

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: SPB 7080

INTRODUCER: Criminal Justice Committee

SUBJECT: Law Enforcement Officer Body Cameras

DATE: April 7, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Cannon		CJ Submitted as Committee Bill

I. Summary:

SPB 7080 requires law enforcement agencies that use body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The bill specifies what must be included in those policies and procedures, such as general guidelines for the proper use, maintenance, and storage of body cameras and limitations on recording law enforcement-related encounters and activities.

The bill also requires these agencies to conduct training, retain audio and video data recorded by body cameras, and perform periodic review of practices.

Finally, the bill provides that ch. 934, F.S. (interception of communications), does not apply to body camera recordings made by law enforcement agencies that elect to use body cameras. Therefore, a body camera recording cannot be considered an “intercept” and the general prohibition against interception of wire, oral, and electronic communications does not apply to such recordings.

II. Present Situation:

Body-Worn Cameras

Body-Worn Cameras (BWCs) or “body cameras” are currently being used or considered for use by many law enforcement agencies. “BWCs are mobile audio and video capture devices that allow officers to record what they see and hear. Devices can be attached to various body areas, including the head, by helmet, glasses or other means, or to the body by pocket, badge, or other means of attachment (such as in-car on the dash). They have the capability to record officer interactions that previously could only be captured by in-car interrogation room camera systems.”¹

¹ Sensor, Surveillance, and Biometric Technologies Center of Excellence. September 2012. *A Primer on Body-Worn Cameras for Law Enforcement*. National Institute of Justice. The quoted text is from page 5 of the report, which is available at <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf> (last viewed on March 31, 2015).

One recent study of BWCs noted some of the perceived benefits and perceived concerns and problems regarding their use:

Perceived Benefits:

- BWCs “increase transparency and citizen views of police legitimacy”;
- BWCs “have a civilizing effect, resulting in improved behavior among both police officers and citizens”;
- BWCs “have evidentiary benefits that expedite resolution of citizen complaints or lawsuits and that improve evidence for arrest and prosecution”;
- BWCs “provide opportunities for police training.”²

Perceived Concerns and Problems:

- BWCs “create citizen privacy concerns”;
- BWCs “create concerns for police officer privacy” (e.g., some police unions “have claimed that the cameras represent a change in working conditions that must be negotiated”);
- BWCs “create concerns for officer health and safety” (e.g., head and neck injuries that may be mitigated by wearing the BWC on the uniform instead of on the head);
- BWCs “require investments in terms of training and policy development”;
- BWCs “require substantial commitment of finances, resources, and logistics.”

Florida Police Chiefs Association staff is aware of 13 Florida police departments that currently use BWCs³ and 9 Florida police departments that have implemented pilot programs to test the use of BWCs.⁴ The media have reported that the Flagler County Sheriff’s Office is using BWCs⁵ and the Pasco County Sheriff has indicated an intent to purchase BWCs.⁶ Other Florida sheriffs’ offices may be considering whether to use BWCs.

On December 1, 2014, the White House announced that President Barack Obama was proposing “a three-year \$263 million investment package that will increase use of body-worn cameras, expand training for law enforcement agencies (LEAs), add more resources for police department reform, and multiply the number of cities where DOJ facilitates community and local LEA engagement. As part of this initiative, a new Body Worn Camera Partnership Program would provide a 50 percent match to States/localities who purchase body worn cameras and requisite

² White, Michael D. 2014. *Police Officer Body-Worn Cameras: Assessing the Evidence*. Washington, DC: Office of Community Oriented Policing Services. The information is from the “Executive Summary” section of the report. The report is available at <https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf> (last viewed on March 31, 2015).

³ Police departments: Eustis; City of Miami; Cocoa; Daytona Beach; Daytona Beach Shores; Florida State University (motorcycle officers); Gulfport; Palm Bay (SWAT Officers); Pensacola; West Melbourne; Windermere; Miami Beach; and Rockledge.

⁴ Police departments: Clearwater; Ft. Myers; Marianna; Orlando (University of South Florida study); Plant City; Sarasota; St. Petersburg; Tampa; and West Palm Beach.

⁵ Metz, Claire. “Flagler County deputies fitted with new body cameras.” WESH.com (Orlando). August 28, 2014. The news broadcast video is available at <http://www.wesh.com/flagler-county-deputies-fitted-with-new-body-cameras/27779830> (last viewed on March 31, 2015).

⁶ Behrman, Elizabeth. “Local law enforcement split on body cameras.” *The Tampa Tribune*. December 14, 2014. The article is available at <http://tbo.com/news/crime/-20141226/> (last viewed on March 31, 2015).

storage. Overall, the proposed \$75 million investment over three years could help purchase 50,000 body worn cameras.”⁷

Currently, Florida law does not require such agencies to have policies in place that govern the use of such technology.

Interception of Communications

Paragraphs (1) (a) and (4)(a) of s. 934.03, F.S., make it a third degree felony⁸ to intentionally “intercept”⁹ an “oral communication.”¹⁰ The statute provides for a number of exceptions to this general prohibition.¹¹ For example, it is lawful under ss. 934.03-934.09, F.S.,¹² for:

- A law enforcement officer to intercept an oral communication if the officer is a party to the communication or one of the parties to the communication has given prior consent to the interception and the purpose of the interception is to obtain evidence of a criminal act;¹³ or
- A person to intercept an oral communication when all of the parties to the communication have given prior consent to the interception.¹⁴

The contents of an intercepted communication and evidence derived from the contents may not be received in evidence in court proceedings and other specified proceedings if the disclosure of the information would violate ch. 934, F.S. (i.e., a statutory exclusionary rule):

Whenever any wire or oral communication has been intercepted, no part of the contents of such communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the state, or a political subdivision thereof, if the disclosure of that information would be in violation of this chapter. The prohibition of use as evidence provided in this section does not apply in cases of prosecution for criminal interception in violation of the provisions of this chapter.¹⁵

⁷ “FACT SHEET: Strengthening Community Policing,” Office of the Press Secretary, The White House. December 1, 2014. The document is available at <http://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing> (last viewed on March 31, 2015).

⁸ A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S.

⁹ Section 934.02(3), F.S., defines “intercept” as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

¹⁰ Section 934.02(2), F.S., defines “oral communication” as any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

¹¹ Section 934.02(2)(a)-(j), F.S.

¹² These laws respectively relate to: interception and disclosure of wire, oral, and electronic communications; manufacture of communication-intercepting devices; confiscation of those devices; authorization of an interception; authorization for disclosure and use of an intercepted communication; and the procedure for interception.

¹³ Section 934.03(2)(c), F.S.

¹⁴ Section 934.03(2)(d), F.S.

¹⁵ Section 934.06, F.S.

Florida state courts have not addressed whether a body camera recording that records “oral communications” constitutes an “intercept” within the meaning of that term in s. 934.02, F.S. However, the Florida Supreme Court has previously held that other recordings of “oral communications” constituted an “intercept.”¹⁶ Body camera recordings are not expressly addressed in any existing exception in ch. 934, F.S., or otherwise excluded from ch. 934, F.S. Assuming body camera recordings are an “intercept,” some recordings might fall under an existing exception (such as the examples of exceptions previously noted) but others might not. Absent the recording falling under a current exception or otherwise being excluded from ch. 934, F.S., it might be in violation of ch. 934, F.S., and inadmissible under s. 934.06, F.S.

III. Effect of Proposed Changes:

The bill does the following:

- Provides a preamble that indicates:
 - Advancements in technology allow body cameras to be affordable and practical tools for law enforcement use;
 - Body cameras can provide a valuable source of information to both law enforcement and the general public;
 - The audio and video recording of police and citizen interactions allows law enforcement agencies to improve efforts to reduce crime and properly address citizen complaints;
 - Establishing uniform procedural requirements for the use of body cameras by law enforcement will provide consistency and reliability throughout the state; and
 - There are currently no statewide mandatory and uniform standards or guidelines that apply to use of body cameras by law enforcement officers.
- Provides relevant definitions of body camera,¹⁷ law enforcement officer,¹⁸ and law enforcement agency.¹⁹

¹⁶ For a discussion of this issue, see *Guilder v. State*, 899 So.2d 412 (Fla. 4th DCA 2005). The court relied on *State v. Tsavaris*, 394 So.2d 418, 420 (Fla. 1981), *receded from on other grounds*, 478 So.2d 38 (Fla. 1985), as precedent for affirming the trial court’s decision to deny a motion to suppress a recording made by the defendant of a face-to-face conversation without the consent of the parties to the conversation. *Id.* at 417-419. *Tsavaris* involved “a medical examiner recording a telephone conversation with a murder suspect who called him.” *Id.* at 417. In its analysis, the Fourth District Court of Appeals also noted that the Florida Supreme Court, in reaching its holding in *Shevin v. Sunbeam Television Corp.*, 31 So.2d 723 (Fla. 1977), was “apparently under the belief that recording a conversation in which one is a participant constituted intercepting a conversation[.]” *Id.* Further, the court noted that the Florida Supreme Court held in *State v. Walls*, 356 So.2d 294, 296 (Fla. 1978) that “an extortionary threat delivered personally to the victim in the victim’s home is an ‘oral communication’ ... [and] pursuant to Section 934.03, the electronic recording of such ‘oral communication’ without the consent of all parties to the communication was prohibited.” *Id.*

¹⁷ The bill defines a “body camera” as 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.

¹⁸ The bill states that “law enforcement officer” has the same meaning as provided in s. 943.10, F.S. Section 943.10(1), F.S., defines a “law enforcement officer” as 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.

¹⁹ The bill defines “law enforcement agency” as an agency that has a primary mission of preventing and detecting crime and enforcing the penal, criminal, traffic, and motor vehicle laws of the state and in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10, F.S.

- Requires law enforcement agencies that use body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. 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 and activities in which law enforcement officers are permitted to wear body cameras.
 - General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.
- Requires a law enforcement agency that permits its law enforcement officers to wear body cameras to:
 - Ensure that all personnel who wear, use, maintain, or store body cameras are trained in the law enforcement agency's policies and procedures concerning them.
 - Ensure that all personnel who use, maintain, store, or release audio or video data recorded by body cameras are trained in the law enforcement agency's policies and procedures.
 - Retain audio and video data recorded by body cameras in accordance with the requirements of s. 119.021, F.S. (maintenance of public records), except as otherwise provided by law.
 - Perform a periodic review of actual agency body camera practices to ensure conformity with the agency's policies and procedures.
- Provides that ch. 934, F.S. (interception of communications), does not apply to body camera recordings made by law enforcement agencies that elect to use body cameras. Therefore, a body camera recording cannot be considered an "intercept" and the general prohibition against interception of wire, oral, and electronic communications does not apply to such recordings.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18 of the Florida Constitution (the "mandates" provision) restricts the state's ability to: require local governments to spend money; reduce local government authority to raise revenues; and reduce local governments' share of state taxes.

While subsection (d) of Section 18 provides a "criminal law" exemption from the requirements of Section 18, it is uncertain if that exemption applies. The bill requires county or municipal governments (local law enforcement agencies) to develop policies and procedures on body cameras, conduct training, retain audio and video data recorded by body cameras, and perform periodic review of practices. If the bill's requirements implicate the mandates provision, an exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments. Even absent the bill, local law enforcement agencies that uses body cameras would likely conduct some training and develop some policies and procedures to ensure effective implementation of a body camera program and avoid potential liability issues.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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.

The bill may also 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.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 943.1718 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
