

LAW ENFORCEMENT BODY-WORN CAMERA PRIVACY ACT

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House Bill 4427 as introduced
Sponsor: Rep. Jim Runestad
Committee: Judiciary
Complete to 4-24-17

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4427 creates the Law Enforcement Body-Worn Camera Privacy Act to regulate public access to recordings recorded by body-worn cameras worn by law enforcement officers and retention of evidentiary audio and video recordings recorded by the body-cams. "Body-worn camera" means a device that is worn by a law enforcement officer that electronically records audio and video of the officer's activities.

The new act would do the following:

- With some exceptions, prohibit a recording recorded by a body-worn camera in a private place from disclosure under the Freedom of Information Act (FOIA).
- Specify the circumstances under which a recording would be subject to FOIA and the William Van Regenmorter Crime Victim's Rights Act.
- With some exceptions, require a video and audio recording to be retained for at least than 30 days from the date it was made.
- Specify that if a complaint against a law enforcement officer was made after the retention period expired, there would be no presumption that the recording would have provided corroboration of the defendant's or plaintiff's version of events.
- Allow a law enforcement agency to charge a fee for a copy of a recording.
- Require each law enforcement agency utilizing body-worn cameras to develop a written policy for the use of the devices and the maintenance and disclosure of recordings made by the devices.

Public access to recordings and exemptions to public access

Under the bill, disclosures of any audio or video recording recorded by a body-worn camera would be subject to the protections provided for crime victims under the William Van Regenmorter Crime Victim's Rights Act (CVRA). Among other things, the sections of the CVRA cited in the bill exempt certain personally identifiable information, such as names and addresses, and visual representations—including any film, videotape, or digitally stored image—from disclosure under the Freedom of Information Act (FOIA).

Except as provided in the bill, a recording recorded by a law enforcement officer with a body-worn camera or similar device that is recorded in a private place is exempt from disclosure under the Freedom of Information Act (FOIA). "Private place" is defined as a place where an

individual may reasonably expect to be safe from casual or hostile intrusion or surveillance but does not include a place to which the public or a substantial group of the public has access.

Except for an audio and video recording exempted from disclosure under Section 13 of the Freedom of Information Act, any of the following individuals may request a copy of an audio and video recording recorded in a private place:

- An individual who is the subject of the audio and video recording.
- An individual whose property has been seized or damaged in relation to, or is otherwise involved with, a crime to which the recording is related.
- A parent of, a legal guardian of, or an attorney for an individual described above.

An audio or video recording from a body-worn camera that is retained by a law enforcement agency in connection with an ongoing criminal investigation or an ongoing internal investigation is not a public record and would be exempt from disclosure under FOIA, but only to the extent that disclosure as a public record would do any of the following:

- Interfere with law enforcement proceedings.
- Deprive a person of the right to a fair trial or impartial adjudication.
- Constitute an unwarranted invasion of personal privacy.
- Disclose the identity of a confidential source or, if the record were compiled by a law enforcement agency in the course of criminal investigation, disclose confidential information furnished only by a confidential source.
- Disclose law enforcement investigative techniques or procedures.
- Endanger the life or physical safety of law enforcement personnel.
- Disclose information regarding a crime victim in violation of provisions of the CVRA.

Disclosure of recordings in civil actions

An audio or video recording from a body-cam retained by a law enforcement agency relating to a civil action in which the party requesting the recording and the public body are parties is not a public record and so is also exempt from disclosure under FOIA.

Retention of evidentiary recordings

In general, a law enforcement agency must retain *an evidentiary audio and video recording* for at least 30 days from the date the recording was made. The term means an audio and video recording of an incident or encounter recorded by a body-worn camera and includes, but is not limited to, a crime, arrest, citation, search, use of force incident, or confrontational encounter with a citizen, that is useful for investigative or prosecutorial purposes that would include criminal and internal investigations.

Recordings that are the subject of an ongoing criminal or internal investigation, or an ongoing criminal prosecution or civil action, must be retained by a law enforcement agency until the completion of the ongoing investigation or legal proceeding.

The recording must be retained for at least three years after the date the recording was made if the recording is relevant to a formal complaint against a law enforcement officer or agency as determined by the law enforcement agency.

No presumption of corroboration

If a complaint against a law enforcement officer or law enforcement agency is made after the expiration of the relevant retention period and a law enforcement agency is unable to produce a recording related to the complaint in any criminal prosecution or civil action, the bill states that it could not be presumed that the recording would corroborate either the prosecution's or the defendant's version of events in a criminal prosecution or the plaintiff's or defendant's version in a civil action.

Fee

A law enforcement agency could charge a fee for a copy of an audio and video recording from a body-cam. The fee must be calculated under and in compliance with Section 4 of FOIA.

Written policy on body-worn camera

A law enforcement agency utilizing body cams would be required to develop a written policy regarding the use of the devices by its law enforcement officers and the maintenance and disclosure of the recordings recorded by body-worn cameras that complies with the requirements of this act.

FISCAL IMPACT:

This bill would not have a significant fiscal impact on the Department of State Police (MSP). The MSP currently has a small pilot program testing the use of body-worn cameras, which would likely remain unaffected by this bill.

This bill could impose significant costs on some local units of government that have already adopted body-worn cameras. These costs would be dependent upon the variation between local law enforcement programs and policies for data retention and the requirements in this bill. Most local law enforcement agencies contract with third-party vendors for cameras, support equipment, and data storage. This bill would impose costs on local law enforcement agencies who have body-worn camera programs that do not meet the minimum required data storage period, while those agencies that already meet or exceed the requirements would likely have no additional costs. The local law enforcement agencies that did not previously meet the minimum standards would have to purchase additional storage capacity through their vendor or find other means of compliance.

The costs of complying with the provisions requiring the disclosure of copies of audio or video footage would likely be covered through processing fees paid by the requesting party.

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