

CITY OF OAKLAND
BILL ANALYSIS



2016 APR 13 PM 12:26
Date:

April 7, 2016

Bill Number: Assembly Bill 1957

Bill Author: Quirk

DEPARTMENT INFORMATION

Contact: Ashley Winston
Department: Councilmember Desley Brooks
Telephone: 510-238-3971

RECOMMENDED POSITION: Support

Summary of the Bill

Current requirements under SB 175 state that each department or agency that require peace officers to wear body-worn cameras to develop a policy relating to the use of body-worn cameras that include the procedures for, and limitations on, public access to recordings taken by body-worn cameras, in accordance with the California Public Records Act

Existing law exempts from the disclosure requirements records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, law enforcement agencies, including the Attorney General and state or local police agencies

This bill would (1) require the governing board of the law enforcement agency, to review the footage from a body-worn camera when an officer is involved in an incident that results in great bodily harm or death (2) require a judge, if there is an indictment after an investigation, to determine the protocol for release of the footage from a body-worn camera and (3) require a state or local law enforcement agency to make available, upon request, footage from a law enforcement body-worn camera 60 days after the commencement of an investigation into misconduct resulting in great bodily injury or death depicted in the footage.

The bill would also prohibit the public release of footage that relates to crimes of domestic violence or crimes that include minors or that include statements of a witness at the scene of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

Item: _____
Rules & Legislation Comte.
April 21, 2016

This bill would provide that no reimbursement is required by this act for a specified reason.

Positive Factors for Oakland

The Oakland Police Department has used Portable Digital Recording Devices since 2010 and requires patrol officers to wear the cameras during a number of outlined situations, including detentions, arrests, and serving a warrant. This legislation will help to improve public trust Oakland Police Officers and the people they serve through these accountability measures. It will also help to provide closure and transparency.

PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:

- Critical** (top priority for City lobbyist, city position required ASAP)
- Very Important** (priority for City lobbyist, city position necessary)
- Somewhat Important** (City position desirable if time and resources are available)
- Minimal or** **None** (do not review with City Council, position not required)

Please see attach for bill text and state legislative committee analysis.

Date of Hearing: April 12, 2016

Counsel: Sandra Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 1957 (Quirk) – As Amended April 6, 2016

As Proposed to be Amended in Committee

SUMMARY: Allows a local governing body to review body camera footage of an officer-involved incident resulting in death or great bodily injury the day after the incident occurs, and allows the public access to the footage 60 days after the commencement of an investigation. Specifically, **this bill:**

- 1) States that the local governing body may review, in a closed session, body camera footage depicting an officer-involved incident resulting in death or great bodily injury. This review will occur the before the end of the next business day following the incident.
- 2) Provides that, if there is an investigation that leads to a prosecution, the judge shall review the body camera footage and determine the release protocol, including, but not limited to, whether the footage is released, to whom, and if redaction is required.
- 3) Provides that a state or local law enforcement agency shall make available, upon a Public Records Act request, footage from a law enforcement body camera 60 days after the commencement of an investigation into a misconduct allegation based on use of force resulting in great bodily injury or death depicted in the footage.
- 4) Prohibits release of body camera footage that relates to domestic violence crimes, crimes including minors, or depicting statements of a witness at the scene of a crime.

EXISTING LAW:

- 1) Establishes the California Public Records Act and provides that the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code, § 6250 et seq.)
- 2) Defines "public records" as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." "Writing" means "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." (Gov. Code, § 6252.)

- 3) Makes public records open to inspection at all times during the office hours of the state or local agency. Every person has a right to inspect any public record, except as hereafter provided. Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law. (Gov. Code, § 6253, subd. (a).)
- 4) Provides that, except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so. (Gov. Code, § 6253, subd. (b).)
- 5) Requires the public agency, when a member of the public requests to inspect a public record or obtain a copy of a public record, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, to do all of the following, to the extent reasonable under the circumstances:
 - a) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated;
 - b) Describe the information technology and physical location in which the records exist; and
 - c) Provide suggestions for overcoming any practical basis for denying access to the records or information sought. (Gov. Code, § 6253.1, subd. (a).)
- 6) States that the above provision does not apply when the public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254, as specified. (Gov. Code, § 6253.1, subd. (d).)
- 7) States that, except as in other sections of the California Public Records Act, this chapter does not require the disclosure of specified records, which includes among other things: Records of complaints to, or investigations conducted by specified agencies, including any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes. (Gov. Code, § 6254.)
- 8) Provides, notwithstanding any other law, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:
 - a) The full name and booking information of all persons arrested;
 - b) Calls for service logs and crime reports, subject to protections for protecting the confidentiality of victims; and,
 - c) The addresses of individuals arrested by the agency and victims of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly,

journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator. (Gov. Code, § 6254, subd. (f).)

- 9) Requires the agency to justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. (Gov. Code, § 6255.)
- 10) Authorizes any person to institute proceedings for injunctive or declarative relief or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this chapter. (Gov. Code, § 6258.)
- 11) States that peace officer or custodial officer personnel records and records maintained by any state or local agency pursuant to citizens' complaints against personnel are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery. This section shall not apply to investigations or proceedings concerning the conduct of peace officers or custodial officers, or any agency or department that employ these officers, conducted by a grand jury, a district attorney's office, or the Attorney General's office. (Pen. Code, § 832.7, subd. (a).)
- 12) Provides, notwithstanding the above provision, a department of agency shall release to the complaining party a copy of his or her own statements at the time the complaint is filed. (Pen. Code, § 832.7, subd. (b).)
- 13) States that police "personnel records" include "complaints, or investigations of complaints, concerning an event or transaction in which the officer participated, or which he or she perceived; and pertaining to the manner in which he or she performed his or her duties." (Pen. Code, § 832.8.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Since 2012, there has been a national outcry of several incidents where law enforcement 'use of force' has been questioned in communities throughout the United States. These incidences, many leading to no indictment, have fractured the relationship between many communities and the law enforcement agencies sworn to protect them.

"Body worn cameras have many benefits. A 2013 University of Cambridge study found that when police wear body cameras, both police and respondents are less likely to use violence. The study indicated a drop in use of force by more than a 50 percent. Body cameras could thus make the streets safer for both officers and the general public. Body worn footage can improve the public's view of policing.

"California has an untiring commitment to fairness, civil rights, community policing, transparency, and justice; AB 1957 seeks to adopt the best practices for release of images

captured by the use of police body-worn cameras in this state."

- 2) **Body-Worn Cameras as Tool to Increase Transparency:** A recent report released by U.S. Department of Justice's Office of Community Oriented Policing Services and the Police Executive Research Forum studied the use of body-worn cameras by police agencies. This research included a survey of 250 police agencies, interviews with more than 40 police executives, a review of 20 existing body-camera policies, and a national conference at which more than 200 police chiefs, sheriffs, federal justice representatives, and other experts shared their knowledge of and experiences with body-worn cameras. The report shows that body-worn cameras can help agencies demonstrate transparency and address the community's questions about controversial events. Among other reported benefits are that the presence of a body-worn camera have helped strengthen officer professionalism and helped to de-escalate contentious situations, and when questions do arise following an event or encounter, police having a video record helps lead to a quicker resolution. (Miller and Toliver, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, Police Executive Research Forum (Nov. 2014).)
- 3) **California Public Records Act:** The purpose of the California Public Records Act is to prevent secrecy in government and to contribute significantly to the public understanding of government activities. (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1016-1017.) Thus, under the California Public Records Act, generally all public records are open to public inspection unless a statutory exception exists. But, even if a specific exception does not exist, an agency may refuse to disclose records if on balance, the interest of nondisclosure outweighs disclosure. "The specific exceptions of section 6254 should be viewed with the general philosophy of section 6255 in mind; that is, that records should be withheld from disclosure only where the public interest served by not making a record public outweighs the public interest served by the general policy of disclosure." (53 Ops.Cal.Atty.Gen. 136 (1970).)
 - a) *Police Investigatory Records:* Under the California Public Records Act, police investigatory records are exempt from disclosure. (Gov. Code, § 6254, subd. (f).) The California Supreme Court has expressly rejected this to mean that all information reasonably related to criminal activity is exempt. "Such a broad exemption . . . would effectively exclude the law enforcement function of state and local governments from any public scrutiny under the California Act, a result inconsistent with its fundamental purpose." (*American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 449.) Additionally, a record or document that contains some information that is exempt does not require the entire record to be exempt as long as the exempt material is reasonably segregable from the non-exempt material. (*Id.* at p. 453.)
 - b) *Police Personnel Records:* Under existing law, certain police personnel records are deemed confidential. (Pen. Code, §§ 832.5, 832.7, 832.8.) "Personnel records" are defined to include any file maintained under that individual's name by the officer's employing agency and containing records relating to any of the following, among other things, "employee advancement, appraisal, or discipline" and "complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties." (Pen. Code, § 832.8, subs. (d) and (e).)

- c) *Case Review*: In *Copley-Press, Inv. v. Superior Court* (2006) 39 Cal.4th 1272, a newspaper publisher requested disciplinary appeal records for a particular officer that had been terminated. The newspaper publisher, Copley-Press, argued for disclosure by stating, among other reasons, that the records maintained by the Commission conducting the disciplinary appeal were not protected because they are not personnel records. The Court rejected this view and stated that the records are "personnel records" and therefore are confidential. It did not matter that the Commission, rather than the actual law enforcement agency was in possession of the documents. The Court relied largely on the language of Penal Code section 832.7, subdivision (c), which permits a department or agency that employs peace officers to disclose certain data against officers, but only "if that information is in a form which does not identify the individuals involved." The Court reasoned that the information demonstrates that the statute is intended to protect, among other things, the identity of officers subject to complaints. (*Copley-Press, Inv. v. Superior Court, supra*, 39 Cal.4th at p. 1289.)

A more recent case distinguished itself from *Copley* and held that officers' names in this particular case must be disclosed. In *Long Beach Police Officers Association v. City of Long Beach* (2015) 59 Cal.4th 59, a police union sought to prevent disclosure of the names of Long Beach police officers involved in certain shootings while on-duty pursuant to exceptions in the California Public Records Act. The California Supreme Court, in reviewing the statutes that make police personnel records confidential (Pen. Code, §§ 832.7 and 832.8) stated that the information contained in the initial incident report of an on-duty shooting are typically not "personnel records" although it would result in an investigation by the employing agency and may lead to discipline. "Only the records *generated* in connection with that appraisal or discipline would come within the statutory definition of personal records. (Pen. Code, 832.8, subd. (d).) We do not read the phrase 'records relating to . . . employee . . . appraisal or discipline' so broadly to include every record that might be *considered* for purposes of an officer's appraisal or discipline, for a such a broad reading of the statute would sweep virtually all law enforcement records into the protected category of 'personnel records.'" (*Id.* at pp. 71-72.)

The Court also analyzed the investigatory records exception within the California Public Records Act (Gov. Code, § 6254, subd. (f)) to support its conclusion that not all records pertaining to an on-duty shooting is confidential. The Court noted that paragraphs (1) and (2) of subdivision (f) require the disclosure of the officer's name when a shooting occurs by the officer during an arrest, or in the course of responding to a complaint or request for assistance, or when the officer's name is recorded as a factual circumstance of the incident. "It thus appears that the Legislature draws a distinction between (1) records of factual information about an incident (which generally must be disclosed) and (2) records generated as part of an internal investigation of an officer in connection with the incident (which generally are confidential)." (*Long Beach Officers Association, supra*, 59 Cal.4th at p. 72.)

Likewise, the Court found that the exception against disclosure of personnel records if disclosure would constitute an unwarranted invasion of personal privacy, (Gov. Code, § 6254, subd. (c)), would in most instances weigh in favor of disclosure. "The public's substantial interest in the conduct of its peace officers outweighs, in most cases, the

officer's personal privacy interest." (*Long Beach Officers Association, supra*, 59 Cal.4th at p. 73.)

The Court distinguished its finding from *Copley, supra*, where the court held that an officer's identity was protected from disclosure as a "personnel record." In *Copley, supra*, disclosing the name of the officer in disciplinary appeal records would link the officer to confidential personnel matters involving disciplinary action. In this case, disclosing the names of officers involved in various shootings would not imply that those shootings resulted in disciplinary action against the officers, and it would not link those names to any confidential personnel matters or other protected information. (*Long Beach Officers Association, supra*, 59 Cal.4th at p. 73.)

Lastly, the Court considered the catchall exemption in the California Public Records Act that allows a public agency to withhold any public record if the agency shows that "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Gov. Code, § 6255.) The court concluded that vague safety concerns that apply to all officers involved in shootings are insufficient to tip the balance against disclosure. (*Long Beach Officers Association, supra*, 59 Cal.4th at p. 74.) Thus, the Court rejected the blanket rule sought by the union preventing disclosure of officer names every time an officer is involved in a shooting, and stated that that some circumstances may warrant the nondisclosure of names but the facts of this case did not warrant it. (*Id.* at p. 75.)

Police body camera footage would be considered a public record under the Public Records Act. This type of record can have multiple purposes. For example, body camera footage might be used for training purposes. But, when the video depicts police use of force resulting in great bodily injury or death, it will most likely be used for investigatory purposes.

This bill would create an exception to the investigative-records exemption of the Public Records Act. This bill would allow body camera footage depicting an officer-involved use of force involving great bodily injury or death which has resulted in an investigation of misconduct to be made available to the public under the California Public Records Act 60 days after the investigation commences.

This bill is consistent with the Supreme Court's interpretation of the Public Records Act. The California Supreme Court has found a policy favoring disclosure especially salient when the subject is law enforcement: In order to maintain trust in its police department, the public must be kept fully informed of the activities of its peace officers. (See *Long Beach Officers Association, supra*, 59 Cal.4th at p. 74, see also *Commission on Peace Officer Standards & Training v. Superior Court* (2007) 42 Cal.4th 278, 297.) In *Commission on Peace Officer Standards, supra*, the Supreme Court noted:

Given the extraordinary authority with which they are entrusted, the need for transparency, accountability and public access to information is particularly acute when the information sought involves the conduct of police officers. In *Commission on Police Officer Standards*, the Supreme Court observed, "The public's legitimate interest in the identity and activities of peace officers is even greater than its interest in those of the average public servant. 'Law enforcement officers carry upon their shoulders the cloak of authority to enforce the laws of the state. In order to maintain

trust in its police department, the public must be kept fully informed of the activities of its peace officers.' [Citation.] 'It is indisputable that law enforcement is a primary function of local government and that the public has a far greater interest in the qualifications and conduct of law enforcement officers, even at, and perhaps especially at, an "on the street" level than in the qualifications and conduct of other comparably low-ranking government employees performing more proprietary functions. The abuse of a patrolman's office can have great potentiality for social harm' (*Commission on Police Officer Standards*, at pp. 297–298, fn. omitted.)

Release of body camera footage is precisely the kind of disclosure which will promote public scrutiny of, and accountability for, uses of force.

- 4) **Argument in Support:** According to the *California Public Defenders Association*, "The California Public Records Act requires that public records be open to inspection at all times during the office hours of a state or local agency and that every person has a right to inspect any public record, except as specifically provided. The act further requires that a reasonably segregable portion of a public record be available for inspection by any person requesting the public record after deletion of the portions that are exempted by law. Existing law exempts from the disclosure requirements records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, law enforcement agencies, including the Attorney General and state or local police agencies.

"This bill would by require a state or local law enforcement agency to make available, upon request, footage from a law enforcement body-worn camera 60 days after the commencement of an investigation into misconduct that uses or involves that footage.

"This bill promotes transparency in the actions of law enforcement by mandating the release of recordings that would tend to shed light on possible police misconduct. It can have the purposes of promoting public confidence in such actions, or disclose inappropriate behavior. Under either circumstance, the public has a right to view these recordings."

- 5) **Argument in Opposition:** According to the *California District Attorneys Association*, "Existing law, in Government Code, section 6254(f), provides an exception to the California Public Records Act that protects against disclosure of reports that 'would endanger the successful completion of the investigation or a related investigation.' This bill, rather arbitrarily, would override that CPRA exemption after just 60 days. In many cases, particularly those in which an officer is being investigated as a criminal suspect, such an investigation would still be ongoing after 60 days.

"AB 1957 provides no mechanism by which to delay the release of any footage related to the investigation, and, in fact, *requires* its release upon request. Under no circumstances are law enforcement agencies required to disclose evidence during the pendency of an investigation. Existing law sufficiently balances the public's desire to obtain this type of information with law enforcement agencies' need to preserve the integrity of the investigations. AB 1957 would undermine those efforts."

6) Related Legislation:

- a) AB 1940 (Cooper), in pertinent part, exempts from disclosure under the Public Records Act body-worn camera recordings that depict the use of force resulting in serious injury or death from public disclosure, except as specified. AB 1940 will be heard in this Committee today.
- b) AB 2533 (Santiago) entitles an officer to at least five-day's notice before an agency release an audio or video recording by that officer on the Internet. AB 2533 will be heard in this Committee today.
- c) AB 2611 (Low) exempts from disclosure under the Public Records Act any investigatory or security audio or video recording compiled by state or local law enforcement. AB 2611 is pending in the Judiciary Committee.

7) Prior Legislation:

- a) AB 65 (Alejo), would have redirected funds from the Driver Training Penalty Assessment Fund and allocates that money to the Board of State and Community Corrections to be used to fund local law enforcement agencies to operate a body-worn camera program, as specified. AB 65 was held in the Assembly Appropriations Committee.
- b) AB 66 (Weber), would have established mandatory requirements and recommended guidelines for the use of body-worn cameras by peace officers and the handling of the resulting video and audio data. AB 66 was held in the Assembly Appropriations Committee.
- c) AB 69 (Rodriguez), Chapter 461, Statutes of 2015, requires law enforcement agencies to consider specified best practices when establishing policies and procedures for downloading and storing data from body-worn cameras.
- d) SB 175 (Huff) would have required each department or agency that employs peace officers and that elects to require those peace officers to wear body-worn cameras to develop a policy relating to the use of body-worn cameras. SB 175 was ordered to the inactive file.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Public Defenders Association
Legal Services for Prisoners with Children

Opposition

California Civil Liberties Advocacy
California District Attorneys Association
California Police Chiefs Association

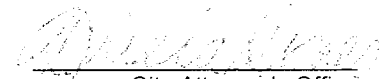
California State Sheriffs' Association
Fraternal Order of Police

Analysis Prepared by: Sandy Uribe / PUB. S. / (916) 319-3744

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2016 APR 13 PM 12:26

Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DESLEY BROOKS

**RESOLUTION IN SUPPORT OF ASSEMBLY BILL 1957 (QUIRK)
WHICH REQUIRES STATE OR LOCAL LAW ENFORCEMENT TO
MAKE AVAILABLE, UPON REQUEST, FOOTAGE FROM LAW
ENFORCEMENT BODY-WORN CAMERAS 60 DAYS AFTER THE
COMMENCEMENT OF AN INVESTIGATION INTO MISCONDUCT THAT
USES OR INVOLVES THAT FOOTAGE**

WHEREAS, The Department of Justice recognizes body-worn cameras as a law enforcement strategy aimed at improving public safety, reducing crime, and improving public trust between police and the citizens they serve; and

WHEREAS, Current requirements under SB 175 state that each department or agency that require peace officers to wear body-worn cameras to develop a policy relating to the use of body-worn cameras that include the procedures for, and limitations on, public access to recordings taken by body-worn cameras, in accordance with the California Public Records Act; and

WHEREAS, The California Public Records Act requires state and local agencies to make their records available for public inspection, except where provided, and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state; and

WHEREAS, The Oakland Police Department has used Portable Digital Recording Devices since 2010 and require patrol officers to wear the cameras during a number of outlined situations, including detentions, arrests, and serving a warrant; and

WHEREAS, Assembly Bill (AB) 1957 (Quirk) would require (1) the governing board of the law enforcement agency, to review the footage from a body-worn camera when an officer is involved in an incident that results in great bodily harm or death (2) a judge, if there is an indictment after an investigation, to determine the protocol for release of the footage from a body-worn camera and (3) a state or local law enforcement agency to make available, upon request, footage from a law enforcement body-worn camera 60 days after the commencement of an investigation into misconduct that uses or involves that footage; and

WHEREAS, The bill would also prohibit the public release of footage that relates to crimes of domestic violence or crimes that include minors or that includes statements of a witness at the scene of a crime; now, therefore, be it

RESOLVED: That the Oakland City Council hereby endorses AB 1957 and urges the California State Legislature and Governor Jerry Brown to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID, AND
PRESIDENT GIBSON MCELHANEY

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California