

AMENDED IN SENATE APRIL 24, 2018

**SENATE BILL**

**No. 1186**

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**Introduced by Senator Hill**

February 15, 2018

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An act to add Chapter 15 (commencing with Section 54999.8) to Part 1 of Division 2 of Title 5 of the Government Code, relating to law enforcement agencies.

LEGISLATIVE COUNSEL'S DIGEST

SB 1186, as amended, Hill. Law enforcement agencies: surveillance: policies.

Under existing law, a city or county is empowered to perform duties including providing for public safety and law enforcement. A city or county is authorized, either directly or indirectly, to prescribe policies and regulations for law enforcement agencies under its jurisdiction.

This bill would, beginning July 1, 2019, require each law enforcement agency, as defined, to submit to its governing body at a regularly scheduled hearing, open to the public, a proposed Surveillance Use Policy for the use of each type of surveillance technology and the information collected, as specified. The bill would require the law enforcement agency to cease using the surveillance technology within 30 days if the proposed plan is not adopted. The bill would require the law enforcement agency to submit an amendment to the surveillance plan, pursuant to the same open meeting requirements, for each new type of surveillance technology sought to be used. The bill would require the policy and any amendments to be posted on the agency's Internet Web site. The bill would also require the agency to make specified reports, at approved intervals, concerning the use of surveillance technology, and to make those reports available on the agency's Internet

Web site. The bill would prohibit a law enforcement agency from selling, sharing, or transferring information gathered by surveillance technology, except to another law enforcement agency, as permitted by law and the terms of the Surveillance Use Policy. The bill would provide that any person could bring an action for injunctive relief to prevent a violation of these provisions and, if successful, could recover reasonable attorney's fees and costs. The bill would require an agency to discipline an employee who knowingly or intentionally uses surveillance technology in violation of these provisions, as specified. The bill would authorize an agency to temporarily use surveillance technology during exigent circumstances, as specified, without meeting the requirements of these provisions, provided that, among other things, the agency submits a specified report to its governing body within 45 days of the end of the exigent circumstances, except as specified.

~~The bill would establish separate procedures for a sheriff's department or a district attorney to establish their own Surveillance Use Policies, instead of submitting them through their governing body. The procedures would include holding a noticed public hearing on the proposed policy, posting the policy on the department's Internet Web site, amending the policy to include new types of surveillance technology, and publishing a biennial report regarding the department's use of surveillance technology, as specified.~~

The bill would also establish procedures for the Department of the California Highway Patrol and the Department of Justice to establish their own Surveillance Use Policies. The bill would, among other things, require that these agencies ensure that the collection, use, maintenance, sharing, and dissemination of information or data collected with surveillance technology is consistent with respect for individual privacy and civil liberties, and that the policy be publicly available on the agency's Internet Web site. The bill would also require that if these agencies intend to acquire surveillance technology, they provide 90 days advance notice on the agency's Internet Web site, as specified.

The bill would make legislative findings in support of these provisions.

Because this bill would impose additional requirements on local public agencies, it would impose a state-mandated local program.

The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open

meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose.

This bill would make legislative findings to that effect.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, with regard to certain mandates, no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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

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

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) While law enforcement agencies increasingly rely on  
4 surveillance technologies because those technologies may enhance  
5 community safety and aid in the investigation of crimes, those  
6 technologies are often used without any written rules or civilian  
7 oversight, and the ability of surveillance technology to enhance  
8 public safety should be balanced with reasonable safeguards for  
9 residents' civil liberties and privacy.

10 (b) Promoting a safer community through the use of surveillance  
11 technology while preserving the protection of civil liberties and  
12 privacy are not mutually exclusive goals, and policymakers should  
13 be empowered to make informed decisions about what kind of  
14 surveillance technologies should be used in their community.

15 (c) Decisions about whether to use surveillance technology for  
16 data collection and how to use and store the information collected  
17 should not be made by the agencies that would operate the  
18 technology, but by the elected bodies that are directly accountable  
19 to the residents in their communities who should also have  
20 opportunities to review the decision of whether or not to use  
21 surveillance technologies.

1 SEC. 2. Chapter 15 (commencing with Section 54999.8) is  
2 added to Part 1 of Division 2 of Title 5 of the Government Code,  
3 to read:

4  
5 CHAPTER 15. SURVEILLANCE POLICIES FOR LAW ENFORCEMENT

6  
7 54999.8. The following definitions apply for purposes of this  
8 chapter:

9 (a) “Exigent circumstances” means a law enforcement agency’s  
10 good faith belief that an emergency involving danger of death or  
11 serious physical injury to any person requires use of a surveillance  
12 technology or the information it provides.

13 (b) “Governing body” means the elected body that oversees the  
14 law enforcement agency or an appointed overseeing body if there  
15 is no elected body that provides direct oversight of the law  
16 enforcement agency.

17 (c) “Law enforcement agency” means any police department,  
18 sheriff’s department, district attorney, county probation department,  
19 transit agency police department, school district police department,  
20 the police department of any campus of the University of  
21 California, the California State University, or community college,  
22 the Department of the California Highway Patrol, and the  
23 Department of Justice.

24 (d) (1) “Surveillance technology” means any electronic device  
25 or system with the capacity to monitor and collect audio, visual,  
26 locational, thermal, or similar information on any individual or  
27 group. This includes, but is not limited to, drones with cameras or  
28 monitoring capabilities, automated license plate recognition  
29 systems, closed-circuit cameras/televisions, International Mobile  
30 Subscriber Identity (IMSI) trackers, global positioning system  
31 (GPS) technology, software designed to monitor social media  
32 services or forecast criminal activity or criminality, radio frequency  
33 identification (RFID) technology, body-worn cameras, biometric  
34 identification hardware or software, and facial recognition hardware  
35 or software.

36 (2) “Surveillance technology” does not include standard public  
37 agency hardware and software in widespread public use and not  
38 used by the law enforcement agency for any surveillance or  
39 surveillance-related functions, such as televisions, computers,  
40 printers, parking ticket devices, case management databases,

1 medical equipment used to diagnose, treat, or prevent disease or  
2 injury, fingerprint scanners, ignition interlock devices, cellular or  
3 standard telephones, and two-way radios, or other similar electronic  
4 devices.

5 54999.85. (a) (1) Except as provided in paragraph (4), on or  
6 before July 1, 2019, a law enforcement agency that uses, or  
7 accesses information from, surveillance technology shall submit  
8 to its governing body a Surveillance Use Policy to ensure that the  
9 collection, use, maintenance, sharing, and dissemination of  
10 information or data collected with surveillance technology is  
11 consistent with respect for individuals' privacy and civil liberties.  
12 The policy shall be in writing and made publicly available on the  
13 agency's Internet Web site prior to the public hearing and after  
14 adoption.

15 (2) Except as provided in paragraph (4), the governing body, at  
16 a regularly scheduled hearing pursuant to the Ralph M. Brown Act  
17 (Chapter 9 (commencing with Section 54950) of Part 1 of Division  
18 2 of Title 5 of the Government Code), shall consider the policy  
19 for adoption by resolution or ordinance on the regular, nonconsent  
20 calendar and shall provide an opportunity for public comment  
21 before adopting the resolution or ordinance.

22 (3) Except as provided in paragraph (4), if a submitted  
23 Surveillance Use Policy is not adopted by resolution or ordinance  
24 by the governing body, the law enforcement agency shall cease  
25 use of surveillance technologies within 30 days of the hearing and  
26 until the time that a Surveillance Use Policy is adopted.

27 ~~(4) (A) On or before July 1, 2019, a sheriff's department or a~~  
28 ~~district attorney that uses or accesses information from a~~  
29 ~~surveillance technology shall hold a properly noticed public hearing~~  
30 ~~and provide an opportunity for public comment before adopting~~  
31 ~~a Surveillance Use Policy, which shall ensure that the collection,~~  
32 ~~use, maintenance, sharing, and dissemination of information or~~  
33 ~~data collected with surveillance technology is consistent with~~  
34 ~~respect for individual privacy and civil liberties. The policy shall~~  
35 ~~be in writing and shall be made publicly available on the agency's~~  
36 ~~Internet Web site prior to the public hearing and after adoption.~~

37 ~~(B)~~

38 (4) On or before July 1, 2019, if the Department of Justice or  
39 the Department of the California Highway Patrol use or access  
40 information from a surveillance technology, the agency shall adopt

1 a Surveillance Use Policy, which shall ensure that the collection,  
2 use, maintenance, sharing, and dissemination of information or  
3 data collected with surveillance technology is consistent with  
4 respect for individual privacy and civil liberties. The policy shall  
5 be in writing and shall be made publicly available on the agency's  
6 Internet Web site. Nothing in this section shall be construed to  
7 limit or repeal any obligation of the Department of Justice or the  
8 Department of the California Highway Patrol to comply with any  
9 requirement found in any other law.

10 (b) The policy shall pertain to any surveillance technologies  
11 already in use or relied upon for information by the law  
12 enforcement agency and shall include, in separate sections specific  
13 to each unique type of surveillance technology, a description of  
14 each surveillance technology used or relied upon for information  
15 by the law enforcement agency. Each section covering a separate  
16 technology shall, at a minimum include the following:

17 (1) Authorized purposes for using the surveillance technology.

18 (2) Types of data that can be and is collected by the surveillance  
19 technology.

20 (3) A description of the job title or other designation of  
21 employees and independent contractors who are authorized to use  
22 the surveillance technology or to access data collected by the  
23 surveillance technology. The policy shall identify and require  
24 training for those authorized employees and independent  
25 contractors.

26 (4) Title of the official custodian, or owner, of the surveillance  
27 technology responsible for implementing this section.

28 (5) A description of how the surveillance technology will be  
29 monitored to ensure the security of the information and compliance  
30 with applicable privacy laws.

31 (6) The length of time information gathered by the surveillance  
32 technology will be retained, and a process to determine if and when  
33 to destroy retained information.

34 (7) Purposes of, process for, and restrictions on the sale, sharing,  
35 or transfer of information to other persons and whether, if so, how  
36 the collected information can be accessed by members of the  
37 public, including criminal defendants.

38 (8) A process to maintain a record of access of the surveillance  
39 technology or information collected by the surveillance technology.  
40 At a minimum, the record shall include all of the following:

1 (A) The date and time the technology is used or the information  
2 is accessed.

3 (B) The data elements the employee used to query the  
4 information.

5 (C) The username of the employee who uses the technology or  
6 accesses the information, and, as applicable, the organization or  
7 entity with whom the person is affiliated.

8 (D) The purpose for accessing the information or using the  
9 technology.

10 (9) The existence of a memorandum of understanding or other  
11 agreement with another local agency or any other party, whether  
12 or not formalized, for the shared use of the surveillance technology  
13 or the sharing of the information collected through its use,  
14 including the identity of the parties.

15 (c) (1) Except as provided in paragraph (4), after July 1, 2019,  
16 if a law enforcement agency intends to acquire a new type of  
17 surveillance technology after the adoption of the policy required  
18 by subdivision (a), the agency shall submit an amendment to the  
19 policy to include the new type of technology as a new section of  
20 the policy and submit the amendment to its governing body for  
21 approval consistent with subdivision (a).

22 (2) Except as provided in paragraph (4) and Section 54999.95,  
23 the amendment shall be submitted prior to requesting funds for  
24 acquiring, using, or accessing information from the technology  
25 and shall be submitted to the governing body at a properly noticed  
26 public meeting on the regular, nonconsent calendar and the  
27 governing body shall provide an opportunity for public comment  
28 before adopting the amendment.

29 (3) Except as provided in paragraph (4), the amendment shall  
30 be in writing and made publicly available on the agency's Internet  
31 Web site prior to the public hearing and after adoption. The  
32 governing body has 30 days to consider an amendment. If a  
33 submitted amendment is not adopted by the governing body, the  
34 law enforcement agency shall not request funds for, acquire, use,  
35 or access information from the new surveillance technology.

36 (4) (A) ~~(i) After July 1, 2019, if a sheriff's department, district~~  
37 ~~attorney, the Department of Justice, Justice or the Department of~~  
38 the California Highway Patrol intends to acquire a new type of  
39 surveillance technology after the adoption of the policy required  
40 by subdivision (a), that agency shall draft an amendment to the

1 policy to include the new type of technology as a new section of  
2 the policy. *The agency shall post the amendment in writing and*  
3 *make it publicly available on its Internet Web site.*

4 ~~(ii) A sheriff's department or a district attorney shall hold a~~  
5 ~~properly noticed public hearing and provide an opportunity for~~  
6 ~~public comment before adopting such an amendment. The~~  
7 ~~amendment shall be in writing and shall be made publicly available~~  
8 ~~on the agency's Internet Web site prior to the public hearing and~~  
9 ~~after adoption.~~

10 ~~(iii) The Department of Justice or the Department of the~~  
11 ~~California Highway Patrol shall post the amendment in writing~~  
12 ~~and make it publicly available on the agency's Internet Web site.~~

13 ~~(B) If a sheriff's department or a district attorney is not in~~  
14 ~~possession of surveillance technology on or before July 1, 2019,~~  
15 ~~and intends to acquire surveillance technology after that date, that~~  
16 ~~agency shall hold a properly noticed public hearing and provide~~  
17 ~~an opportunity for public comment before adopting a Surveillance~~  
18 ~~Use Policy, which shall ensure that the collection, use,~~  
19 ~~maintenance, sharing, and dissemination of information or data~~  
20 ~~collected with surveillance technology is consistent with respect~~  
21 ~~for individuals' privacy and civil liberties. The policy shall be in~~  
22 ~~writing and shall be made publicly available on the agency's~~  
23 ~~Internet Web site prior to the public hearing and after adoption.~~

24 ~~(C)~~

25 ~~(B) (i) If either the Department of Justice or the Department of~~  
26 ~~the California Highway Patrol is not in possession of surveillance~~  
27 ~~technology on or before July 1, 2019, and intends to acquire~~  
28 ~~surveillance technology after that date, that agency shall~~  
29 ~~prominently post on the agency's Internet Website a public notice~~  
30 ~~of its intention to commence the process of acquiring surveillance~~  
31 ~~technology not less than 90 days before taking any such steps. The~~  
32 ~~notice shall include a description of information describing the~~  
33 ~~surveillance technology and how it works, including product~~  
34 ~~descriptions from manufacturers, information on the proposed~~  
35 ~~purpose for the surveillance technology, and type of data collected.~~

36 ~~(ii) If either the Department of Justice or the Department of the~~  
37 ~~California Highway Patrol is not in possession of surveillance~~  
38 ~~technology on or before July 1, 2019, and acquires it after that~~  
39 ~~date, that agency shall adopt a Surveillance Use Policy, which~~  
40 ~~shall ensure that the collection, use, maintenance, sharing, and~~



1 dissemination of information or data collected with surveillance  
2 technology is consistent with respect for individual privacy and  
3 civil liberties. The policy shall be in writing and shall be made  
4 publicly available on the agency's Internet Web site. Nothing in  
5 this section shall be construed to limit or repeal any obligation of  
6 the Department of Justice or the Department of the California  
7 Highway Patrol to comply with any requirement found in any other  
8 law.

9 (d) If, before July 1, 2019, a law enforcement agency has  
10 implemented the requirements for an automated license plate  
11 recognition system, pursuant to Title 1.81.23 (commencing with  
12 Section 1798.90.5) of Part 4 of Division 3 of the Civil Code or for  
13 cellular communications interception technology pursuant to  
14 Article 11 (commencing with Section 53166) of Chapter 1, the  
15 law enforcement agency shall include the required information as  
16 part of the Surveillance Use Policy required by subdivision (a).

17 (e) If a law enforcement agency is not in possession of  
18 surveillance technology on or before July 1, 2019, and intends to  
19 acquire surveillance technology after that date, the law enforcement  
20 agency shall submit a Surveillance Use Policy to its governing  
21 body pursuant to subdivision (a) for consideration. Nothing in this  
22 section shall be construed to limit the authority of a governing  
23 body to exercise its budgetary authority in any way if a law  
24 enforcement agency makes a budget request to acquire surveillance  
25 technology.

26 (f) (1) Except as provided in paragraph (2), at a time interval  
27 agreed to by the law enforcement agency and the governing body,  
28 but not less often than every two years, a law enforcement agency  
29 that uses surveillance technologies and which has an approved  
30 Surveillance Use Policy shall submit to its governing body a written  
31 Surveillance Technology Use Report. The report shall be made  
32 publicly available on the agency's Internet Web site, and shall, at  
33 a minimum, include the following:

34 (A) The acquisition costs for each surveillance technology, as  
35 well as the annual operating cost, including personnel costs.

36 (B) The total number of times each type of technology was  
37 used in the preceding year and the total number of times each type  
38 of technology helped apprehend suspects or close a criminal case.

39 (C) The total number of times the surveillance technology was  
40 borrowed from or lent to another agency, the identity of that

1 agency, and the purposes for which the surveillance technology  
2 was shared, including any exigent circumstances.

3 (D) The total number of the agency employees trained and  
4 authorized to use each type of surveillance technology.

5 (E) The total number of times any surveillance technology was  
6 used in a manner out of compliance with the agency's Surveillance  
7 Use Policy, whether data collected through the use of surveillance  
8 technology was inappropriately disclosed, released, or in any other  
9 way revealed for a nonapproved reason, and the steps the agency  
10 took to correct the error.

11 (2) Not less than every two years, ~~a sheriff's department, district~~  
12 ~~attorney,~~ the Department of ~~Justice,~~ *Justice* and the Department  
13 of the California Highway Patrol shall each publish and post on  
14 their Internet Web sites, a written Surveillance Technology Use  
15 Report containing the information required by subparagraphs (A)  
16 through (F).

17 (g) Nothing in this section shall be construed to do ~~either~~ *any*  
18 of the following:

19 (1) Limit the authority of a governing body to exercise its  
20 authority in any way if a law enforcement agency makes a request  
21 to acquire surveillance technology.

22 (2) Prohibit a governing body from holding any public meeting  
23 required by this section jointly with another law enforcement  
24 agency or governing body.

25 ~~(h) A governing body may reevaluate any existing Surveillance~~  
26 ~~Use Policy it has previously approved at a properly noticed public~~  
27 ~~meeting on their regular nonconsent calendar.~~

28 (3) *Limit the application of Section 25303.*

29 *(h) Nothing in this section shall be construed to prohibit a*  
30 *governing body, the Department of Justice, or the Department of*  
31 *the California Highway Patrol from adopting additional protocols*  
32 *as they relate to surveillance technology. A governing body may*  
33 *reevaluate any existing Surveillance Use Policy at a properly*  
34 *noticed public meeting on the regular, nonconsent calendar and*  
35 *revoke or request amendments to the policy.*

36 (i) A law enforcement agency shall not sell, share, or transfer  
37 information gathered by surveillance technology, except to another  
38 law enforcement agency, and only as permitted by law and as  
39 allowed by an approved Surveillance Use Policy. For purposes of  
40 this subdivision, the provision of data hosting shall not be

1 considered to be the sale, sharing, or transferring of surveillance  
2 technology information.

3 54999.9. (a) In addition to any other sanctions, penalties, or  
4 remedies provided by law, any person may seek injunctive relief  
5 to prevent a violation under this chapter. The court may award  
6 reasonable attorney's fees and other litigation costs reasonably  
7 incurred by a prevailing plaintiff.

8 (b) A law enforcement agency shall take appropriate disciplinary  
9 action, consistent with the agency's existing disciplinary  
10 procedures, against an employee who knowingly or intentionally  
11 uses surveillance technology in a manner that is not consistent  
12 with this chapter or with the agency's approved Surveillance Use  
13 Policy.

14 54999.95. (a) A law enforcement agency may temporarily  
15 acquire or temporarily use a surveillance technology in a manner  
16 not expressly allowed by a Surveillance Use Policy in exigent  
17 circumstances without following the provisions of Section  
18 54999.85 before that acquisition or use unless that acquisition or  
19 use in exigent circumstances conflicts with, or is preempted by,  
20 other state or federal law.

21 (b) If a law enforcement agency acquires or uses a surveillance  
22 technology in exigent circumstances pursuant to subdivision (a),  
23 the agency shall:

24 (1) Use the surveillance technology to solely respond to the  
25 exigent circumstances.

26 (2) Cease using the surveillance technology when the exigent  
27 circumstances end.

28 (3) Only keep and maintain data related to the exigent  
29 circumstances and dispose of any data that is not related to the  
30 exigent circumstances.

31 (4) (A) For a law enforcement agency other than the  
32 Department of Justice, or the Department of the California  
33 Highway Patrol, report that acquisition or use to the governing  
34 body within 45 days following the end of the exigent  
35 circumstances.

36 (B) The Department of Justice or the Department of the  
37 California Highway Patrol shall publicly disclose that acquisition  
38 or use within 45 days following the end of the exigent  
39 circumstances in writing on the agency's Internet Web site.

1 (c) Any technology temporarily acquired in exigent  
2 circumstances shall be returned within seven days following its  
3 acquisition, or when the exigent circumstances end, whichever is  
4 sooner, unless the technology is submitted to the governing body  
5 for approval pursuant to subdivisions (a) to (c), inclusive, of  
6 Section 54999.85, and is approved. If the agency is unable to  
7 comply with the seven-day timeline, the agency shall notify the  
8 governing body, who may grant an extension.

9 SEC. 3. The Legislature finds and declares that Section 2 of  
10 this act, which adds Chapter 15 (commencing with Section  
11 54999.8) to Part 1 of Division 2 of Title 5 of the Government Code,  
12 furthers, within the meaning of paragraph (7) of subdivision (b)  
13 of Section 3 of Article I of the California Constitution, the purposes  
14 of that constitutional section as it relates to the right of public  
15 access to the meetings of local public bodies or the writings of  
16 local public officials and local agencies. Pursuant to paragraph (7)  
17 of subdivision (b) of Section 3 of Article I of the California  
18 Constitution, the Legislature makes the following findings:

19 By requiring law enforcement agencies to submit their proposed  
20 Surveillance Use Policy for consideration by their governing body  
21 at a public hearing, this act furthers the purposes of paragraph (7)  
22 of subdivision (b) of Section 3 of Article I of the California  
23 Constitution.

24 The Legislature also finds and declares that Section 2 of this act,  
25 which adds Chapter 15 (commencing with Section 54999.8) to  
26 Part 1 of Division 2 of Title 5 of the Government Code, furthers,  
27 within the meaning of Section 1 of Article I of the California  
28 Constitution, the purposes of that constitutional section as it relates  
29 to the inalienable and enforceable right of privacy held by all  
30 Californians.

31 SEC. 4. No reimbursement is required by this act pursuant to  
32 Section 6 of Article XIII B of the California Constitution because  
33 the only costs that may be incurred by a local agency or school  
34 district under this act would result from a legislative mandate that  
35 is within the scope of paragraph (7) of subdivision (b) of Section  
36 3 of Article I of the California Constitution.

37 However, if the Commission on State Mandates determines that  
38 this act contains other costs mandated by the state, reimbursement  
39 to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O