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 Fiscal Policy

BILL:	SB 418
INTRODUCER:	Senators Smith and Thompson
SUBJECT:	Law Enforcement Officer Body Cameras
DATE:	February 23, 2016
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	**Favorable**
2.	Cochran	Yeatman	CA	**Favorable**
3.	Jones	Hrdlicka	FP	**Pre-meeting**

I. Summary:

SB 418 creates s. 943.1718, F.S., pertaining to body cameras. The bill requires a law enforcement agency that authorizes its law enforcement officers to wear 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.

The bill specifies 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.

The bill may have an indeterminate fiscal impact on state or local governments. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming law.

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 devices worn by officers to record what they see and hear. They can record officer interactions that previously could only be captured by in-car or interrogation room camera systems.[1]

[1] National Institute of Justice, *A Primer on Body-Worn Cameras for Law Enforcement*, p. 5 (September 2012), available at https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf (last visited on February 19, 2016).

A 2014 study of BWCs noted some of the perceived benefits and perceived concerns and problems regarding BWCs use. The perceived benefits are that:

- 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; and
- BWCs provide opportunities for police training.[2]

Whereas, the perceived concerns and problems are that:

- BWCs create concerns for citizen and police officer privacy;
- BWCs create concerns for officer health and safety;
- BWCs require investments in terms of training and policy development; and
- BWCs require substantial commitment of finances, resources, and logistics.[3]

Data provided by the Florida Police Chiefs Association in October of 2015 indicated that out of 301 police departments in Florida, 18 police departments used body cameras, and another 10 agencies had pilot body camera programs in place.[4]

Florida law does not require agencies to have policies in place that govern the use of BWCs.

2015 Legislation on Body Cameras

During the 2015 Regular Session, legislation was passed and signed into law that makes audio or video data recorded by a law enforcement body camera confidential and exempt.[5] The body camera recording is confidential and exempt if it is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services; or
- In a place that a reasonable person would expect to be private.[6]

The public records exemption provides specific circumstances in which a law enforcement agency may disclose a body camera recording and circumstances in which the agency must disclose the recording.[7]

---

[2] White, Michael D., *Police Officer Body-Worn Cameras Assessing the Evidence*, p. 6-7 (2014), available at https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf (last visited on February 19, 2016).

[3] *Id.* at pp. 7-9.

[4] Telephone communication between the Committee on Criminal Justice staff and the Florida Police Chiefs Association (FPCA) (January 27, 2015). Additionally, FPCA staff indicated that in 2015 that there were 262 police departments in Florida, as well as an additional 39 law enforcement agencies that serve university and college campuses and airports. FPCA staff informed Senate Criminal Justice staff that the 2015 data provided may not reflect current data (if collected) but FPCA staff does not believe that any changes in the 2015 data would alter the statement in this analysis that only a small number of Florida law enforcement agencies have elected to use body cameras.

[5] Chapter 2015-41, L.O.F.

[6] Section 119.071(2)(l)2., F.S. The exemption is retroactive and a law enforcement agency must retain a body camera recording for at least 90 days. Section 119.071(2)(l)5.- 6., F.S.

[7] Sections 119.071(2)(l)3.- 4., F.S.

This exemption does not supersede any other public records exemption that existed before or created after July 1, 2015. Portions of a recording protected from disclosure by another public records exemption continue to be exempt or confidential and exempt.[8]

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. General Records Schedule GS2 governs the records maintenance and retention requirements for law enforcement, correctional facilities, and district medical examiners.[9] Schedule GS2 does not specify a retention requirement for video or audio recordings from body cameras.[10]

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.[11]

Interception of Communications

Chapter 934, F.S., governs the security of various types of communications in the state, limits the ability to intercept, monitor, and record such communications and provides criminal penalties[12] and civil remedies.[13]

Section 934.03, F.S. makes it a third degree felony[14] to intentionally "intercept" an "oral communication."[15] The statute provides for a number of exceptions,[16] for example, it is lawful 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; or
- A person to intercept an oral communication when all of the parties to the communication have given prior consent to the interception.[17]

---

[8] Section 119.071(2)(l)7., F.S. For example, an exemption that may apply to information in the recording is the exemption for active criminal intelligence information or active criminal investigative information. Section 119.071(2)(c)1., F.S.
[9] Rule 1B-24.003(1), F.A.C.
[10] State of Florida, Florida Department of State, Division of Library and Information Services, *General Records Schedule GS2 for Law Enforcement, Correctional Facilities, and District Medical Examiners,* (February 19, 2015), available at http://dos.myflorida.com/media/693578/gs02.pdf (last visited February 19, 2016).
[11] *Id*., at p. 7-8.
[12] Sections 934.04, 934.21, 934.215, 934.31, and 934.43, F.S.
[13] Section 934.05, F.S.
[14] A third degree felony is punishable by up to 5 years in state prison and a fine of up to $5,000. Sections 775.082 and 775.083, F.S.
[15] 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. 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.
[16] Section 934.03(2), F.S.
[17] Section 934.03(2), F.S.

The contents of an intercepted communication and any evidence derived from its 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.[18]

Florida state courts have not addressed whether a body camera recording that records "oral communications" constitutes an "intercept" within the meaning of s. 934.02, F.S. The Florida Supreme Court has previously held that other recordings of "oral communications" constituted an "intercept."[19]

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 but others might not. Absent the body camera 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 therefore inadmissible in court.

III. Effect of Proposed Changes:

The bill creates s. 943.1718, F.S., to govern body cameras and body cameras policies and procedures.

The bill defines the following terms:

- "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 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.;
- "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or its political subdivisions; 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.[20]

The bill requires a law enforcement agency that authorizes its law enforcement officers to wear 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;

[18] Section 934.06, F.S.
[19] *See Guilder v. State*, 899 So.2d 412 (Fla. 4th DCA 2005).
[20] Section 943.10(1), F.S. 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.

- Any limitations on law-enforcement-related encounters and activities 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.

A law enforcement agency that authorizes its law enforcement officers to wear body cameras must:

- Ensure that all personnel who wear, use, maintain, or store body cameras are trained in the 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 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); and
- Perform a periodic review of actual agency body camera practices to ensure conformity with the agency's policies and procedures.

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. This allows law enforcement officers to wear body cameras when on duty without having to inform each individual he or she encounters that they are being recorded. If the body camera recording does not consist of "audio and video data of the officer's law-enforcement-related encounters and activities," the exclusion does not apply.

The bill is effective upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate provisions of art. VII, s. 18(a) of the Florida Constitution do not apply because the requirements of the bill apply only to local governments that voluntarily use body cameras.

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 an indeterminate impact on state 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. There would also be costs associated with purchasing the equipment, data storage, and maintenance.

The bill may also have an indeterminate 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. There would also be costs associated with purchasing the equipment, data storage, and maintenance.

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.