

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 Judiciary

BILL: CS/SB 624

INTRODUCER: Criminal Justice Committee and Senator Steube

SUBJECT: Body Cameras

DATE: March 21, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Jones | Hrdlicka | CJ | Fav/CS |
| 2. | Brown | Cibula | JU | Pre-meeting |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 624 requires a law enforcement agency to address in its policies and procedures on the use of body cameras instances in which a law enforcement officer may review body camera footage.

Section 943.1718, F.S., currently requires a law enforcement agency using body cameras to record an incident to establish policies and procedures on their use. However, Florida law does not require agencies to use body cameras or address whether a law enforcement officer may review body camera footage prior to writing a report or making a statement about a recorded incident.

The bill authorizes a law enforcement officer using a body camera to review the body camera footage before:

- Writing a report; or
- Providing a statement regarding an event arising within the scope of his or her official duties.

However, these policies and procedures need not authorize a law enforcement officer to review body camera footage before providing information at the scene of an incident to identify and preserve the crime scene and identify suspects and witnesses.

II. Present Situation:

Body Cameras

A body camera is a portable electronic recording device that is worn on a law enforcement officer's person which records audio and video data of the officer's encounters and activities.¹ Body cameras are currently being used or considered for use by many law enforcement agencies.

Annually, the Criminal Justice Standards and Training Commission compiles the Criminal Justice Agency Profile Report, which provides compensation and benefit information for the 399 criminal justice agencies in Florida.² The 2015 report shows that 91 of the 382 responding agencies reported using body cameras and the 2016 preliminary report shows that 107 of the 368 responding agencies reported using body cameras.³

Officer Review of Body Camera Footage

Views on the Review of Body Camera Footage

The use of body cameras has raised numerous policy questions within the law enforcement community. A 2014 report from the United States Department of Justice, Police Executive Research Forum, provides recommendations to law enforcement agencies on the use of body cameras. The report specifically recommends that agencies allow a law enforcement officer to review the body camera footage of an incident before making a statement about the incident. Most of the police executives interviewed for the report believe that allowing officers to review the body camera footage provides the best evidence of the incident.⁴

Lexipol, a private company providing training on risk management to public safety organizations offers a specific online training on the use of body cameras.⁵ In the training, the presenter notes that a video is not always an accurate representation of the incident because it does not always show the fear of the officer or the force that occurred during the incident.⁶ However, viewing the video after the incident can assist the officer with memory recall of what occurred.⁷ On the other hand, an officer who views body camera footage before writing a report could make his or her account more susceptible to scrutiny based on a perception that the officer changed his or her account.⁸

¹ Section 943.1718(1)(a), F.S.

² Florida Department of Law Enforcement, *Criminal Justice Agency Profile Survey Results*, available at <http://www.fdle.state.fl.us/cms/CJSTC/Publications/CJAP/CJAP.aspx> (last visited March 15, 2017).

³ Email from Ronald Draa, Director of External Affairs, Florida Department of Law Enforcement, to Senate Criminal Justice Committee staff, (Feb. 28, 2017) (on file with the Senate Criminal Justice Committee and Senate Judiciary Committee).

⁴ Community Oriented Policing Services, U.S. Department of Justice, Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, pg. 29 (2014), available at <https://ric-zai-inc.com/Publications/cops-p296-pub.pdf>.

⁵ Lexipol, *About Lexipol, Public Safety Organization Policies and Resources*, available at <http://www.lexipol.com/about-us/> (last visited February 27, 2017) and Lexipol, *Officer Viewing of Body Worn Camera Footage*, available at <http://www.lexipol.com/body-worn-camera-webinar/> (last visited March 15, 2017); Ken Wallentine, Laura Scarry, and Grant Fredericks, Lexipol, *Point/Counterpoint: The Debate Over Officer Viewing of BWC Video*, December 12, 2016, available at <http://www.lexipol.com/wp-content/uploads/2016/11/BWC-Video-Viewing.pdf>.

⁶ *Id.* at p. 5-6.

⁷ *Id.* at 17.

⁸ *Id.* at 19.

Other States

Thirty states and the District of Columbia have enacted laws governing the use of body cameras by law enforcement agencies and officers.⁹ Seventeen states, including Florida, and the District of Columbia require law enforcement agencies to adopt written policies in order for law enforcement agencies to use or receive funding for body cameras.¹⁰ Some states have laws addressing whether a law enforcement officer may view body camera footage prior to writing a report or making a statement.¹¹ For example, in Texas a law enforcement agency that uses body cameras must enact policies ensuring an officer access to any recording of an incident prior to making a statement.¹²

In Connecticut, an officer may view the body camera footage when writing his or her police report. An officer may also view the body camera footage if he or she has to give a formal statement about the use of force involved or if he or she is the subject of a disciplinary investigation. The officer also has the right to view the body camera footage with an attorney or labor representative present and to review recordings of the incident from other body cameras that captured the officer's image or voice.¹³

Section 943.1718, F.S., requires a law enforcement agency using body cameras to establish certain policies and procedures on their use. However, Florida law does not require agencies to use body cameras or address whether a law enforcement officer may review body camera footage prior to writing a report or making a statement about a recorded incident.

Section 943.1718, F.S., Body Camera Policies and Procedure

In 2016, the Legislature enacted requirements for law enforcement agencies who use body cameras.¹⁴ Section 943.1718, F.S., requires a law enforcement agency using body cameras to establish policies and procedures that 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; and
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

III. Effect of Proposed Changes:

The bill requires a law enforcement agency to address in its body camera policies and procedures instances in which a law enforcement officer may review body camera footage.

⁹ National Conference of State Legislatures, *Body-Worn Cameras Interactive Graphic, State Body-Worn Camera Laws*, August 30, 2016, available at <http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx> (last visited March 15, 2017).

¹⁰ NCSL, *Written Body-Worn Camera Policies*, available at http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx#/ (last visited March 15, 2017).

¹¹ *Id.*

¹² Tex. Occ. Code s. 1701.655(b)(5).

¹³ Conn. Gen. Stat. Ann. s. 29-4(e) and (f).

¹⁴ Chapter 2016-76, L.O.F.

Specifically, the bill requires these policies and procedures to authorize a law enforcement officer who uses a body camera to review the body camera footage before:

- Writing a report; or
- Providing a statement regarding an event arising within the scope of his or her official duties.

However, these policies and procedures need not authorize a law enforcement officer to review body camera footage before providing information at the scene of an incident to identify and preserve the crime scene and identify suspects and witnesses.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

Although this bill requires law enforcement agencies to include a new policy in their policies and procedures on the use of body cameras, little fiscal impact is expected.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.1718, Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on March 6, 2017:

The committee substitute:

- Requires a “provision” instead of “general guidelines” by law enforcement using body cameras;
- Limits the review of footage to law enforcement officers using body cameras;
- Allows the law enforcement officer to view the body camera footage instead of “relevant audio and video recordings”;
- Specifies that the law enforcement officer can review the body camera footage for incidents within the scope of the officer’s official duties instead of incidents in which the officer was involved; and
- Prohibits a law enforcement officer using a body camera to review the body camera footage before providing information at the scene of an incident for the sole purposes of identifying and preserving the crime scene and identifying witnesses and suspects.

- B. **Amendments:**

None.