

ATTACHMENT 3

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2015 MAY 26 AM 9:08

Approved as to form and legality

DRAFT

City Attorney's Office

OAKLAND CITY COUNCIL

ORDINANCE NO: _____ C.M.S.

INTRODUCED BY 100 BLACK MEN OF THE BAY AREA, INC.

AN ORDINANCE ADDING CHAPTER 9.08.270 TO CHAPTER 9 OF THE OAKLAND MUNICIPAL CODE ESTABLISHING THE RIGHT TO PHOTOGRAPH, VIDEO AND/OR AUDIO RECORD POLICE AND/OR PEACE OFFICER(S)

Whereas despite California's well-established right to take photographs and make audio and video recordings of police officers, members of the public have nonetheless been arrested and detained for lawfully photographing and recording the police; and

Whereas the core protections of our Federal and State Constitution are violated when individuals are arrested and/or detained for legally pursuing constitutionally protected activity; and

Whereas, when Oscar Grant was fatally shot and killed by a BART Police, BART Police attempted to seize video and audio recording devices in violation of State law; and

Whereas, this confused the public as to their right to photograph, videotape and audio record police and/or peace officers; and

Whereas such violations threaten our liberties and make our communities less safe; and

Whereas by recognizing the existing constitutional right to photograph and record the police helps to safeguard our collective freedoms and takes an important step towards ensuring that individuals are not punished for the mere exercise of their constitutional rights;

WHEREAS, by enacting an ordinance establishing the right to photograph, video and/or audio record police and/or peace officer(s), the City of Oakland will recognize bystander's right to photograph, videotape or audio record police and/or peace officer(s) now therefore be it

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1. That the City Council finds and determines the foregoing recitals to be true and correct and hereby makes them a part of this Ordinance.

Section 2. Chapter 9.08.270, added to Title 9 -- Public Peace, Welfare, Morals and Welfare of the Oakland Municipal Code, to read as follows:

9.08.270 RIGHT TO PHOTOGRAPH, AUDIO RECORD AND/OR VIDEOTAPE
POLICE/PEACE OFFICERS ESTABLISHED

A. The fact that a person takes a photograph or makes an audio or video recording of a police 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, does not constitute, in and of itself, a violation.

B. Nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.

Section 3. Severability. If any section, paragraph clause, phrase, or word in this ordinance is declared invalid or unconstitutional by any court with jurisdiction to make such decision, said decision shall not affect the remaining portions of this ordinance. The City Council hereby finds and declares that it would have enacted this ordinance without that section, paragraph, clause, phrase, or word.

Section 4. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes on final adoption as provided by Section 216 of the City Charter; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL. OAKLAND, CALIFORNIA, _____, 2015.

PASSED BY THE FOLLOWING VOTE:

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

DATE OF ATTESTATION: _____

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.

DIGEST KEY

Vote: MAJORITY Appropriation: NO Fiscal Committee: NO Local Program: NO

BILL TEXT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

Section 69 of the Penal Code is amended to read:

69.

(a) Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon ~~such~~ *the* officer by law, or who knowingly resists, by the use of force or violence, ~~such~~ *the* officer, in the performance of his or her duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment.

(b) 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, does not constitute, in and of itself, a violation of subdivision (a).

SEC. 2.

Section 148 of the Penal Code is amended to read:

148.

(a) (1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(2) Except as provided by subdivision (d) of Section 653t, every person who knowingly and maliciously interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a public safety radio frequency shall be punished by a fine not exceeding one thousand dollars (\$1,000), imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(b) Every person who, during the commission of any offense described in subdivision (a), removes or takes any weapon, other than a firearm, from the person of, or immediate presence of, a public officer or peace officer shall be punished by imprisonment in a county jail not to exceed one year or pursuant to subdivision (h) of Section 1170.

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

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

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

- (1) The officer's holster strap was unfastened by the defendant.
 - (2) The firearm was partially removed from the officer's holster by the defendant.
 - (3) The firearm safety was released by the defendant.
 - (4) An independent witness corroborates that the defendant stated that he or she intended to remove the firearm and the defendant actually touched the firearm.
 - (5) An independent witness corroborates that the defendant actually had his or her hand on the firearm and tried to take the firearm away from the officer who was holding it.
 - (6) The defendant's fingerprint was found on the firearm or holster.
 - (7) Physical evidence authenticated by a scientifically verifiable procedure established that the defendant touched the firearm.
 - (8) In the course of any struggle, the officer's firearm fell and the defendant attempted to pick it up.
- (e) A person shall not be convicted of a violation of subdivision (a) in addition to a conviction of a violation of subdivision (b), (c), or (d) when the resistance, delay, or obstruction, and the removal or taking of the weapon or firearm or attempt thereof, was committed against the same public officer, peace officer, or emergency medical technician. A person may be convicted of multiple violations of this section if more than one public officer, peace officer, or emergency medical technician are victims.
- (f) This section shall not apply if the public officer, peace officer, or emergency medical technician is disarmed while engaged in a criminal act.
- (g) 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, does not constitute, in and of itself, a violation of subdivision (a), nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.***