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BILL ANALYSIS



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House Bill 4427 (Substitute H-1 as passed by the House)

Sponsor: Representative Jim Runestad

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 5-30-17

CONTENT

The bill would create the "Law Enforcement Body-Worn Camera Privacy Act" to do the following:

- **Specify that disclosure of an audio or video recording recorded by a body-worn camera would be subject to protections provided to crime victims under the Crime Victim's Rights Act.**
- **Specify that a recording recorded in a private place by a law enforcement officer with a body-worn camera would be exempt from disclosure under the Freedom of Information Act (FOIA), except under certain circumstances.**
- **Allow certain individuals to request a copy of a recording, except for a recording that was exempt from FOIA or disclosed the personally identifiable information of a victim, recorded by a law enforcement officer with a body-worn camera in a private place.**
- **Specify that a body-worn camera recording that a law enforcement agency retained in connection with an ongoing criminal or internal investigation would be exempt from disclosure under FOIA.**
- **Prescribe minimum retention periods for recordings under various circumstances.**
- **Allow a law enforcement agency to charge a fee for a copy of a body-worn camera recording.**
- **Require a law enforcement agency that used body-worn cameras to develop a written policy regarding the use of the cameras by its officers.**

The bill would take effect 180 days after its enactment.

Definitions

"Body-worn camera" would mean a device that is worn by a law enforcement officer that electronically records audio and video of his or her activities.

"Private place" would mean a place where an individual may reasonably expect to be safe from casual or hostile intrusion or surveillance, but would not include a place to which the public or a substantial group of the public has access.

Public Access to Recordings; Recordings Recorded in a Private Place

The disclosure of any audio or video recording recorded by a body-worn camera would be subject to the protections provided for crime victims in Sections 8, 19, 19a, 21, 34, 38, 48, 62, 68, and 80 of the Crime Victim's Rights Act. (These provisions generally exempt a crime

victim's name, address, phone number, or other personally identifiable information from disclosure under FOIA.)

Except as otherwise provided, and subject to the conditions described below, a recording recorded by a law enforcement officer with a body-worn camera that was recorded in a private place would be exempt from disclosure under FOIA.

Except for an audio and video recording exempt from disclosure under Section 13 of FOIA (which permits a public body to exempt a public record from disclosure under a variety of circumstances), a recording that disclosed the personally identifiable information of a crime victim, or a recording exempt from disclosure under Section 5 of the proposed Act, any of the following individuals could request a copy of an audio and video recording recorded by a law enforcement officer with a body-worn camera in a private place:

- a) An individual who was the subject of the recording.
- b) An individual whose property had been seized or damaged in relation to a crime to which the recording was related.
- c) A parent of an individual who was less than 18 years of age described in a) or b).
- d) A legal guardian of an individual described in a) or b).
- e) An attorney who represented an individual described in a) or b).

Disclosure of a Recording Retained by a Law Enforcement Agency

Under Section 5 of the proposed Act, an audio or video recording from a body-worn camera that a law enforcement agency retained in connection with an ongoing criminal or internal investigation would not be 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 a 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 the Crime Victim's Rights Act.

If a recording from a body-worn camera retained by a law enforcement agency related to a civil action in which the requesting party and the public body were parties, the recording would not be a public record and would be exempt from disclosure under Section 13(1)(v) of FOIA. (Section 13(1)(v) allows a public body to exempt from disclosure a public records or information relating to a civil action in which the requesting party and the public body are parties.)

Retention of Recordings

Except as otherwise provided, a law enforcement agency would have to retain an evidentiary audio and video recording recorded by a body-worn camera for at least 30 days from the date the recording was made. "Evidentiary audio and video recording" would mean "an audio and video recording of an incident or encounter recorded by a body-worn camera, including a crime, arrest, citation, search, use of force incident, or confrontational encounter with a citizen, that may be materially useful for investigative or prosecutorial purposes, including for a criminal and internal investigation".

An agency would have to retain recordings that were the subject of an ongoing criminal or internal investigation, or an ongoing criminal prosecution or civil action, until the investigation or proceeding was completed. If a recording were relevant to a formal complaint against a law enforcement officer or agency, the agency would have to retain it for at least three years after the date the recording was made.

If a complaint against a law enforcement officer or law enforcement agency were made after a retention period expired, or an agency were unable to produce a recording related to the complaint in any criminal prosecution or civil action as a result of technical failure or human error, the proposed Act would not create a presumption 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 the defendant's version of events in a civil action.

Fee & Policy

A law enforcement agency could charge a fee for a copy of an audio and video recording recorded by a law enforcement officer with a body-worn camera. The fee would have to be calculated under and in compliance with FOIA.

A law enforcement agency that used body-worn cameras would have to develop a written policy regarding the use of the cameras by its officers and the maintenance and disclosure of recordings recorded by the cameras that complied with the proposed Act's requirements.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have a fiscal impact of varying degrees on law enforcement agencies that adopt or have adopted the use of body-worn cameras for their officers. For agencies that already use body cameras, these costs would depend upon the difference between a law enforcement agency's existing policies and practices and those required under the bill. The Michigan Association of Chiefs of Police estimates that less than 10% of the State's 587 law enforcement agencies use body-worn cameras, and it is reasonable to assume that a certain number of those agencies whose policies and practices closely mirror those required under the bill, would incur no additional costs.

Potential costs to some agencies could result from the purchase of additional storage capacity for recordings and the possible required updating of management systems needed to conform to the storage time frames required.

The costs of the requirement that agencies provide copies of body camera recordings in certain instances could be covered by the provision in the bill that would allow an agency to charge a fee for such a service.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.