

BILL ANALYSIS

Senate Research Center

S.B. 158
By: West et al.
Criminal Justice
6/29/2015
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 158 creates statewide policy and guidelines on the use of body-worn cameras by members of law enforcement who are engaged in patrol duties or are first responders to calls for assistance. S.B. 158 also proposes to provide a matching grant program that would assist Texas law enforcement agencies in securing the equipment required to operate a body-worn camera program.

The advent of body-worn camera technology and its usage has increased dramatically over the course of the last three years and more law enforcement agencies across America are implementing body camera programs. As with the use of dashboard cameras that was implemented statewide by S.B. 1074, 77th Legislature, Regular Session, 2001, video evidence has been proven to protect both citizens and police. Video documentation has been used to reduce the number of false claims made against law enforcement.

The use of body-worn cameras has been the topic of several national studies, the most prominent of which is *Implementing a Body-Worn Camera Program—Recommendations and Lessons Learned*, by the U S. Department of Justice - Community Oriented Policing Services (COPS) and the Police Executive Research Forum (PERF). The COPS/PERF study is the basis for S.B. 158.

In Texas, the cities of Fort Worth, DeSoto, Sugarland, and Corpus Christi, as well as Brazos County, have fully implemented body-worn camera programs. Cities like Dallas, Houston, San Antonio, Duncanville, Denton, Lancaster and others have programs that are in various stages of field testing and implementation. It is safe to predict that the use of body-worn cameras by law enforcement will continue to expand in coming years. Several states now have legislation pending.

S.B. 158 seeks to create statewide standards on the use of body-worn cameras by law enforcement and to provide a state solution to assist the procurement and operation of a body-worn camera program. (Original Author's/Sponsor's Statement of Intent)

S.B. 158 amends current law relating to a body worn camera program for certain law enforcement agencies in this state, creates an offense, and authorizes a fee.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. SECTION 1. Amends Chapter 1701, Occupations Code, by adding Subchapter N, as follows:

SUBCHAPTER N. BODY WORN CAMERA PROGRAM

Sec. 1701.651. DEFINITIONS. Defines "body worn camera," "department," and "private space" in this subchapter.

Sec. 1701.652. GRANTS FOR BODY WORN CAMERAS. (a) Authorizes a police department of a municipality in this state, a sheriff of a county in this state who has received the approval of the commissioners court for the purpose, or the Department of Public Safety of the State of Texas (DPS) to apply to the Office of the Governor (governor's office) for a grant to defray the cost of implementing this subchapter and to equip peace officers with body worn cameras if that law enforcement agency employs officers who:

(1) are engaged in traffic or highway patrol or otherwise regularly detain or stop motor vehicles; or

(2) are primary responders who respond directly to calls for assistance from the public.

(b) Requires the governor's office to set deadlines for applications for grants under this chapter.

(c) Requires the governor's office, except as provided by Subsection (d), to create and implement a matching grant program under which matching funds from federal, state, local, and other funding sources may be required as a condition of the grant. Provides that a law enforcement agency that receives a grant under this section is required to match 25 percent of the grant money.

(d) Provides that DPS is eligible for grants under this subchapter but may not be made subject to any requirement for matching funds.

(e) Authorizes the governor's office to conditionally award a grant to a law enforcement agency that has not adopted and implemented the policy under Section 1701.655 or implemented the training required under Section 1701.656, but provides that money may not be disbursed to a law enforcement agency until the agency fully complies with those sections.

Sec. 1701.653. REPORTING. (a) Requires a law enforcement agency annually, as a condition of receiving a grant under this subchapter, to report to the Texas Commission on Law Enforcement (TCOLE) regarding the costs of implementing a body worn camera program, including all known equipment costs and costs for data storage.

(b) Requires TCOLE to compile the information submitted under Subsection (a) into a report and submit the report to the governor's office and the legislature not later than December 1 of each year.

Sec. 1701.654. INTERAGENCY OR INTERLOCAL CONTRACTS. Authorizes a law enforcement agency in this state to enter into an interagency or interlocal contract to receive body worn camera services and have the identified operations performed through a program established by the Department of Information Resources.

Sec. 1701.655. BODY WORN CAMERA POLICY. (a) Requires a law enforcement agency that receives a grant to provide body worn cameras to its peace officers or that otherwise operates a body worn camera program to adopt a policy for the use of body worn cameras.

(b) Requires that a policy described by Subsection (a) ensure that a body worn camera is activated only for a law enforcement purpose and include:

(1) guidelines for when a peace officer should activate a camera or discontinue a recording currently in progress, considering the need for privacy in certain situations and at certain locations;

(2) provisions relating to data retention, including a provision requiring the retention of video for a minimum period of 90 days;

(3) provisions relating to storage of video and audio, creation of backup copies of the video and audio, and maintenance of data security;

(4) guidelines for public access, through open records requests, to recordings that are public information;

(5) provisions entitling an officer to access any recording of an incident involving the officer before the officer is required to make a statement about the incident;

(6) procedures for supervisory or internal review; and

(7) the handling and documenting of equipment and malfunctions of equipment.

(c) Prohibits a policy described by Subsection (a) from requiring a peace officer to keep a body worn camera activated for the entire period of the officer's shift.

(d) Requires that a policy adopted under this section be consistent with the Federal Rules of Evidence and Texas Rules of Evidence.

Sec. 1701.656. TRAINING. (a) Requires a law enforcement agency, before an agency may operate a body worn camera program, to provide training to:

(1) peace officers who will wear the body worn cameras; and

(2) any other personnel who will come into contact with video and audio data obtained from the use of body worn cameras.

(b) Requires TCOLE, in consultation with DPS, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth Jr. Police Institute at Dallas, and the Texas Police Chiefs Association, to develop or approve a curriculum for a training program under this section.

Sec. 1701.657. RECORDING INTERACTIONS WITH THE PUBLIC. (a) Requires a peace officer equipped with a body worn camera to act in a manner that is consistent with the policy of the law enforcement agency that employs the officer with respect to when and under what circumstances a body worn camera must be activated.

(b) Authorizes a peace officer equipped with a body worn camera to choose not to activate a camera or to choose to discontinue a recording currently in progress for any nonconfrontational encounter with a person, including an interview of a witness or victim.

(c) Requires a peace officer who does not activate a body worn camera in response to a call for assistance to include in the officer's incident report or otherwise note in the case file or record the reason for not activating the camera.

(d) Provides that any justification for failing to activate the body worn camera because it is unsafe, unrealistic, or impracticable is based on whether a reasonable officer under the same or similar circumstances would have made the same decision.

Sec. 1701.658. USE OF PERSONAL EQUIPMENT. (a) Authorizes a peace officer who is employed by the agency and who is on duty, if a law enforcement agency receives a grant under this subchapter, to only use a body worn camera that is issued and maintained by that agency.

(b) Prohibits an agency, notwithstanding any previous policies, from allowing its peace officers to use privately owned body worn cameras after receiving a grant under this subchapter.

(c) Authorizes a peace officer who is employed by a law enforcement agency that has not received a grant or who has not otherwise been provided with a body worn camera by the agency that employs the officer to operate a body worn camera that is privately owned only if permitted by the employing agency.

(d) Requires an agency that authorizes the use of privately owned body worn cameras under Subsection (c) to make provisions for the security and compatibility of the recordings made by those cameras.

Sec. 1701.659. OFFENSE. (a) Provides that a peace officer or other employee of a law enforcement agency commits an offense if the officer or employee releases a recording created with a body worn camera under this subchapter without permission of the applicable law enforcement agency.

(b) Provides that an offense under this section is a Class A misdemeanor.

Sec. 1701.660. RECORDINGS AS EVIDENCE. (a) Prohibits a recording created with a body worn camera and documenting an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer, except as provided by Subsection (b), from being deleted, destroyed, or released to the public until all criminal matters have been finally adjudicated and all related administrative investigations have concluded.

(b) Authorizes a law enforcement agency to release to the public a recording described by Subsection (a) if the law enforcement agency determines that the release furthers a law enforcement purpose.

(c) Provides that this section does not affect the authority of a law enforcement agency to withhold under Section 552.108 (Exception: Certain Law Enforcement, Corrections, and Prosecutorial Information), Government Code, information related to a closed criminal

investigation that did not result in a conviction or a grant of deferred adjudication community supervision.

Sec. 1701.661. RELEASE OF INFORMATION RECORDED BY BODY WORN CAMERA.

(a) Provides that a member of the public is required to provide the following information when submitting a written request to a law enforcement agency for information recorded by a body worn camera:

- (1) the date and approximate time of the recording;
- (2) the specific location where the recording occurred; and
- (3) the name of one or more persons known to be a subject of the recording.

(b) Provides that a failure to provide all of the information required by Subsection (a) to be part of a request for recorded information does not preclude the requestor from making a future request for the same recorded information.

(c) Provides that, except as provided by Subsection (d), information recorded by a body worn camera and held by a law enforcement agency under this subchapter is not subject to the requirements of Section 552.021 (Availability of Public Information), Government Code.

(d) Provides that information that is or could be used as evidence in a criminal prosecution is subject to the requirements of Section 552.021, Government Code.

(e) Authorizes a law enforcement agency to:

- (1) seek to withhold information subject to Subsection (d) in accordance with procedures provided by Section 552.301 (Request for Attorney General Decision), Government Code;
- (2) assert any exceptions to disclosure in Chapter 552, Government Code, or other law; or
- (3) release information requested in accordance with Subsection (a) after the agency redacts any information made confidential under Chapter 552, Government Code, or other law.

(f) Prohibits a law enforcement agency from releasing any portion of a recording made in a private space, or of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest, without written authorization from the person who is the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

(g) Requires the attorney general to set a proposed fee to be charged to members of the public who seek to obtain a copy of a recording under this section. Requires that the fee amount be sufficient to cover the cost of reviewing and making the recording. Authorizes a law enforcement agency to provide a copy without charge or at a reduced charge if the agency determines that waiver or reduction of the charge is in the public interest.

(h) Provides that a recording is confidential and excepted from the requirements of

Chapter 552, Government Code, if the recording:

(1) was not required to be made under this subchapter or another law or under a policy adopted by the appropriate law enforcement agency; and

(2) does not relate to a law enforcement purpose.

Sec. 1701.662. BODY WORN CAMERA RECORDINGS; REQUEST FOR ATTORNEY GENERAL DECISION. (a) Provides that, notwithstanding Section 552.301(b) (requiring a governmental body to ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request), Government Code, a governmental body's request for a decision from the attorney general about whether a requested body worn camera recording falls within an exception to public disclosure is considered timely if made not later than the 20th business day after the date of receipt of the written request.

(b) Provides that, notwithstanding Section 552.301(d) (requiring a governmental body that requests an attorney general decision under Subsection (a) to provide to the requestor within a reasonable time but not later than the 10th business day after the date of receiving the requestor's written request a written statement that the governmental body wishes to withhold the requested information and has asked for a decision from the attorney general about whether the information is within an exception to public disclosure, and a copy of the governmental body's written communication to the attorney general asking for the decision or, if the governmental body's written communication to the attorney general discloses the requested information, a redacted copy of that written communication), Government Code, a governmental body's response to a requestor regarding a requested body worn camera recording is considered timely if made not later than the 20th business day after the date of receipt of the written request.

(c) Provides that, notwithstanding Section 552.301(e) (requiring a governmental body that requests an attorney general decision under Subsection (a) to within a reasonable time but not later than the 15th business day after the date of receiving the written request submit to the attorney general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, a copy of the written request for information, a signed statement as to the date on which the written request for information was received by the governmental body or evidence sufficient to establish that date, and a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested, and label that copy of the specific information, or of the representative samples, to indicate which exceptions apply to which parts of the copy), Government Code, a governmental body's submission to the attorney general of the information required by that subsection regarding a requested body worn camera recording is considered timely if made not later than the 25th business day after the date of receipt of the written request.

(d) Provides that, notwithstanding Section 552.301(e-1) (requiring a governmental body that submits written comments to the attorney general under Subsection (e)(1)(A) to send a copy of those comments to the person who requested the information from the governmental body not later than the 15th business day after the date of receiving the written request), Government Code, a governmental body's submission to a requestor of the information required by that subsection regarding a requested body worn camera recording is considered timely if made not later than the 25th business day after the date

of receipt of the written request.

Sec. 1701.663. PRODUCTION OF BODY WORN CAMERA RECORDING IN RESPONSE TO VOLUMINOUS PUBLIC INFORMATION REQUESTS. (a) Provides that, notwithstanding Section 552.221(d) (requiring an officer, if the officer for public information cannot produce public information for inspection or duplication within 10 business days after the date the information is requested under Subsection (a), to certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication), Government Code, an officer for public information who is employed by a governmental body and who receives a voluminous request in accordance with Section 1701.661(a) is considered to have promptly produced the information for purposes of Section 552.221 (Application for Public Information; Production of Public Information), Government Code, if the officer takes the actions required under Section 552.221 before the 21st business day after the date of receipt of the written request.

(b) Provides that, for purposes of this section, "voluminous request" includes:

- (1) a request for body worn camera recordings from more than five separate incidents;
- (2) more than five separate requests for body worn camera recordings from the same person in a 24-hour period, regardless of the number of incidents included in each request; or
- (3) a request or multiple requests from the same person in a 24-hour period for body worn camera recordings that, taken together, constitute more than five total hours of video footage.

SECTION 2. (a) Requires TCOLE, in consultation with DPS, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth Jr. Police Institute at Dallas, and the Texas Police Chiefs Association, to develop or approve a curriculum for the training program required under Section 1701.656, Occupations Code, as added by this Act, not later than January 1, 2016.

(b) Authorizes a law enforcement agency operating a body worn camera program on the effective date of this Act to submit any existing policy of the agency regarding the use of body worn cameras to TCOLE to determine whether the policy complies with Section 1701.655, Occupations Code, as added by this Act.

(c) Provides that, notwithstanding Sections 1701.655 and 1701.656, Occupations Code, as added by this Act, a law enforcement agency operating a body worn camera program on the effective date of this Act is not required to adopt or implement a policy that complies with Section 1701.655 or implement the training program required under Section 1701.656 before September 1, 2016.

SECTION 3. Effective date: September 1, 2015.