

AMENDED IN ASSEMBLY APRIL 14, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1940**

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**Introduced by Assembly Member Cooper**

February 12, 2016

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An act to add ~~Section 6254.31 to the Government Code, and to add~~ Section 832.19 to the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1940, as amended, Cooper. Peace officers: body-worn cameras: policies and procedures.

~~(1) Existing~~

*Existing* law requires law enforcement agencies, departments, or entities to consider specified best practices regarding the downloading and storage of body-worn camera data when establishing policies and procedures for the implementation and operation of a body-worn camera system, such as designating the person responsible for downloading the recorded data from the body-worn camera, and establishing when data should be downloaded to ensure the data is entered into the system in a timely manner and the cameras are properly maintained and ready for the next use.

This bill would require a law enforcement agency, department, or entity, if it employs peace officers and uses body-worn cameras for those officers, to develop a body-worn camera policy. The bill would require the policy to allow a peace officer to review his or her body-worn camera video and audio recordings before making a report, giving an internal affairs statement, or before any criminal or civil proceeding.

The bill would encourage the law enforcement agency, department, or entity to include specified considerations in the policy, including the time, place, circumstances, and duration in which the body-worn camera is operational and the availability of the policy to peace officers and members of the public.

~~(2) Existing law, the California Public Records Act, requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies.~~

~~This bill would exempt body-worn camera recordings that depict the use of force resulting in serious injury or death from public disclosure pursuant to the act unless a judicial determination is made, after the adjudication of any civil or criminal proceeding related to the use of force incident, that the interest in public disclosure outweighs the need to protect the individual right to privacy.~~

~~(3) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.~~

~~This bill would make legislative findings to that effect.~~

~~(4) The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.~~

~~This bill would make legislative findings to that effect.~~

~~(5) 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.~~

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

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~*no*.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. ~~Section 6254.31 is added to the Government~~
- 2 Code, to read:

1 ~~6254.31. (a) A visual or audio recording made by a peace~~  
2 ~~officer's body-worn camera during the performance of his or her~~  
3 ~~duties that depicts use of force resulting in serious injury or death~~  
4 ~~is confidential and shall not be disclosed to any member of the~~  
5 ~~public pursuant to this chapter unless it is determined that the~~  
6 ~~interest in public disclosure outweighs the need to protect the~~  
7 ~~individual right to privacy.~~

8 ~~(b) This determination is subject to a judicial order that shall~~  
9 ~~only occur after the adjudication of any civil or criminal proceeding~~  
10 ~~related to the use of force incident involving the peace officer.~~

11 ~~SEC. 2.~~

12 *SECTION 1.* Section 832.19 is added to the Penal Code, to  
13 read:

14 832.19. (a) (1) If a law enforcement agency, department, or  
15 entity that employs peace officers uses body-worn cameras for  
16 those officers, the agency, department, or entity shall develop a  
17 policy relating to the use of body-worn cameras.

18 (2) The following definitions shall apply to this section:

19 (A) "Body-worn camera" means a device attached to the uniform  
20 or body of a peace officer that records video, audio, or both, in a  
21 digital or analog format.

22 (B) "Peace officer" means any person designated as a peace  
23 officer pursuant to this chapter.

24 (b) (1) The policy shall allow a peace officer to review his or  
25 her body-worn camera video and audio recordings before he or  
26 she makes a report, is ordered to give an internal affairs statement,  
27 or before any criminal or civil proceeding.

28 (2) A peace officer is not required to review his or her  
29 body-worn camera video and audio recordings before making a  
30 report, giving an internal affairs statement, or before any criminal  
31 or civil proceeding.

32 (c) The policy shall be developed in accordance with the  
33 Meyers-Milias-Brown Act (Chapter 10 (commencing with Section  
34 3500) of Division 4 of Title 1 of the Government Code) and the  
35 Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512)  
36 of Division 4 of Title 1 of the Government Code).

37 (d) In developing the policy, law enforcement agencies,  
38 departments, or entities are encouraged to include the following  
39 in the policy:

1 (1) The time, place, circumstances, and duration in which the  
2 body-worn camera shall be operational.

3 (2) Which peace officers shall wear the body-worn camera and  
4 when they shall wear it.

5 (3) Prohibitions against the use of body-worn camera equipment  
6 and footage in specified circumstances, such as when the peace  
7 officer is off-duty.

8 (4) The type of training and length of training required for  
9 body-worn camera usage.

10 (5) Public notification of field use of body-worn cameras,  
11 including the circumstances in which citizens are to be notified  
12 that they are being recorded.

13 (6) The manner in which to document a citizen’s refusal from  
14 being recorded under certain circumstances.

15 (7) The use of body-worn camera video and audio recordings  
16 in internal affairs cases.

17 (8) The use of body-worn camera video and audio recordings  
18 in criminal and civil case preparation and testimony.

19 (9) The transfer and use of body-worn camera video and audio  
20 recordings to other law enforcement agencies, including  
21 establishing what constitutes a need-to-know basis and what  
22 constitutes a right-to-know basis.

23 (10) The policy may be available to all peace officers in a written  
24 form.

25 (11) The policy may be available to the public for viewing.

26 ~~SEC. 3. The Legislature finds and declares that Section 1 of~~  
27 ~~this act, which adds Section 6254.31 to the Government Code,~~  
28 ~~imposes a limitation on the public’s right of access to the meetings~~  
29 ~~of public bodies or the writings of public officials and agencies~~  
30 ~~within the meaning of Section 3 of Article I of the California~~  
31 ~~Constitution. Pursuant to that constitutional provision, the~~  
32 ~~Legislature makes the following findings to demonstrate the interest~~  
33 ~~protected by this limitation and the need for protecting that interest:~~

34 ~~The need to protect individual privacy and the credibility and~~  
35 ~~integrity of official ongoing investigations and those persons~~  
36 ~~subject to those investigations from the public disclosure of video~~  
37 ~~and audio recordings captured by a body-worn camera outweighs~~  
38 ~~the interest in the public disclosure of that information.~~

39 ~~SEC. 4. The Legislature finds and declares that Section 1 of~~  
40 ~~this act, which adds Section 6254.31 to the Government Code,~~

1 furthers, within the meaning of paragraph (7) of subdivision (b)  
2 of Section 3 of Article I of the California Constitution, the purposes  
3 of that constitutional section as it relates to the right of public  
4 access to the meetings of local public bodies or the writings of  
5 local public officials and local agencies. Pursuant to paragraph (7)  
6 of subdivision (b) of Section 3 of Article I of the California  
7 Constitution, the Legislature makes the following findings:

8 Protecting the privacy of a person whose image is captured by  
9 a peace officer's body-worn camera enhances public safety, the  
10 protection of individual rights, and the credibility and integrity of  
11 official ongoing investigations and those persons subject to those  
12 investigations, thereby furthering the purposes of Section 3 of  
13 Article I of the California Constitution.

14 SEC. 5. No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district under this act would result from a legislative mandate that  
18 is within the scope of paragraph (7) of subdivision (b) of Section  
19 3 of Article I of the California Constitution.