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**AB-459 Public records: video or audio recordings: crime.** (2017-2018)

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**Assembly Bill No. 459**

**CHAPTER 291**

An act to add Section 6254.4.5 to the Government Code, relating to public records.

[ Approved by Governor September 26, 2017. Filed with Secretary of State September 26, 2017. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 459, Chau. Public records: video or audio recordings: crime.

Existing law, the California Public Records Act, requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies.

This bill would specify that the act does not require disclosure of a video or audio recording that was created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident depicted in the recording. The bill would require an agency to justify withholding such a video or audio recording by demonstrating that on the facts of the particular case, the public interest served by not disclosing the recording clearly outweighs the public interest served by disclosure of the recording. The bill would require the agency to consider specified factors when balancing the public interests. The bill would authorize a victim who is a subject of such a recording, the parent or legal guardian of a minor subject, a deceased subject's next of kin, or a subject's legally authorized designee, to be permitted to inspect the recording and to obtain a copy of the recording. By imposing new duties upon local agencies, the bill would impose a state-mandated local program.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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 no reimbursement is required by this act for a specified reason.

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

**SECTION 1.** Section 6254.4.5 is added to the Government Code, to read:

**6254.4.5.** (a) This chapter does not require disclosure of a video or audio recording that was created during the commission or investigation of the crime of rape, incest, sexual assault, domestic violence, or child abuse that depicts the face, intimate body part, or voice of a victim of the incident depicted in the recording. An agency shall justify withholding such a video or audio recording by demonstrating, pursuant to Section 6255, that on the facts of the particular case, the public interest served by not disclosing the recording clearly outweighs the public interest served by disclosure of the recording.

(b) When balancing the public interests as required by this section, an agency shall consider both of the following:

(1) The constitutional right to privacy of the person or persons depicted in the recording.

(2) Whether the potential harm to the victim caused by disclosing the recording may be mitigated by redacting the recording to obscure images showing intimate body parts and personally identifying characteristics of the victim or by distorting portions of the recording containing the victim's voice, provided that the redaction does not prevent a viewer from being able to fully and accurately perceive the events captured on the recording. The recording shall not otherwise be edited or altered.

(c) A victim of a crime described in subdivision (a) who is a subject of a recording, the parent or legal guardian of a minor subject, a deceased subject's next of kin, or a subject's legally authorized designee, shall be permitted to inspect the recording and to obtain a copy of the recording. Disclosure under this subdivision does not require that the record be made available to the public pursuant to Section 6254.5.

(d) Nothing in this section shall be construed to affect any other exemption provided by this chapter.

**SEC. 2.** The Legislature finds and declares that Section 1 of this act, which adds Section 6254.4.5 to the Government Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The need to protect the privacy of victims of serious crimes from the public disclosure of images captured in video or audio recordings outweighs the interest in public disclosure of that information.

**SEC. 3.** The Legislature finds and declares that Section 1 of this act, which adds Section 6254.4.5 to the Government Code, furthers, within the meaning of paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the purposes of that constitutional section as it relates to the right of public access to the meetings of local public bodies or the writings of local public officials and local agencies. Pursuant to paragraph (7) of subdivision (b) of Section 3 of Article I of the California Constitution, the Legislature makes the following findings:

Because video and audio files may contain sensitive information that could compromise important police work in addition to information that is highly private for victims of certain crimes, requiring local agencies to maintain the confidentiality of certain video or audio recordings furthers the purposes of Section 3 of Article I of the California Constitution.

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