

**REPORT OF THE
CHIEF LEGISLATIVE ANALYST**

DATE: June 1, 2015

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations
Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No: 15-0002-S17
Assignment No: 15-04-0324

SUBJECT: Resolution (Parks-Koretz) to SUPPORT SB 411 (Lara)

CLA RECOMMENDATION: Adopt Resolution (Parks-Koretz) to include in the City's 2015 – 2016 State Legislative Program, SUPPORT for SB 411 (Lara) that would recognize the existing right of Californians to record or photograph police officers as long as they are not interfering with a police officer's duties.

SUMMARY

Resolution (Parks-Koretz), introduced on April 21, 2015, concerns SB 411 (Lara), which would recognize the right of Californians to record or photograph police officers as long as they are not interfering with a police officer's duties. The Resolution states that, in the past, bystanders have been arrested by law enforcement officers for video recording police officers during use-of-force incidents.

The Resolution further indicates that existing California law allows citizens to observe law enforcement officers when officers are performing their duties. SB 411 would clarify existing law and specifically state that an individual has the right to record or photograph law enforcement officers performing their duties. The Resolution, therefore, seeks an official position of the City of Los Angeles to support SB 411 (Lara).

BACKGROUND

Due to technological advances, almost every person has a hand-held recording device, which may be used to record police officers while on duty. In some cases, photographs and video and audio recordings of police officers have exposed police brutality cases. Conversely, the photographs and recordings have also been used as evidence to show when police used the appropriate amount of force in a given situation.

Despite the benefits that recordings and photographs may have, the law is unclear as to whether it is an obstruction to justice, and therefore a violation of State law, to photograph or record police officers while they are on duty. In several California cases, members of the public have been arrested while recording or photographing police activity in public places. California Penal Code Section 69 states that any person who deters or prevents an officer from performing his or her duties, or knowingly resists an officer, may be subject to fines and/or imprisonment.

The purpose of SB 411 is to expressly state that it is not a crime to take a photograph or record law enforcement officers while they are on duty. SB 411 states that a person who takes a photograph

or makes an audio or video recording of a police officer, while the officer is in a public place or the person is in a place he or she has the right to be, is not a violation of existing laws. Furthermore, SB 411 provides that recording or photographing police officers does not constitute reasonable suspicion to detain the person or probable cause to arrest the person.

SB 411 is supported by various organizations, including the American Civil Liberties Union of California, California Public Defenders Association, Conference of California Bar Associations, and California Attorneys for Criminal Justice. Currently, no opposition has been received.

BILL STATUS

2/25/2015	Introduced
3/05/2015	Referred to the Senate Committee on Public Safety
4/07/2015	Passed from Committee
4/13/2015	Passed Senate, Ordered to Assembly
4/14/2015	Referred to the Assembly Committee on Public Safety



Cheryl A. Banares
Analyst

SMT:cab

Attachment: 1. Resolution (Parks-Koretz)
2. SB 411 (Lara)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, in the past, some bystanders have been arrested by law enforcement officers for video recording police during use-of-force incidents; and

WHEREAS, video recordings by bystanders have previously exposed police brutality cases, and the recording of police officers should not be discouraged; and

WHEREAS, current California law allows for citizens to observe law enforcement officers when officers are performing their duties; and

WHEREAS, this right also includes the right to record or photograph law enforcement officers, as long as an individual is not interfering with a police officer's duties; and

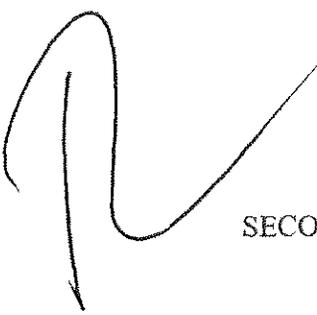
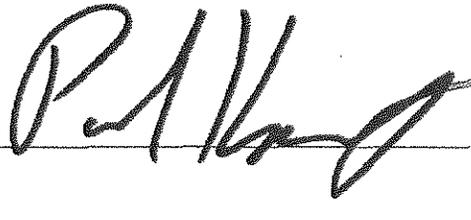
WHEREAS, the right to record or photograph law enforcement officers who are carrying out their duties is not specifically stated in California law; and

WHEREAS, SB 411 (Lara) would clarify current law and specifically state that an individual has the right to record or photograph law enforcement officers performing their duties; and

WHEREAS, SB 411 ensures that Californians are able to exercise their clearly-stated rights, and removes any legal ambiguity when recording or photographing law enforcement officers;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2015 - 2016 State Legislative Program SUPPORT for SB 411 (Lara), which would recognize the existing right of Californians to record or photograph police officers as long as they are not interfering with a police officer's duties.

PRESENTED BY 
BERNARD C. PARKS
Councilmember, 8th District

 SECONDED BY 

jwd

APR 21 2015

Introduced by Senator Lara

February 25, 2015

An act to amend Sections 69 and 148 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 411, as introduced, Lara. Crimes.

Under existing law, every person who deters or prevents an executive officer from performing any of his or her duties, or knowingly resists the officer, is punishable by a fine or imprisonment, or both, as specified.

This bill would provide that the fact that a person takes a photograph or makes an audio or video recording of an executive officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of the above-mentioned provision.

Under existing law, every person who willfully resists, delays, or obstructs any public officer, peace officer, or emergency medical technician in the discharge or attempt to discharge any of his or her duties shall be punished by a fine or imprisonment, or both, as specified.

This bill would provide that the fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, is not, in and of itself, a violation of the above-mentioned provision, nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.

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

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

- 1 SECTION 1. Section 69 of the Penal Code is amended to read:
2 69. (a) Every person who attempts, by means of any threat
3 or violence, to deter or prevent an executive officer from
4 performing any duty imposed upon ~~such~~ *the* officer by law, or who
5 knowingly resists, by the use of force or violence, ~~such~~ *the* officer,
6 in the performance of his *or her* duty, is punishable by a fine not
7 exceeding ten thousand dollars (\$10,000), or by imprisonment
8 pursuant to subdivision (h) of Section 1170, or in a county jail not
9 exceeding one year, or by both such fine and imprisonment.
10 (b) *The fact that a person takes a photograph or makes an audio*
11 *or video recording of an executive officer, while the officer is in*
12 *a public place or the person taking the photograph or making the*
13 *recording is in a place he or she has the right to be, does not*
14 *constitute, in and of itself, a violation of subdivision (a).*
15 SEC. 2. Section 148 of the Penal Code is amended to read:
16 148. (a) (1) Every person who willfully resists, delays, or
17 obstructs any public officer, peace officer, or an emergency medical
18 technician, as defined in Division 2.5 (commencing with Section
19 1797) of the Health and Safety Code, in the discharge or attempt
20 to discharge any duty of his or her office or employment, when
21 no other punishment is prescribed, shall be punished by a fine not
22 exceeding one thousand dollars (\$1,000), or by imprisonment in
23 a county jail not to exceed one year, or by both that fine and
24 imprisonment.
25 (2) Except as provided by subdivision (d) of Section 653t, every
26 person who knowingly and maliciously interrupts, disrupts,
27 impedes, or otherwise interferes with the transmission of a
28 communication over a public safety radio frequency shall be
29 punished by a fine not exceeding one thousand dollars (\$1,000),
30 imprisonment in a county jail not exceeding one year, or by both
31 that fine and imprisonment.
32 (b) Every person who, during the commission of any offense
33 described in subdivision (a), removes or takes any weapon, other
34 than a firearm, from the person of, or immediate presence of, a
35 public officer or peace officer shall be punished by imprisonment
36 in a county jail not to exceed one year or pursuant to subdivision
37 (h) of Section 1170.

1 (c) Every person who, during the commission of any offense
2 described in subdivision (a), removes or takes a firearm from the
3 person of, or immediate presence of, a public officer or peace
4 officer shall be punished by imprisonment pursuant to subdivision
5 (h) of Section 1170.

6 (d) Except as provided in subdivision (c) and notwithstanding
7 subdivision (a) of Section 489, every person who removes or takes
8 without intent to permanently deprive, or who attempts to remove
9 or take a firearm from the person of, or immediate presence of, a
10 public officer or peace officer, while the officer is engaged in the
11 performance of his or her lawful duties, shall be punished by
12 imprisonment in a county jail not to exceed one year or pursuant
13 to subdivision (h) of Section 1170.

14 In order to prove a violation of this subdivision, the prosecution
15 shall establish that the defendant had the specific intent to remove
16 or take the firearm by demonstrating that any of the following
17 direct, but ineffectual, acts occurred:

18 (1) The officer's holster strap was unfastened by the defendant.

19 (2) The firearm was partially removed from the officer's holster
20 by the defendant.

21 (3) The firearm safety was released by the defendant.

22 (4) An independent witness corroborates that the defendant
23 stated that he or she intended to remove the firearm and the
24 defendant actually touched the firearm.

25 (5) An independent witness corroborates that the defendant
26 actually had his or her hand on the firearm and tried to take the
27 firearm away from the officer who was holding it.

28 (6) The defendant's fingerprint was found on the firearm or
29 holster.

30 (7) Physical evidence authenticated by a scientifically verifiable
31 procedure established that the defendant touched the firearm.

32 (8) In the course of any struggle, the officer's firearm fell and
33 the defendant attempted to pick it up.

34 (e) A person shall not be convicted of a violation of subdivision
35 (a) in addition to a conviction of a violation of subdivision (b), (c),
36 or (d) when the resistance, delay, or obstruction, and the removal
37 or taking of the weapon or firearm or attempt thereof, was
38 committed against the same public officer, peace officer, or
39 emergency medical technician. A person may be convicted of

1 multiple violations of this section if more than one public officer,
2 peace officer, or emergency medical technician are victims.
3 (f) This section shall not apply if the public officer, peace
4 officer, or emergency medical technician is disarmed while engaged
5 in a criminal act.
6 (g) *The fact that a person takes a photograph or makes an audio*
7 *or video recording of a public officer or peace officer, while the*
8 *officer is in a public place or the person taking the photograph or*
9 *making the recording is in a place he or she has the right to be,*
10 *does not constitute, in and of itself, a violation of subdivision (a),*
11 *nor does it constitute reasonable suspicion to detain the person*
12 *or probable cause to arrest the person.*

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