

BILL ANALYSIS

C.S.S.B. 158

By: West

Emerging Issues In Texas Law Enforcement, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that the use of body worn camera technology by law enforcement has increased dramatically over the last few years. These parties contend that video evidence has reduced the rate of false claims made against law enforcement and predict that the use of body worn cameras by law enforcement in Texas will increase in coming years. C.S.S.B. 158 seeks to create statewide standards on the use of body worn cameras by law enforcement and assist in the procurement and operation of a body worn camera program.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 158 amends the Occupations Code to authorize a police department of a municipality in Texas, a sheriff of a county in Texas who has received the approval of the commissioners court for the purpose, or the Department of Public Safety (DPS) to apply to the governor's office for a grant to defray the cost of implementing a body worn camera program and to equip peace officers with body worn cameras if that law enforcement agency employs officers who are engaged in traffic or highway patrol, otherwise regularly detain or stop motor vehicles, or are primary responders who respond directly to calls for assistance from the public. The bill requires the governor's office to set deadlines for applications for grants under Occupations Code provisions relating to law enforcement officers and 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. The bill requires a law enforcement agency that receives such a grant to match 25 percent of the grant money. The bill makes DPS eligible for such grants but prohibits DPS from being made subject to any requirement for matching funds. The bill authorizes the governor's office to conditionally award a grant to a law enforcement agency that has not adopted and implemented the body worn camera policy or the required training under the bill's provisions but prohibits money from being disbursed to the agency until the agency fully complies with such provisions.

C.S.S.B. 158 requires a law enforcement agency, as a condition of receiving a grant under the bill's provisions, 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. The bill requires TCOLE to compile the submitted information into a

report and to submit the report to the governor's office and the legislature not later than December 1 of each year. The bill authorizes a law enforcement agency in Texas to enter into an interagency or interlocal contract to receive body worn camera services and to have the identified operations performed through a program established by the Department of Information Resources.

C.S.S.B. 158 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. The bill requires such a policy to ensure that a body worn camera is activated only for a law enforcement purpose and sets out additional required contents of the policy. The bill prohibits such a policy from requiring a peace officer to keep a body worn camera activated for the entire period of the officer's shift and requires such a policy to be consistent with the Federal Rules of Evidence and the Texas Rules of Evidence.

C.S.S.B. 158 requires a law enforcement agency, before the agency is authorized to operate a body worn camera program, to provide training to peace officers who will wear the body worn cameras and to any other personnel who will come into contact with video and audio data obtained from the use of body worn cameras. The bill requires TCOLE, not later than January 1, 2016, to develop or approve a curriculum for such a training program 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.

C.S.S.B. 158 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. The bill authorizes a peace officer equipped with a body worn camera to choose not to activate a camera or choose to discontinue a recording currently in progress for any nonconfrontational encounter with a person, including an interview of a witness or victim. The bill 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. The bill establishes 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.

C.S.S.B. 158 limits the type of body worn camera used by a peace officer who is employed by a law enforcement agency that receives a grant under the bill's provisions and who is on duty to those body worn cameras issued and maintained by that agency and prohibits an agency from allowing its peace officers to use privately owned body worn cameras after receiving such a grant. The bill 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 if permitted by the employing agency and requires an agency that authorizes the use of privately owned body worn cameras to make provisions for the security and compatibility of the recordings made by those cameras.

C.S.S.B. 158 makes it a Class A misdemeanor for a peace officer or other employee of a law enforcement agency to release a recording created with a body worn camera under the bill's provisions without permission of the applicable law enforcement agency.

C.S.S.B. 158 prohibits a recording created with a body worn camera that documents an incident involving the use of deadly force by a peace officer or a recording that is otherwise related to an administrative or criminal investigation of an officer from being deleted, destroyed, or released to the public until all criminal matters have been finally adjudicated and all related administrative investigations have concluded. The bill authorizes a law enforcement agency to release such a recording to the public if the agency determines that the release furthers a law enforcement purpose. The bill establishes that its provisions relating to body worn camera

recordings as evidence do not affect the authority of a law enforcement agency to withhold, under state public information law, information related to a closed criminal investigation that did not result in a conviction or a grant of deferred adjudication community supervision.

C.S.S.B. 158 requires a member of the public, when submitting a written request to a law enforcement agency for information recorded by a body worn camera, to provide the date and approximate time of the recording, the specific location where the recording occurred, and the name of one or more persons known to be a subject of the recording. The bill establishes that a failure to provide all of the information required to be part of such a request does not preclude the requestor from making a future request for the same recorded information. The bill exempts information recorded by a body worn camera and held by a law enforcement agency from the disclosure requirement under state public information law relating to the availability of public information during normal business hours of a governmental body, except information that is or could be used as evidence in a criminal prosecution, which is subject to that requirement. The bill authorizes a law enforcement agency to seek to withhold such information subject to that disclosure requirement in accordance with relevant procedures, to assert any lawful exceptions to disclosure, or to release information requested by a member of the public after the agency redacts any information made confidential by law. The bill prohibits a law enforcement agency from releasing any portion of a recording made in a private space, defined by the bill as a location in which a person has a reasonable expectation of privacy, 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. The bill 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 the bill's provisions, requires the fee amount to be sufficient to cover the cost of reviewing and making the recording, and authorizes a law enforcement agency to provide a copy without charge or at a reduced charge if the agency determines that such a waiver or reduction is in the public interest.

C.S.S.B. 158 specifies deadlines by which certain requests, responses, and submissions by a governmental body relating to a body worn camera recording are considered timely, notwithstanding certain provisions of the state public information law. The bill establishes that an officer for public information who is employed by a governmental body and who receives a voluminous request for information recorded by a body worn camera is considered to have promptly produced such information for purposes of state public information law if the officer takes the required actions before the 21st business day after the date of receipt of the written request.

C.S.S.B. 158 authorizes a law enforcement agency operating a body worn camera program on the bill's effective date to submit any existing policy of the agency regarding the use of body worn cameras to TCOLE to determine whether the policy complies with the bill's provisions and establishes that such an agency is not required to adopt or implement a policy or training program that complies with the bill's provisions before September 1, 2016.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 158 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

HOUSE COMMITTEE SUBSTITUTE

84R 31246

15.140.368

Substitute Document Number: 84R 29146

SECTION 1. Chapter 1701, Occupations Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. BODY WORN CAMERA PROGRAM

Sec. 1701.651. DEFINITIONS.

Sec. 1701.652. GRANTS FOR BODY WORN CAMERAS. (a) A police department of a municipality in this state, a sheriff of a county in this state, or the department may apply to the office of the governor for a grant 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) The office of the governor shall set deadlines for applications for grants under this chapter.

(c) Except as provided by Subsection (d), the office of the governor shall 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. A law enforcement agency that receives a grant under this section is required to match 25 percent of the grant money.

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

(e) The governor's office may 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 money may not be disbursed to a law enforcement agency until the agency fully complies with those sections.

Sec. 1701.653. REPORTING.

Sec. 1701.654. INTERAGENCY OR INTERLOCAL CONTRACTS.

SECTION 1. Chapter 1701, Occupations Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. BODY WORN CAMERA PROGRAM

Sec. 1701.651. DEFINITIONS.

Sec. 1701.652. GRANTS FOR BODY WORN CAMERAS. (a) 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 may apply to the office of the governor 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) The office of the governor shall set deadlines for applications for grants under this chapter.

(c) Except as provided by Subsection (d), the office of the governor shall 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. A law enforcement agency that receives a grant under this section is required to match 25 percent of the grant money.

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

(e) The governor's office may 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 money may not be disbursed to a law enforcement agency until the agency fully complies with those sections.

Sec. 1701.653. REPORTING.

Sec. 1701.654. INTERAGENCY OR INTERLOCAL CONTRACTS.

Sec. 1701.655. BODY WORN CAMERA POLICY.

Sec. 1701.656. TRAINING.

Sec. 1701.657. RECORDING INTERACTIONS WITH THE PUBLIC.

Sec. 1701.658. USE OF PERSONAL EQUIPMENT.

Sec. 1701.659. OFFENSE.

Sec. 1701.660. RECORDINGS AS EVIDENCE.

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

(a) Except as otherwise provided by this section and by Section 1701.660, information recorded by a body worn camera and held by a law enforcement agency under this subchapter is public information subject to Chapter 552, Government Code.

(b) A recording that concerns an incident under investigation is excepted from the requirements of Chapter 552, Government Code, and may be:

(1) used by the applicable law enforcement agency only for purposes of:

(A) detecting, investigating, or prosecuting crime; or

(B) investigating an allegation of misconduct by a peace officer; or

(2) released to the public if the law enforcement agency determines that the release furthers a law enforcement purpose.

(c) 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.

(d) A recording made in a private space or during a pedestrian or traffic stop may not

Sec. 1701.655. BODY WORN CAMERA POLICY.

Sec. 1701.656. TRAINING.

Sec. 1701.657. RECORDING INTERACTIONS WITH THE PUBLIC.

Sec. 1701.658. USE OF PERSONAL EQUIPMENT.

Sec. 1701.659. OFFENSE.

Sec. 1701.660. RECORDINGS AS EVIDENCE.

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

No equivalent provision. *(But see subsection (c) below.)*

No equivalent provision. *(But see subsection (d) below.)*

No equivalent provision.

No equivalent provision. *(But see subsection (f) below.)*

be released without written authorization from the person who is the subject of the recording or, if the person is deceased, from the person's authorized representative.

(e) A law enforcement agency shall release to a member of the public a recording that is not otherwise confidential or excepted from disclosure under this section on that person's written request and payment of any required fee. The written request must include all of the following:

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

No equivalent provision.

No equivalent provision. *(But see subsection (a) above.)*

No equivalent provision. *(But see subsection (b) above.)*

(f) Before releasing any information to a member of the public, a law enforcement agency shall redact any information made confidential under this subchapter or any other law or excepted from disclosure under Chapter 552, Government Code.

No equivalent provision. *(But see subsection (d) above.)*

(a) 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) 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) 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, Government Code.

(d) 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) A law enforcement agency may:

- (1) seek to withhold information subject to Subsection (d) in accordance with procedures provided by Section 552.301, 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) A law enforcement agency may not release 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) The attorney general shall set a proposed fee to be charged to members of the public who seek to obtain a copy of a recording under this section. The fee amount must be sufficient to cover the cost of making the recording. A law enforcement agency may 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.

(g) The attorney general shall set a proposed fee to be charged to members of the public who seek to obtain a copy of a recording under this section. The fee amount must be sufficient to cover the cost of reviewing and making the recording. A law enforcement agency may 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.

Sec. 1701.662. BODY WORN CAMERA RECORDINGS; REQUEST FOR ATTORNEY GENERAL DECISION.

Sec. 1701.662. BODY WORN CAMERA RECORDINGS; REQUEST FOR ATTORNEY GENERAL DECISION.

Sec. 1701.663. PRODUCTION OF BODY WORN CAMERA RECORDING IN RESPONSE TO VOLUMINOUS PUBLIC INFORMATION REQUESTS. (a) Notwithstanding Section 552.221(d), Government Code, an officer for public information who is employed by a governmental body and who receives a voluminous request for body worn camera recordings is considered to have promptly produced the information for purposes of Section 552.221, 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.

Sec. 1701.663. PRODUCTION OF BODY WORN CAMERA RECORDING IN RESPONSE TO VOLUMINOUS PUBLIC INFORMATION REQUESTS. (a) Notwithstanding Section 552.221(d), 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, 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) For purposes of this section, "voluminous request" includes:

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(1) a request for body worn camera recordings from more than five separate incidents;

(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 individual or entity in a 24-hour period, regardless of the number of incidents included in each request; or

(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

(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) The Texas Commission on Law Enforcement, in consultation with the Department of Public Safety, the Bill Blackwood Law Enforcement Management Institute of Texas, the W. W. Caruth Jr. Police Institute at Dallas, and the Texas Police Chiefs Association, shall 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) A law enforcement agency operating a body worn camera program on the effective date of this Act may submit any existing policy of the agency regarding the use of body worn cameras to the Texas Commission on Law Enforcement to determine whether the policy complies with Section 1701.655, Occupations Code, as added by this Act.

(c) 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. This Act takes effect September 1, 2015.

video footage.

SECTION 2. Same as engrossed version.

SECTION 3. Same as engrossed version.