
OLR Bill Analysis

sSB 1093

AN ACT CONCERNING CIVILIAN POLICE REVIEW BOARDS, SECURITY GUARDS, BODY-WORN RECORDING EQUIPMENT AND SEARCHES BY POLICE.

SUMMARY

This bill makes various changes to the laws regarding (1) civilian police review boards, (2) police body-worn recording equipment (e.g., body cameras), (3) consent searches, (4) security guards, and (5) no-knock warrants. Specifically, the bill:

1. provides a process for a person to object to a civilian police review board's subpoena and allows the court to order compliance with a board's subpoena;
2. allows a police officer whose image or voice is captured on certain recordings (e.g., body camera) to review the recordings before they are disclosed in certain instances where there is a request for public disclosure;
3. allows a trier of fact (e.g., judge or jury) to draw an unfavorable inference from the deliberate failure of a police officer who wears a body camera to record their use of force or other relevant incidents in civil cases involving depriving someone's equal protection or privileges and immunities;
4. prohibits former police officers who were decertified in other states from being licensed as security guards and other related jobs; and
5. prohibits law enforcement from using no-knock warrants.

EFFECTIVE DATE: October 1, 2021, except that a conforming change is effective July 1, 2022, and the provisions on unfavorable inferences for failure to record for (1) use of force is effective July 1,

2021, and (2) civil cases is effective January 1, 2022.

§ 1 – CIVILIAN POLICE REVIEW BOARD SUBPOENAS

The bill provides a process for a person to object to a subpoena issued by a civilian police review board and allows the court to order compliance with a board’s subpoena.

It allows the person issued such a subpoena to, within specified timeframes, (1) serve the board with a written objection to the subpoena and (2) file the objection in the Superior Court, which must adjudicate the objection under court rules. A person who wishes to object must do so within 15 days after the subpoena was served or on or before the time the subpoena specifies for compliance, if the time is less than 15 days after service.

Under the bill, if the person issued a subpoena fails to appear or refuses to testify or produce the evidence the subpoena requires after appearing, the Superior Court, upon the board’s application, may order the person to appear, give testimony, or produce the evidence, as the case may be.

§§ 2, 3, 9 & 10 – BODY-WORN AND DASHBOARD CAMERA REVIEW AND UNFAVORABLE INFERENCE IF CAMERA IS OFF

Right to Review (§§ 2 & 3)

Under existing law, police officers have a right to review recordings, with their labor representative or attorney present, when they are (1) giving a formal statement about the use of force or (2) the subject of a disciplinary investigation where a body-worn recording equipment (e.g., body camera) or dashboard camera recording is part of the review. In these instances, the recordings are disclosable to the public, upon request, by the earlier of (1) 48 hours after an officer has reviewed it or (2) 96 hours after the recorded incident if the officer does not review the recording. The bill changes the latter to 96 hours after the initiation of a disciplinary investigation, thus potentially increasing the timeframe before public disclosure.

The bill also extends this right to review to instances when a police

officer's image or voice is captured on a recording for which a public disclosure request has been made and (1) the officer has not been asked to give a formal statement or (2) a disciplinary investigation has not been initiated. The bill requires public disclosure by the earlier of (1) 48 hours after an officer has reviewed the recording or (2) 96 hours after the disclosure request, if the officer does not review it.

As under existing law, certain scenarios are, generally, not disclosable, including the following:

1. communications with other law enforcement personnel, unless within the performance of duties;
2. encounters with undercover officers or informants;
3. officers on break or engaged in personal activity;
4. people undergoing medical or psychological evaluations, procedures, or treatment;
5. people, other than suspects, in a hospital or medical facility;
6. activities in mental health facilities, unless responding to a call involving a suspect in the facilities; or
7. certain crime victims if it would be an invasion of personal privacy (e.g., domestic or sexual abuse).

Unfavorable Inference (§§ 9 & 10)

Use of Force. Under the bill, beginning January 1, 2022, in determining whether the use of force by a police officer who wears a body camera (see BACKGROUND) is justified, the trier of fact (e.g., judge or jury) may draw an unfavorable inference from a police officer's deliberate failure, in violation of the police body camera law, to record the use of physical force.

Governmental Immunity. PA 20-1, July Special Session (JSS), § 41, established a civil cause of action, beginning July 1, 2021, against a police officer who deprives an individual or class of individuals of

state law's equal protection or privileges and immunities. In creating a cause of action against police officers in statute, the act, in certain circumstances, eliminates the possibility of claiming governmental immunity (i.e., common law protection from civil suit) as a defense to these suits.

Under the bill, in these civil actions, the trier of fact may draw an adverse inference from a police officer's deliberate failure, in violation of the police body camera law, to record any event that is relevant to the action.

§ 4 & 5 – DECERTIFIED POLICE OFFICERS IN OTHER STATES SERVING AS SECURITY GUARDS

The bill adds decertification as a police officer in other states, including cancellation, revocation, or refusal to renew a certification, to the list of criteria that make a person ineligible for (1) a security service license, (2) a security officer license, and (3) employment with a security service to perform security officer duties while his or her security officer license application is pending. Existing law already makes police officers decertified in Connecticut ineligible.

§§ 6 & 7 – CONSENT SEARCHES

The bill expands the instances where law enforcement officers may perform consent searches on an individual or in a motor vehicle and requires that they report information on their requests to search.

On the Person Searches

Under current law, an individual's consent to conduct a search of his or her body is not justification for a law enforcement official to conduct the search, unless there is probable cause. The bill instead allows a law enforcement officer to ask a person if he or she may conduct a search of their person, if the officer has reasonable and articulable suspicion that (1) weapons, contraband, or other evidence of a crime is contained on the person or (2) the search is reasonably necessary to further an ongoing law enforcement investigation.

Under the bill, officers who ask to search a person, whether or not

the consent is granted, must complete a police report documenting the reasonable and articulable suspicion for soliciting consent or the facts and circumstances that support the search being reasonably necessary to further an ongoing law enforcement investigation.

Motor Vehicle Searches

Current law prohibits a law enforcement officer from asking for a driver's consent to search the vehicle or its contents when the vehicle is stopped solely for a motor vehicle violation. The bill eliminates this prohibition and instead allows police officers to ask for the drivers' consent to search a vehicle they have stopped if they have a reasonable and articulable suspicion that weapons, contraband, or other evidence of a crime is contained in the vehicle. An officer who solicits consent, whether or not the consent is granted, must complete a police report within 48 hours documenting the reasonable and articulable suspicion for doing so.

Under current law, for vehicles stopped solely for motor vehicle violations, any search of the vehicle or its contents must be (1) based on probable cause or (2) after receiving the driver's unsolicited consent either in writing or recorded by body-worn recording equipment or a dashboard camera. The bill removes the requirement for the consent to be unsolicited, but as under existing law, the consent must still be in writing or recorded.

§ 7 – ASKING FOR NON-DRIVER DOCUMENTATION

Existing law generally prohibits law enforcement officials, during stops solely for motor vehicle violations, from asking drivers for any documentation or identification other than a driver's license, motor vehicle registration, insurance identity card, or other documentation or identification directly related to the stop. This prohibition, however, does not apply if there is probable cause that a felony or misdemeanor offense has been committed. The bill expands this exemption to also include when there is a reasonable and articulable suspicion that such an offense has been committed.

§ 8 – NO-KNOCK WARRANTS PROHIBITED

The bill prohibits police officers of a regularly organized police department, state police officers, Division of Criminal Justice inspectors, conservation officers, special conservation officers or patrolpersons, or sworn motor vehicle inspectors from seeking, executing, or participating in the execution of a no-knock warrant. The bill requires that search warrants require an officer to provide notice of the officer's identity, authority, and purpose before entering the place to be searched under the search warrant.

The bill requires the executing officer, before searching or seizing anything, to read and give a copy of the search warrant to the person to be searched or the owner of the place to be searched or, if the owner is not present, to any occupant of the place to be searched. If the place is unoccupied, the officer must leave a copy of the search warrant suitably affixed to the place being searched.

Under the bill, a "no-knock warrant" means a warrant allowing police officers to enter certain premises without first knocking and announcing their presence or purpose before entering the property.

BACKGROUND

Body Camera Requirement

Current law generally requires police officers to use body cameras while interacting with the public in their law enforcement capacity if they are sworn members of (1) the State Police, (2) a municipal police department that has received reimbursement for body camera purchases under the state's grant program, or (3) a public university or college special police force. Current law allows sworn members of all other municipal police departments to use body cameras as directed by their departments and in accordance with state law. Beginning July 1, 2020, all sworn members of law enforcement units and members of those units who perform police duties must wear body cameras, among other requirements (PA 20-1, JSS, § 19).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 32 Nay 6 (04/06/2021)