

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/CS/HB 57 Law Enforcement Officer Body Cameras

**SPONSOR(S):** Judiciary Committee; Appropriations Committee; Criminal Justice Subcommittee; Jones, S.; Williams and others

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 7080

| REFERENCE                        | ACTION           | ANALYST   | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------|------------------|-----------|---------------------------------------|
| 1) Criminal Justice Subcommittee | 12 Y, 0 N, As CS | Keegan    | Cunningham                            |
| 2) Appropriations Committee      | 28 Y, 0 N, As CS | McAuliffe | Leznoff                               |
| 3) Judiciary Committee           | 18 Y, 0 N, As CS | Keegan    | Havlicak                              |

### SUMMARY ANALYSIS

A body camera is a portable electronic device, typically worn on the outside of a vest or a portion of clothing, which records audio and video data. Nationally, a small number of law enforcement agencies have opted to allow their law enforcement officers to wear body cameras. Preliminary studies on the effects of using body cameras on law enforcement officers indicated a reduction of citizen complaints against officers who wore the cameras while on duty.

Similar to the national trend, only a handful of Florida law enforcement agencies have elected to use body cameras. Currently, Florida law does not require such agencies to have policies in place that govern the use of such technology.

The bill requires law enforcement agencies that permit law enforcement officers to wear body cameras to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on law enforcement-related encounters in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

The bill requires law enforcement agencies to provide policies and procedures training to all personnel who use, maintain, store, or release body camera recording data. The bill also requires law enforcement agencies to retain body camera recording data in compliance with s. 119.021, F.S., and to perform periodic reviews of agency practices to ensure compliance with the agency's policies and procedures. The bill also exempts body camera recordings from the requirements of ch. 934, F.S. This allows law enforcement officers to wear body cameras during their patrol duties without having to inform each individual they make contact with that they are being recorded.

The bill may have a minimal impact on state and local government expenditures because the bill creates a new requirement for law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

The bill is effective upon becoming a law.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Law Enforcement Body Cameras**

A body camera is a portable electronic device, typically worn on the outside of a vest or a portion of clothing, which records audio and video data. Nationally, a small number of law enforcement agencies have opted to allow their law enforcement officers to wear body cameras. The Police Executive Research Forum conducted a national study in 2013 to determine the number of law enforcement agencies currently using body cameras,<sup>1</sup> and only sixty-three agencies nationwide reported using them.<sup>2</sup>

A limited number of studies have been conducted in the United States to determine the positive and negative effects of using body cameras on law enforcement officers.<sup>3</sup> The empirical studies that have been conducted in the United States focused on the effects of using body cameras in the Rialto Police Department (California) and the Mesa Police Department (Arizona).<sup>4</sup> While the relative lack of peer-reviewed research makes it difficult to accurately identify the benefits and drawbacks of requiring the use of body cameras, the findings of the Rialto and Mesa studies indicated a significant reduction of citizen complaints against officers who wore the cameras while on duty.<sup>5</sup>

More extensive studies have been conducted on the effects of using in-car cameras, commonly referred to as “dash cams,” in law enforcement patrol vehicles. The International Association of Chiefs of Police (hereinafter “IACP”) published findings in 2003 from an extensive study of the effects of using cameras in patrol vehicles.<sup>6</sup> The IACP study surveyed 47 agencies that owned a total of 31,498 patrol vehicles and 17,500 camera systems.<sup>7</sup> The study found that the presence of a camera had a small impact on perceptions of officer safety.<sup>8</sup> Only 33% of the officers surveyed reported increased personal safety on patrol due to the presence of a camera, while 64% reported no change in officer safety.<sup>9</sup> Conversely, findings indicated that the presence of in-car cameras had a significant impact on resolving citizen complaints and internal affairs investigations.<sup>10</sup> The outcomes of citizen complaints involving incidents that were videotaped resulted in exonerations for the officers in 93% of recorded incidents.<sup>11</sup> The immediate supervisors of patrol officers also reported that in at least half of complaints, when the complainant learned the incident was videotaped, the complaint was subsequently withdrawn.<sup>12</sup>

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<sup>1</sup> Miller, Lindsay, & Jessica Toliver, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, POLICE EXECUTIVE RESEARCH FORUM, 2014.

<sup>2</sup> *Id.* (Note: The surveyor contacted 500 law enforcement agencies nationwide and received responses from 254 of those agencies. Of the 254 responding agencies, 63 agencies reported using body-worn cameras.)

<sup>3</sup> White, Michael D., *Police Officer Body-Worn Cameras: Assessing the Evidence*, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, 2014.

<sup>4</sup> *Id.*; Studies are currently being conducted in the Phoenix Police Department (Arizona), the Orlando Police Department (Florida), the Las Vegas Metro Police Department (Nevada), and the Los Angeles Police Department (California). (See White, Michael D., *Police Officer Body-Worn Cameras: Assessing the Evidence*, Office of Community Oriented Policing Services, 2014; Mora, Gema, *Department of Criminology to Study the Effectiveness of Body Cameras on Police Officers*, University of South Florida, <http://criminology.cbcs.usf.edu/NewsEvents/ViewNews.cfm?NewsID=908> (last visited Jan. 21, 2015); National Institute of Justice, *Research on Body-Worn Cameras and Law Enforcement*, <http://www.nij.gov/topics/law-enforcement/technology/pages/body-worn-cameras.aspx> (last visited Feb. 2, 2015).)

<sup>5</sup> *Id.* (citing to Farrar, William. *Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras and Police Use-of-Force*, MESA POLICE DEPARTMENT, 2013.)

<sup>6</sup> International Association of Chiefs of Police, *The Impact of Video Evidence on Modern Policing: Research and Best Practices from the IACP Study on In-Car Cameras*, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, 2003.

<sup>7</sup> *Id.* at 10.

<sup>8</sup> *Id.* at 13.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 15.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Similar to the national trend, only a handful of Florida law enforcement agencies have elected to use body cameras. Currently, Florida law does not require such agencies to have policies in place that govern the use of such technology.

### Privacy

Chapter 934, F.S., governs the security of various types of communications in the State, and limits the ability to intercept, monitor, and record such communications. The Chapter provides for criminal penalties<sup>13</sup> and civil remedies<sup>14</sup> in circumstances where communications are intercepted in violation of Chapter 934, F.S. Additionally, s. 934.03(2)(d), F.S., creates the “two party consent rule,” which requires that all parties to a communication or conversation must consent to having the communication recorded before it can be done so legally.<sup>15</sup> Chapter 934, F.S., provides a limited exception for law enforcement-related recordings when “such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.”<sup>16</sup>

### Public Records

Chapter 119, F.S., the Public Records Act, governs the maintenance and availability of state, county, and municipal records.<sup>17</sup> While the intent of the Act was to make most records available for anyone to copy or inspect them, the public records laws in Florida exempt certain records from public view.<sup>18</sup>

There are several public records exemptions that may apply to law enforcement body camera recordings as a result of privacy or public policy concerns. One such exemption relates to criminal investigation records pursuant to s. 119.071(2)(c). This section exempts records related to active criminal intelligence information and active criminal investigations, as well as documentation of public records requests made by law enforcement agencies.<sup>19</sup> A similar such exemption applies to information revealing surveillance techniques, procedures, or personnel.<sup>20</sup> Additionally, exemptions exist to protect private and personal information, such as certain personal identifying information<sup>21</sup> or victim information.<sup>22</sup> Data recorded by body cameras will have to be screened for confidential or exempt data before it is released pursuant to a public records request.

The General Records Schedule, issued by the Florida Department of State, Division of Library and Information Services, establishes the requirements and timelines for agencies to maintain public records.<sup>23</sup> General Records Schedule GS2 governs the records maintenance and retention requirements for law enforcement, correctional facilities, and district medical examiners.<sup>24</sup> Schedule GS2 does not currently specify a retention requirement for video or audio recordings from body cameras.<sup>25</sup> However, a recording from a body camera could fall under existing areas of the retention schedule, depending on what is recorded.

For example, if a body camera records a criminal incident, retention of the recording for most offenses is governed by Item # 129, Criminal Investigative Records, in the Retention Schedule, and must be retained for 4 anniversary years after the offense is committed.<sup>26</sup> If the recording documents a criminal

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<sup>13</sup> ss. 934.04, 934.21, 934.215, 934.31, and 934.43, F.S.

<sup>14</sup> s. 934.05, F.S.;

<sup>15</sup> *See State v. Walls*, 356 So. 2d 294 (Fla. 1978).

<sup>16</sup> s. 934.03(2)(c), F.S.

<sup>17</sup> s. 119.01, F.S.

<sup>18</sup> s. 119.071-0713, F.S.; *see also Alice P. v. Miami Daily News, Inc.*, 440 So. 2d 1300 (Fla. 3d DCA 1983); *Patterson v. Tribune Co.*, 146 So. 2d 623 (Fla. 2d DCA 1962); *Staton v. McMillan*, 597 So. 2d 940 (Fla. 1st DCA 1992).

<sup>19</sup> s. 119.071(2)(c), F.S.

<sup>20</sup> s. 119.071(2)(d), F.S.

<sup>21</sup> s. 501.171, F.S.

<sup>22</sup> s. 119.071(j), F.S.

<sup>23</sup> Rule 1B-24.003, F.A.C.

<sup>24</sup> Florida Dep't of State, Div. of Library & Info. Servs., GENERAL RECORDS SCHEDULE GS2 (2010).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at page 7.

incident that constitutes a capital or life felony, Item # 31, Criminal Investigative Records: Capital/Life Felony, requires that the recording be retained for 100 anniversary years after the incident.<sup>27</sup>

### **Effect of the Bill**

The bill requires law enforcement agencies that permit law enforcement officers to wear body cameras to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on law enforcement-related encounters in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

The bill requires law enforcement agencies that permit law enforcement officers to wear body cameras to provide policies and procedures training to all personnel who use, maintain, store, or release body cameras or recording data. The bill also requires law enforcement agencies to retain body camera recording data in compliance with s. 119.021, F.S., and to perform periodic reviews of agency practices to ensure compliance with the agency's policies and procedures.

The bill specifies that ch. 934, F.S., does not apply to body camera recordings. This allows law enforcement officers to wear body cameras during their patrol duties without having to inform each individual they make contact with that they are being recorded.

The bill also creates the following definitions:

- "Body camera" means a portable electronic recording device that is worn on a law enforcement officer's person that records audio and video data of the officer's law enforcement-related encounters and activities;
- "Law enforcement agency" means an agency that has a primary mission of preventing and detecting crime and the enforcement of the penal, criminal, traffic, or highway laws of the state and that in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10, F.S.; and
- "Law enforcement officer" has the same meaning as provided in s. 943.10, F.S.<sup>28</sup>

### **B. SECTION DIRECTORY:**

Section 1. Creates s. 943.1718, F.S., body cameras; policies and procedures.

Section 2. Provides that the bill is effective upon becoming a law.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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<sup>27</sup> *Id.*

<sup>28</sup> Section 943.10(1), F.S., defines "law enforcement officer" to mean any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

This bill does not appear to have an impact on state revenues.

2. Expenditures:

According to 2014 Criminal Justice Agency Profile Survey, no state law enforcement agency reported using body cameras during the 2014 calendar year. If an agency chooses to use body cameras, the bill may have a minimal impact on state expenditures because the bill creates a new requirement for state law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have an impact on local government revenues.

2. Expenditures:

The bill may have a minimal impact on local expenditures because the bill creates a new requirement for local law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill requires county and municipal governments to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data, which may result in an indeterminate negative fiscal impact. However, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2015, the Criminal Justice Subcommittee adopted a proposed committee substitute and reported the bill favorable as a committee substitute. The committee substitute requires law enforcement agencies that use body cameras to establish policies and procedures that include the following:

- General guidelines for the proper use, maintenance, and storage of body cameras;

- Any limitations on which law enforcement officers are permitted to wear body cameras;
- Any limitations on the situations in which law enforcement officers are permitted to wear body cameras; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

The committee substitute also requires such law enforcement agencies to provide personnel training, to retain body camera data according to specified procedures, and perform periodic reviews of the practices of such agencies.

On March 19, 2015, the Appropriations Committee adopted one amendment to the committee substitute and reported the bill favorably as amended.

The amendment changes the definition of “body camera” to provide that it is a device worn on a law enforcement officer's person that records audio and video data of the officer's activities. The amendment also changes one of the policies and procedures that law enforcement agencies utilizing body cameras must establish to include any limitations on the law enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras.

On April 14, 2015, the Judiciary Committee adopted two amendments and reported the bill favorable as a committee substitute. The first amendment adds a definition for “law enforcement officer,” and the second amendment makes the bill effective upon becoming a law.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.