Capitol Update, February 16, 2016

Advancements in Technology Continue to Drive Public Safety Policy Agenda

Despite the fact that policy committee hearings will not kick off until March, due to the upcoming change in Assembly leadership from Speaker Atkins to Speaker-in-Waiting Rendon, new legislation continues to emerge daily. While the tone of this year’s legislation is certainly less hostile to law enforcement, we continue to hear lawmakers voice concerns about how technology interfaces with public safety and law enforcement.

Last year, we saw a proliferation of legislation regulating the use of body worn cameras and unmanned aircraft systems, requiring more data to be submitted from local agencies to the state, and increasing the warrant requirements for when law enforcement needs to search an electronic device. This year, technology continues to drive the conversation — but in a slightly different way. While last year we witnessed a number of bills that would place an onus on law enforcement in the name of police-community relations, this year we are seeing a number of bills that serve law enforcement and place the onus elsewhere.

At the top of our list is AB 1681 (Cooper), which requires cellphones sold in California to be capable of being decrypted and unlocked by the manufacturer. New encryption technologies promoted by manufacturers such as Apple prevent both law enforcement and manufacturers from unlocking or decrypting a person’s cellphone. As the San Bernardino shooter’s cellphone sits locked and encrypted in an FBI office, the need for this bill goes without explanation. Assemblymember Cooper’s legislation joins bills from across the nation seeking to address this life-threatening problem. We hear that cellphone manufacturers are not pleased with the effort.

Lawmakers are also cracking down on the use of cellphones by drivers for non-communicative purposes, such as GPS and photography. AB 1785 (Quirk) was developed in conjunction with the Cal Chiefs’ Traffic Committee and seeks to extend §23123.5 of the Traffic Code to apply to non-texting uses of an electronic device.

While the aforementioned bills indicate a positive shift in lawmaker’s legislative priorities, concerns remain about the use of body worn cameras by law enforcement. While no body worn camera bills have been introduced as of yet, we anticipate legislation concerning minimum standards for camera use, standards on when an officer can review camera footage, and standards for when and how video footage can be released to the public. While the unknown creates concerns and uncertainty, we are also cognizant of a new reality for 2016: left-leaning lawmakers will be courting the moderate democratic caucus for votes on firearm legislation, which will result in a centralizing effect on other legislation, including body worn camera legislation. This means that bills such as SB 175 (Huff, 2015) and AB 69 (Rodriguez, 2015) will be much more likely to be the ‘bill-de-jour’, rather than bills similar to AB 66 (Weber, 2015). Regardless, we will closely monitor and engage on these bills.

As always, please do not hesitate to contact us with any questions or concerns.