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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 2611                      **Hearing Date:** June 28, 2016  
**Author:** Low  
**Version:** June 22, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** JRD

**Subject:** *The California Public Records Act: Visual or Audio Recording of Peace Officer's Death: Conditional Exemption from Disclosure*

## HISTORY

**Source:** Peace Officers Research Association of California

**Prior Legislation:** None known

**Support:** Fraternal Order of Police; Association of District Attorneys; Association for Los Angeles Deputy Sheriffs; Association of Orange County Deputy Sheriffs; Long Beach Police Officers Association; Los Angeles Police Protective League; the Los Angeles County Deputy Probation Officers Union, AFSCME, Local 685; the Riverside Sheriffs' Association; Sacramento County Deputy Sheriffs' Association; California Statewide Law Enforcement Association

**Opposition:** American Civil Liberties Union of California; California Newspaper Publishers Association; Electronic Frontier Foundation; Legal Services for Prisoners with Children

**Assembly Floor Vote:** 76 - 0

## PURPOSE

*The purpose of this bill is to exempt from disclosure under the California Public Records Act any audio or video recording depicting the death of a peace officer killed in the line of duty, unless authorized to be released by the officer's immediate family, as specified.*

*Existing law*, the California Constitution, declares the people's right to transparency in government. ("The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny....") (Cal. Const., art. I, Sec. 3.)

*Under existing law* the California Public Records Act generally provides that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Government Code § 6250 et. seq.)

*Existing law* provides that public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as 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. (Government Code § 6253)

*Under existing law* there are 30 general categories of documents or information that are exempt from disclosure, essentially due to the character of the information, and unless it is shown that the public's interest in disclosure outweighs the public's interest in non-disclosure of the information, the exempt information may be withheld by the public agency with custody of the information. (Government Code § 6254 et seq.)

*Under existing law* California Public Records Act does not require disclosure of investigations conducted by the office of the Attorney General and the Department of Justice, the Office of Emergency Services and 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. (Government Code § 6254(f).)

*Existing law* requires that any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the proportions that are exempted by law. (Government Code § 6253(a).)

*Existing law*, for records not subject to an exemption, may be withheld if the agency demonstrates 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. (Government Code § 6255.)

*Existing law* defines "public record" 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. (Government Code § 6252(e).)

*Existing law* defines "writing" to include any handwriting, typewriting, printing, photography, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or other representation, regardless of the manner in which the record has been stored. (Government Code § 6252(g).)

*This bill* prohibits a public agency from disclosing a visual or audio recording of the death of a peace officer killed in the line of duty, unless the disclosure is authorized by the peace officer's immediate family. If a peace officer's immediate family authorizes the disclosure of a visual or audio recording of the death of the peace officer killed in the line of duty, the public agency is required to disclose the visual or audio recording.

*This bill* makes the following legislative finding and declaration to demonstrate the interest protected by this limitation and the need for protecting that interest: "Prohibiting the disclosure of a visual or audio recording of the death of a peace officer killed in the line of duty , without the consent of the peace officer's immediate family, ensures the privacy of persons who serve in law enforcement and their immediate families, protects those families from additional emotional trauma from public displays of those images, and further protects the public from the graphic sounds and morbid images that would be contained in a visual or audio recording of the death of a peace officer in the line of duty. By providing for a limited, conditional disclosure of these recordings, when other public records relating to the death may be available for public

inspection, this act properly balances the public's right to access public records with proper privacy interests."

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Legislation

According to the author:

[T]he CPRA does not address the issue of the release of any video that depicts the death of a peace officer while acting in the line of duty. A peace officer giving the ultimate sacrifice for the citizens of this state deserves to have any related video protected by the Act. The surviving families of these officers should not have to worry that the video depicting their loved one's death will be open to the public to be viewed over and over again.

### 2. Effect of This Legislation

The California Public Records Act (CPRA) provides that public records are 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, unless otherwise exempted from disclosure. Existing law further provides, that in the event that a record contains non-disclosable information, "any reasonably segregable portion of the record shall be available" to the requestor. (Gov. Code Sec. 6253.)

Notably, records of complaints and investigations conducted by the police, or any investigatory or security files compiled by the police are exempted from disclosure under the CPRA. (Gov. Code Sec. 6254(f).) With regard to records that are not covered by an exemption, police agencies may withhold any record if "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by the disclosure of the record." (Gov. Code Sec. 6255.)

This bill would prohibit the disclosure of "any visual or audio recording of the death of a peace officer being killed in the line of duty, unless authorized to be released by the officer's immediate family." Thus, under this bill, a video of an officer who died in the line of duty would be automatically exempted from the CPRA, but a similar video depicting the death of a civilian could only be withheld from the public if it was so highly offensive to a reasonable person that any public interest or law enforcement purpose for its disclosure is outweighed by the public interest in nondisclosure. The opposition explains the use of the balancing test:

The public interest balancing test found in Government Code Section 6255 currently allows agencies and courts to balance the public's right to access these recordings when specific circumstances warrant and on a case-by-case basis against the public interest in protecting the privacy interests of the officer or his or her family, which in most cases would likely favor non-disclosure.

We believe agencies are best suited to weigh these competing interests based on the information before them and balance the interests when making a decision in response to a CPRA request.

The opposition, additionally, states:

Eliminating the discretion of the agency to determine whether or not to disclose a recording and placing that decision-making authority in the hands of a grieving family who may not be able to identify a public interest in disclosure let alone balance that interest against their own desire to prevent the public from viewing or hearing the recording would be a dangerous and unprecedented change in the law.

Members may wish to consider what deficiencies, if any, there are in the existing law that necessitate the need for an exception for videos of the death of a peace officer.

**SHOULD PEACE OFFICERS AND THEIR FAMILIES BE ENTITLED TO GREATER PRIVACY PROTECTIONS THAN THE GENERAL PUBLIC?**

### **3. Argument in Support**

According to the Fraternal Order of Police:

Peace officers take a sworn oath to defend and protect the citizens they serve, all while facing extraordinary risks of danger daily. Oftentimes we forget that those individuals that become peace officers are still public employees who are protected under the California Public Records Act, which ensures that certain information is not public information. We are pleased that AB 2611 allows for the audio and video recording involving the death of a public safety officer to be kept confidential. We commend the author for protecting fellow law enforcement officers and families of fallen officers.

### **4. Argument in Opposition**

According to the American Civil Liberties Union of California:

With respect to audio or visual recordings that depict the death of a peace officer, we appreciate that these may be sensitive materials that family members may prefer not to be released. But we see no justification for being more protective of peace officer deaths than those of any other public official, or of the general public. Indeed, there are good reasons for being more open about the activities of peace officers because they are public officials who must be subject to greater scrutiny by virtue of the enormous power entrusted to them, including the possibility that an officer's death may occur in the context of alleged misconduct, or as the victim of a crime.

**-- END --**