HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 93 Law Enforcement Officer Body Cameras
SPONSOR(S): Jones, S.; Williams, A. and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 418

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Keegan	White
2) Appropriations Committee		Lloyd	Leznoff
3) Judiciary Committee			

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. Approximately one-third of local police departments throughout the nation have opted to use 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 small number 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, and to retain body camera recording data in compliance with s. 119.021, F.S. Agencies must perform periodic reviews of agency practices to ensure compliance with agency 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.

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.

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.

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. The Bureau of Justice Statistics published the results of a 2013 survey of local police departments in the United States[1] conducted by the Law Enforcement Management and Administrative Statistics (LEMAS)[2] Survey. As of 2013, an estimated 32 percent of local police departments[3] throughout the nation equip at least some of their patrol officers with body cameras.[4]

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.[5] Most empirical studies in the United States have focused on the effects of using body cameras in the Rialto Police Department (California),[6] the Mesa Police Department (Arizona),[7] the Phoenix Police Department (Arizona),[8] and the Orlando Police Department (Florida).[9] 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 all four studies indicated a significant reduction of citizen complaints against officers who wore the cameras while on duty.[10]

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.[11] The IACP study surveyed forty-seven agencies that owned a total of 31,498 patrol vehicles and 17,500 camera systems.[12] The study found that the presence of a camera

---

[1] Reaves, Brian A., *Local Police Departments, 2013: Equipment and Technology*, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, July, 2015, at 1-2 (*available at* http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5321) (last visited Oct. 23, 2015).

[2] LEMAS has been periodically collecting data on U.S. law enforcement agencies for the Bureau of Justice Statistics since 1987. BUREAU OF JUSTICE STATISTICS, *Data Collection: Law Enforcement Management and Administrative Statistics (LEMAS)*, http://www.bjs.gov/index.cfm?ty=dcdetail&iid=248 (last visited Oct. 23, 2015).

[3] The 2013 LEMAS sample design called for responses from 2,353 local police departments and 983 other types of law enforcement agencies. The term "local police department" does not including sheriff's offices or state law enforcement agencies. Reaves, *supra* note 1, at 8; Bureau of Justice Statistics, *supra* note 2.

[4] Reaves, *supra* note 1, at 3-4.

[5] White, Michael D., *Police Officer Body-Worn Cameras: Assessing the Evidence*, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, 2014.

[6] Ramirez, Eugene P., *A Report on Body Worn Cameras*, MANNING & KASS, ELLROD, RAMIREZ, TRESTER LLP (*available at* https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=0CDgQFjAEahUKEwixzY_7s8_IAhVDLB4KHZuIDI0&url=https%3A%2F%2Fwww.bja.gov%2Fbwc%2Fpdfs%2F14-005_Report_BODY_WORN_CAMERAS.pdf&usg=AFQjCNGjYEMhjJb_WKQOwPiVoN1YVR0_pg&sig2=nybYo3pMAfVWu-MoRzExPw) (last visited Oct. 19, 2015); White, *supra* note 5.

[7] Roy, Allyson, *On-Officer Video Cameras: Examining the Effects of Police Department Policy and Assignment on Camera Use and Activation*, ARIZONA STATE UNIVERSITY, 2014 (*available at* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0CB0QFjAAahUKEwjLkPuGts_IAhWLLB4KHXbBAJk&url=http%3A%2F%2Furbanaillinois.us%2Fsites%2Fdefault%2Ffiles%2Fattachments%2Fofficer-video-cameras-roy.pdf&usg=AFQjCNGJ3vrpVhYmSGKuRtTrFS1MO976jA&sig2=hAkkZlYPZN6zNxhBgROLGg) (last visited Oct. 19, 2015).

[8] Katz et al., *Evaluating the Impact of Officer Worn Body Cameras in the Phoenix Police Department*, Phoenix, AZ: Center for Violence Prevention & Community Safety, ARIZONA STATE UNIVERSITY, 2014.

[9] Jennings, Lynch, & Lorie A. Fridell, *Executive Summary: Evaluating the Impact of Police Officer Body-Worn Cameras: The Orlando Police Department Experience*, UNIVERSITY OF SOUTH FLORIDA, 2015 (*available at* http://www.cityoforlando.net/police/opdusf-body-camera-study-complete/) (last visited Oct. 19, 2015).

[10] Jennings, *supra* note 9, at 2-4; Katz, *supra* note 8, at 3; Ramirez, *supra* note 6, at 7; Roy, *supra* note 7, at 11.

[11] Int'l Ass'n 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.

[12] *Id.* at 10.

had a small impact on perceptions of officer safety.[13] Only 33 percent of the officers surveyed reported increased personal safety on patrol due to the presence of a camera, while 64 percent reported no change in officer safety.[14] Conversely, findings indicated that the presence of in-car cameras had a significant impact on resolving citizen complaints and internal affairs investigations.[15] The outcomes of citizen complaints involving incidents that were videotaped resulted in exonerations for the officers in 93 percent of recorded incidents.[16] 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.[17]

Similar to the national trend, only a small number of Florida law enforcement agencies have elected to use body cameras. Out of 301 police departments in Florida,[18] eighteen agencies use body cameras, and another ten agencies have pilot body camera programs in place.[19] Florida law does not currently require 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[20] and civil remedies[21] in circumstances where communications are intercepted unlawfully. Additionally, s. 934.03(2)(d), F.S., creates the "two party consent rule," which requires that in circumstances justifying an expectation of privacy, all parties to a communication or conversation must consent to having it recorded before it can be done so legally.[22] 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."[23]

Public Records

Chapter 119, F.S., the Public Records Act, governs the maintenance and availability of state, county, and municipal records.[24] While the intent of the Act is to make most records available for anyone to copy or inspect them, the public records laws in Florida exempt certain records from public view.[25]

During the 2015 Legislative session, SB 248 was passed and signed into law, making audio or video data recorded by a law enforcement body camera confidential and exempt.[26] Such a 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.[27] The public record exemption provides specific circumstances in which a law enforcement agency may disclose a confidential and exempt body camera recording,[28] and additional circumstances in which a law enforcement agency must disclose such a recording.[29]

---

[13] *Id.* at 13.
[14] *Id.*
[15] *Id.* at 15.
[16] *Id.*
[17] *Id.*
[18] There are 262 police departments in Florida, as well as an additional thirty-nine law enforcement agencies that serve university and college campuses and airports. Email from Bernadette Howard, Government Affairs Coordinator, The Florida Police Chiefs Association, Body Cam Data (Oct. 26, 2015) (on file with the Florida House of Representatives, Criminal Justice Subcommittee).
[19] *Id.*
[20] ss. 934.04, 934.21, 934.215, 934.31, and 934.43, F.S.
[21] s. 934.05, F.S.;
[22] *State v. Inciarrano*, 473 So. 2d 1272, 1275 (Fla. 1985); *State v. Walls*, 356 So. 2d 294 (Fla. 1978).
[23] s. 934.03(2)(c), F.S.
[24] s. 119.01, F.S.
[25] ss. 119.071-119.0713, 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).
[26] s. 119.071(2)(l), F.S.
[27] s. 119.071(2)(l)2., F.S.
[28] s. 119.071(2)(l)3., F.S.
[29] s. 119.071(2)(l)4., F.S.

There are several additional public record exemptions that may apply to law enforcement body camera recordings. One such exemption relates to criminal investigation records pursuant to s. 119.071(2)(c), F.S. 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.[30] A similar exemption applies to information revealing surveillance techniques, procedures, or personnel.[31] Additionally, exemptions exist to protect private and personal information, such as certain personal identifying information[32] or victim information.[33] Data recorded by body cameras will have to be screened for exempt or confidential and exempt data before being released pursuant to a public record 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.[34] General Records Schedule GS2 governs the records maintenance and retention requirements for law enforcement, correctional facilities, and district medical examiners.[35] Schedule GS2 does not currently specify a retention requirement for video or audio recordings from body cameras.[36] 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 four anniversary years after the offense is committed.[37] If the recording documents a criminal incident that constitutes a capital or life felony, Item # 31, Criminal Investigative Records: Capital/Life Felony, requires that the recording be retained for one hundred anniversary years after the incident.[38]

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:

---

[30] s. 119.071(2)(c). F.S.
[31] s. 119.071(2)(d), F.S.
[32] s. 501.171, F.S.
[33] s. 119.071(j), F.S.
[34] Rule 1B-24.003, F.A.C.
[35] Florida Dep't of State, Div. of Library & Info. Servs., GENERAL RECORDS SCHEDULE GS2 (2010).
[36] *Id*.
[37] *Id*. at page 7.
[38] *Id*.

- "Body camera" means 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 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.[39]

B. SECTION DIRECTORY:

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

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

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:

   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.

[39] 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.

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, and train agency personnel accordingly. This 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

None.