
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 424 **Hearing Date:** April 28, 2015
Author: Pan
Version: April 21, 2015
Urgency: No **Fiscal:** No
Consultant: MK

Subject: *Law Enforcement: Communications*

HISTORY

Source: California College and University Police Chiefs Association

Prior Legislation: AB 992 (Spitzer) - failed Senate Public Safety, 2005
AB 1884 (Spitzer) – vetoed, 2004
AB 860 (Unruh) - Chapter 1509, Stats. 1967

Support: The Association for Los Angeles Deputy Sheriffs; California Association of Code Enforcement Officers; California Correctional Supervisors Organization; California Narcotic Officers Association; Los Angeles Police Protective League; Riverside Sheriffs Association

Opposition: ACLU; California Attorneys for Criminal Justice

PURPOSE

The purpose of this bill is to allow university and college peace officers to eavesdrop in any criminal investigation related to sexual assault or other sexual offense and to wear body-worn cameras.

Existing law establishes that a member of the UC Police Department whose primary duty is the enforcement of the law within the specified jurisdictional areas is a peace officer. (Penal Code § 830.2(b).)

Existing law limits the authority of a member of the UC Police Department to the UC campuses, an area within one mile of the exterior boundaries of each campus, and other properties owned or operated by the Regents of the University of California. (Education Code § 92600.)

Existing law establishes that a member of the CSU Police Department whose primary duty is the enforcement of the law within the specified jurisdictional areas is a peace officer. (Penal Code § 830.2(c).)

Existing law limits the authority of a member of the CSU Police Department to the CSU campuses, an area within one mile of the exterior boundaries of each campus, and other CSU owned or operated properties. (Education Code § 89560.)

Existing law declares legislative intent to protect the right of privacy of the People of California and recognizes that law enforcement agencies have a legitimate need to employ modern listening devices and techniques to investigate criminal conduct. (Penal Code § 630.)

Existing law generally prohibits wiretapping, eavesdropping, and using electronic devices to record or amplify a confidential communication. It further provides that any evidence so obtained is inadmissible in any judicial, administrative, or legislative proceeding. (Penal Code §§ 631, 632, 632.5, 632.6, and 632.7.)

Existing law permits one party to a confidential communication to record the communication for the purpose of obtaining evidence reasonably believed to relate to the commission by another party to the communication of the crime of extortion, kidnapping, bribery, any felony involving violence against the person, or a violation of the law against obscene, threatening, or annoying phone calls. Existing law further provides that any evidence so obtained is admissible in a prosecution for such crimes. (Penal Code § 633.5.)

Existing law provides that notwithstanding prohibitions to eavesdropping, etcetera, upon the request of a victim of domestic violence who is seeking a domestic violence restraining order, a judge issuing the order may include a provision in the order that permits the victim to record any prohibited communication made to him or her by the perpetrator. (Penal Code § 633.6.)

Existing law exempts the Attorney General, any district attorney, specified peace officers such as city police and county sheriffs, and a person acting under the direction of an exempt agency from the prohibitions against wiretapping and other related activities to the extent that they may overhear or record any communication that they were lawfully authorized to overhear or record prior to the enactment of the prohibitions. Existing law provides that any evidence so obtained is admissible in any judicial, administrative, or legislative proceeding. (Penal Code § 633.)

This bill provides that nothing prohibits POST-certified peace officers of a university or college campus from eavesdropping in any criminal investigation related to sexual assault or other sexual offense.

This bill provides that nothing prohibits POST-certified peace officers of a university or college campus from using or operating body-worn cameras.

This bill provides that this section shall not be used to impinge upon the lawful exercise of constitutionally protected rights of freedom of speech or assembly, or the constitutionally protected right of person privacy.

COMMENTS

1. Need for This Bill

According to the author:

Penal Code 663 allows sworn officer to record the statements of suspects without notifying them, which would otherwise be prohibited under state wiretapping laws. This is most often utilized during suspect interviews/interrogations, in-car recordings of suspects in custody, and in a pretext phone call situation. A pretext

phone call is the recording of a conversation between a victim and a known suspect arranged by law enforcement to gain admissions or other incriminating statements. This technique provides some of the best evidence in cases of date rape and other crimes involving no independent witnesses.

Unfortunately, POST certified officers who protect campuses such as the California State University and University of California systems were not among those listed within PC 633 while virtually all other police entities in the state are included. The exact cause of this omission is difficult to ascertain, however, it is clear today that college and university law enforcement entities need the ability to obtain these recordings as dictated by their investigations. Not only does this omission undermine effective law enforcement, it has the effect of prohibiting use of Body Worn Cameras by college and university officers in some circumstances.

The California College and University Police Chiefs Association's members have a significant responsibility for protecting a large at-risk population. College and University chiefs of police in California are responsible for providing front-line public safety protection for three million students and employees on their campuses.

College and university police departments meet the same POST training certification requirements of every municipal police and county sheriff agency and, just like those agencies, engage in ongoing training to continually enhance their knowledge and professionalism.

Although not generally realized, officers in a college and university environment are charged with the handling of some of the most serious events in our society. According to a study by the Federal Bureau of Investigation, there were 39 incidents that occurred in an educational environment in the United States between 2000 and 2013. These incidents at school and college campuses accounted for some of the highest casualty counts in the nation. College and university police officers are also responsible for investigating sexual assaults against students, which is a burgeoning problem given the availability of alcohol, the pernicious presence of controlled substances used to facilitate a sexual assault and a newfound absence of parental supervision.

In addition to crimes like active shooter and sexual assault, college and university police agencies deal with the same array of criminal activity that takes place in a non-campus environment. Campuses are not cocooned bubble and criminal activity truly knows no jurisdictional boundaries. Over the most recent two year period, there were nearly six thousand serious crimes committed on our campuses. These crimes, which are required to be reported pursuant to the Clery Act, include murder, manslaughter, sexual assaults, robbery, aggravated assaults, burglary, vehicle thefts and arson.

College and University police agencies meet the same POST requirements of city police and county sheriffs; they face the same law enforcement challenges. They should have the same tools with which to address those challenges. This proposed legislation will accomplish that objective.

2. Exception to Prohibition on Unlawful Eavesdropping

Penal Code section 631 *et seq.* sets forth a comprehensive statutory scheme protecting the right of privacy by prohibiting unlawful wiretapping and other forms of illegal electronic eavesdropping. Unless a specific exception applies, persons may not intercept, record, or listen to confidential communications whether on a conventional, cordless, or cellular telephone.

A significant exception is described in Penal Code section 633. The Attorney General, any district attorney, specified peace officers, and any person acting pursuant to the direction of a law enforcement officer may lawfully overhear or record certain communications.

3. Allowing University and College Peace Officers to Eavesdrop and Wear Body Cameras

This bill would allow university and college peace officers to eavesdrop in any criminal investigation related to sexual assault. The bill would also allow these police forces to use body cameras. Eavesdropping would allow them to authorize another to make a pretext call, for example, in a sexual assault case permitting the victim to tape the accused perpetrator in a conversation where she gets him to admit there was no consent. As noted in the author's statement, the sponsor states that the POST trained police forces of universities and colleges in California investigate a wide range of crimes on their campuses including sex offenses and they believe the ability to eavesdrop and to wear body cameras will facilitate their investigations.

In support of their position that it is appropriate to include University and College Peace Officers in the exception to eavesdropping, the sponsor makes the following points:

College and university police departments meet the same POST training and certification requirements of every municipal police and county sheriff agency and, just like those agencies, engage in ongoing training to continually enhance their knowledge and professionalism.

Although not generally realized, officers in a college and university environment are charged with the handling of some of the most serious events in our society. According to a study by the Federal Bureau of Investigation, there were 39 incidents that occurred in an educational environment in the United States between 2000 and 2013. These incidents at school and college campuses accounted for some of the highest casualty counts in the nation.

College and university police officers are also responsible for investigating sexual assaults against students, which is a burgeoning problem given the availability of alcohol, the pernicious presence of controlled substances used to facilitate a sexual assault and a newfound absence of parental supervision.

In addition to crimes like active shooter and sexual assault, college and university police agencies deal with the same array of criminal activity that takes place in a non-campus environment. Campuses are not cocooned bubbles and criminal activity truly knows no jurisdictional boundaries. Over the most recent two year period, there were nearly six thousand serious crimes committed on our campuses. These crimes, which are required to be reported pursuant to the Clery Act, include murder, manslaughter, sexual assaults, robbery, aggravated assaults, burglary, vehicle thefts and arson.

4. Opposition

The ACLU opposes this bill stating:

We do not believe the authority to engage in eavesdropping should be extended. Restrictions on the use of eavesdropping apparatus were originally enacted to ensure that such activities would be undertaken only in absolutely justifiable situations and under strict control. We have consistently opposed all previous efforts to expand this authority.

University and college campuses are environments in which the free exchange of views and ideas play a critical role. Freedom of speech and expression must be carefully and thoughtfully protected. These freedoms foster the advancement of knowledge, and help provide students and faculty with a sense of safety and comfort. Giving campus police officers broad powers of surveillance could end up having a chilling effect on these freedoms, and could lead to adversarial relationships between campus police, faculty and the student body.

Campus law enforcement often lacks the training, supervision, and accountability to help ensure the powers granted by SB 424 would be used in a constitutionally acceptable manner. If an investigation is of sufficient importance to merit electronic eavesdropping, campus police should seek cooperation and assistance of those agencies that presently have the authority to do so. Creating further encouragement and incentive to engage in electronic surveillance is inconsistent with the legitimate expectation of privacy surrounding our personal and confidential communications.

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