

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 305 Law Enforcement Body Cameras  
**SPONSOR(S):** Judiciary Committee, Harrison, and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 624

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 1 N	Merlin	White
2) Judiciary Committee	17 Y, 0 N, As CS	Merlin	Camechis

### SUMMARY ANALYSIS

A body camera is a portable electronic recording device that is worn on a law enforcement officer's (LEO's) person that records audio and video data of the LEO's law-enforcement-related encounters and activities.

Current law in Florida requires law enforcement agencies (LEAs) that permit LEOs to wear body cameras to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data. These policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on LEO authority to wear body cameras;
- Any limitations on law-enforcement-related encounters in which LEOs 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.

Florida's body camera laws do not address whether a LEO may or may not review body camera footage prior to writing a report or making a statement about an incident.

The bill amends s. 943.1718(2), F.S., to require a LEA that permits the use of body cameras to have a provision permitting a LEO using a body camera to review the recorded footage from the body camera, upon his or her own initiative or request, before writing a report or providing a statement regarding any event arising within the scope of his or her official duties. The bill further provides that any such provision may not apply to an officer's inherent duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2017.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

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

In Florida, a body camera is a portable electronic recording device that is worn on a law enforcement officer's ("LEO's") person which records audio and video data of the officer's law-enforcement-related encounters and activities.<sup>1</sup> Data from the 2015 Criminal Justice Agency Profile ("CJAP") shows that out of the 399 law enforcement agencies ("LEAs") in this state, 91 have reported using body cameras.<sup>2</sup> Similarly, preliminary data from the 2016 CJAP survey shows that out of the 399 LEAs in this state, 107 have reported using them.<sup>3</sup>

Currently, s. 943.1718(2), F.S., requires LEAs that permit LEOs to wear body cameras to develop policies and procedures governing the proper use, maintenance, and storage of body cameras and recorded data, and provides that these policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras;
- Any limitations on LEO authority to wear body cameras;
- Any limitations on law-enforcement-related encounters in which LEOs 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.

Florida's body camera laws do not address whether a LEO may or may not review body camera footage prior to writing a report or making a statement about an incident.

##### **Internal Affairs Investigations**

As in most states, the subject of an internal affairs ("IA") investigation in Florida is afforded certain protections as set forth in the Law Enforcement Officer's Bill of Rights ("BOR").<sup>4</sup> Generally, the purpose of an IA investigation is to investigate allegations of professional misconduct that could lead to discipline, not criminal charges. The subject of an IA investigation in Florida is permitted to view the "complaint, all witness statements, including all other existing subject officer statements, and all other existing evidence, including, but not limited to, incident reports, GPS locator information, and audio or video recordings relating to the incident under investigation."<sup>5</sup>

In many states, if IA investigators fail to comply with the BOR, the officer who is being investigated may challenge any recommended discipline or termination, and the investigation may be dismissed.<sup>6</sup> In

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<sup>1</sup> s. 943.1718, F.S. A similar definition is found in Florida's Public Records Act, s. 119.071(2)(l)(1)(a), F.S. (defining a "body camera" as "a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.").

<sup>2</sup> CJAP data is compiled by the Criminal Justice Standards and Training Commission and published by the Florida Department of Law Enforcement ("FDLE"). See Criminal Justice Agency Profile Survey Results available at <http://www.fdle.state.fl.us/cms/CJSTC/Publications/CJAP/CJAP.aspx> (last viewed Jan. 30, 2017). The CJAP results are based on self-reporting. There are 399 law enforcement agencies in Florida. This number includes local police departments, sheriff's offices, school and port police departments, and state agencies. Based on preliminary 2016 CJAP data, state agencies have not been using body cameras. Email from Ronald Draa, Director of External Affairs, the Florida Department of Law Enforcement, Body Cam Data (Jan. 30, 2017) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).

<sup>3</sup> *Id.*

<sup>4</sup> ss. 112.532-34, F.S.

<sup>5</sup> s. 112.532(1)(d), F.S.

<sup>6</sup> Walter Olson *Police Misconduct and 'Law Enforcement Officers' Bill of Rights' Laws*, CATO Institute, April 24, 2015, available at <https://www.cato.org/blog/police-misconduct-law-enforcement-officers-bill-rights> (last viewed Feb. 15, 2017); see also Mike Riggs, *Why Firing a Bad Cop is Damn Near Impossible*, GET REASON MAGAZINE, Oct. 19, 2012, available at <http://reason.com/archives/2012/10/19/how-special-rights-for-law-enforcement-m> (last viewed February 15, 2017).

Florida, an investigator has an opportunity to cure any noncompliance with the BOR. If the investigator fails to cure the violation or continues the violation after notice, the investigator may be referred to a review panel, removed from the investigation, and subjected to disciplinary action.<sup>7</sup>

### Reviewing Body Camera Footage before Making Statements and Writing Reports

In a 2014 report from the International Association of Chiefs of Police (“IACP”) National Law Enforcement Policy Center,<sup>8</sup> it was noted that body cameras may be used by LEAs for documenting evidence; evaluating a LEO’s conduct and effectiveness; offering training, guidance, or discipline; preventing and resolving complaints brought by members of the public; strengthening the transparency, performance, and accountability of law enforcement; ensuring that events are presented accurately; and assisting in civil, criminal, and administrative proceedings.<sup>9</sup>

A 2014 Report from the Police Executive Research Forum (“PERF”) discussed the potential in allowing LEOs to review body camera footage before making a statement or writing a report about an incident in which they were involved.<sup>10</sup> The issues discussed by PERF and the recommendations by IACP were addressed in a December 12, 2016, presentation by the Lexipol training organization,<sup>11</sup> which included the following points and counterpoints:

Point	Counterpoint
<ul style="list-style-type: none"> <li>• Video is not always an accurate representation of events.<sup>12</sup> <ul style="list-style-type: none"> <li>○ Video does not: reproduce the LEO’s subjective fear, capture tactile clues, track with the eyes, accurately reproduce what the human eye sees, capture 3D or represent accurate distances, or always accurately represent motion and force.<sup>13</sup></li> </ul> </li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Watching the video before writing a report makes the LEO’s account of the incident vulnerable to scrutiny.<sup>14</sup> <ul style="list-style-type: none"> <li>○ Some believe that a LEO may change, or may feel pressure to change, his or her account to match something the LEO does not remember happening. Once viewed, the LEO cannot “un-view” it.<sup>15</sup></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Video may assist the LEO in obtaining the truth of what occurred and aid in his or her memory recall.<sup>20</sup> <ul style="list-style-type: none"> <li>○ Video corrects a distorted sensory perception, is often better than human recollection, and helps uncover the truth of what happened.<sup>21</sup></li> </ul> </li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Watching the video before making a statement will result in a statement that is more difficult to pick apart in court.<sup>22</sup> <ul style="list-style-type: none"> <li>○ Watching the video results in one statement that addresses all issues and does not provide the LEO with new information.<sup>23</sup></li> </ul> </li> </ul>

<sup>7</sup> s. 112.534, F.S.

<sup>8</sup> *Body-Worn Cameras, Concepts and Issues Paper*, IACP NATIONAL LAW ENFORCEMENT POLICY CENTER, April 2014 available at <http://www.theiacp.org/Portals/0/documents/pdfs/MembersOnly/BodyWornCamerasPaper.pdf> (“IACP Report”) (last viewed Feb. 6, 2017).

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

<sup>10</sup> See Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, COMMUNITY ORIENTED POLICING SERVICES (2014) (“PERF Report”) at 29.

<sup>11</sup> Ken Wallentine, Laura Scarry, and Grant Fredericks, *Point/Counterpoint: The Debate Over Officer Viewing of BWC Video*, Lexipol Powerpoint Presentation from Webinar (“Lexipol Presentation”) (Dec. 12, 2016).

<sup>12</sup> Lexipol Presentation at 5.

<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.* at 19.

<sup>15</sup> *Id.* at 20.

<ul style="list-style-type: none"> <li>• Allowing a LEO to watch the video may contribute negatively to police/community relations and to the department's reputation for transparency and legitimacy.<sup>16</sup> <ul style="list-style-type: none"> <li>○ The public knows non-police witnesses are not afforded the same opportunity.<sup>17</sup></li> </ul> </li> </ul> <hr/> <ul style="list-style-type: none"> <li>• Allowing LEOs to view the video before writing a report contradicts the approach used in other investigations and raises the issue of why all suspects are not allowed to view video evidence that relates to their cases.<sup>18</sup> <ul style="list-style-type: none"> <li>○ Creates a double standard as police departments typically do not allow other non-police witnesses to view video.<sup>19</sup></li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Community/police relations rest on far more than video footage related to any single incident.<sup>24</sup></li> </ul> <hr/> <ul style="list-style-type: none"> <li>• While LEO-involved shooting incidents are investigations, they are unique situations. Such investigations are not automatically criminal investigations.<sup>25</sup> <ul style="list-style-type: none"> <li>○ The LEO was there. The video does not show the LEO anything he or she has not previously seen. LEOs are encouraged to review video for all other events. The goal of the investigation is not to determine a culpable mental state; rather, the goal is to determine whether the LEO acted in an objectively reasonable manner.<sup>26</sup></li> </ul> </li> </ul>
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### Other State Laws relating to the Viewing of Body Camera Footage by LEOs

According to the National Conference on State Legislatures ("NCSL"), 30 states and the District of Columbia have created laws for body cameras,<sup>27</sup> several of which include provisions for writing reports or making statements:

- In Texas, a LEA that uses body cameras must adopt policies entitling a LEO to access any recording of an incident involving the officer before the LEO is required to make a statement about the incident.<sup>28</sup>
- In Connecticut, a LEO may review a recording from his or her body camera to assist the LEO with the preparation of a report or otherwise in the performance of his or her duties.<sup>29</sup> Further, if a LEO is giving a formal statement about the use of force or if a LEO is the subject of a disciplinary investigation in which a recording from a body camera is being considered as part of a review of an incident, the LEO shall: (1) have the right to review such recording in the

<sup>20</sup> *Id.* at 17.

<sup>21</sup> *Id.* at 18.

<sup>22</sup> *Id.* at 21.

<sup>23</sup> *Id.* at 22.

<sup>16</sup> *Id.* at 23.

<sup>17</sup> *Id.* at 24.

<sup>18</sup> *Id.* at 31.

<sup>19</sup> *Id.* at 32.

<sup>24</sup> *Id.* at 25.

<sup>25</sup> *Id.* at 33.

<sup>26</sup> *Id.* at 34.

<sup>27</sup> See National Conference of State Legislatures ("NCSL"), *Requirements to Wear Body Cameras, Body Camera Research*, Aug. 30, 2016 ("NCSL data") (available at <http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx>) (last visited Feb. 6, 2017).

<sup>28</sup> Tex. Occ. Code § 1701.655(b)(5).

<sup>29</sup> Conn. Gen. Stat. Ann. § 29-6d(e).

presence of the LEO's attorney or labor representative; and (2) have the right to review recordings from other equipment capturing the LEO's image or voice during the incident.<sup>30</sup>

- In the District of Columbia, a LEO may review their body camera recording to assist in initial report writing, except in cases involving a police shooting.<sup>31</sup>
- In Illinois, the recording LEO and his or her supervisor may access and review recordings before completing incident reports or other documentation if the LEO or his or her supervisor discloses that fact in the report or documentation.<sup>32</sup>
- In Minnesota, most body camera video is exempt from release or considered "nonpublic," subject to limited exceptions.<sup>33</sup> With respect to report writing by LEOs, Minnesota law provides that, "the responsible authority for a law enforcement agency must establish written procedures to ensure that law enforcement personnel have access to the portable recording system data that are not public only if authorized in writing by the chief of police, sheriff, or head of the law enforcement agency, or their designee, to obtain access to the data for a legitimate, specified law enforcement purpose."<sup>34</sup>

### **Effect of the Bill**

The bill amends s. 943.1718(2), F.S., to require a LEA that permits the use of body cameras to have a provision permitting a LEO using a body camera to review the recorded footage from the body camera, upon his or her own initiative or request, before writing a report or providing a statement regarding any event arising within the scope of his or her official duties. The bill further provides that any such provision may not apply to an officer's inherent duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses.

The bill provides an effective date of July 1, 2017.

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

Section 1. Amends s. 943.1718, F.S., relating to body cameras; policies and procedures.

Section 2. Provides an effective date of July 1, 2017.

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

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

1. Revenues: This bill does not appear to have an impact on state revenues.
2. Expenditures: This bill does not appear to have an impact on state expenditures.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: This bill does not appear to have an impact on local government revenues.
2. Expenditures: This bill does not appear to have an impact on local government expenditures.

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<sup>30</sup> Conn. Gen. Stat. Ann. § 29-6d(f).

<sup>31</sup> D.C. Mun. Regs. 24-39, § 3900.9.

<sup>32</sup> 50 Ill. Comp. Stat. Ann. 706/10-20(a)(6).

<sup>33</sup> Minn. Stat. § 13.825(2), (3), and (4).

<sup>34</sup> Minn. Stat. § 13.825(7)(b).

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 bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

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 March 16, 2017, the Judiciary Committee adopted one amendment and reported the bill favorably as a committee substitute (CS). The CS differs from the bill as filed in that the CS:

- Allows a LEO to view the body camera footage instead of “relevant audio and video recordings”;
- Allows the LEO reviewing the footage to do so upon his or her own initiative or request;
- Specifies that the LEO can review the body camera footage for incidents within the scope of the LEO’s official duties, instead of incidents in which the LEO was involved ; and
- Specifies that the provision permitting the review of footage does not apply to a LEO’s inherent duty to immediately disclose information necessary to secure an active crime scene or identify suspects or witnesses. .

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