

SUBJECT: Grant program, policies for law enforcement body camera programs

COMMITTEE: Emerging Issues in Texas Law Enforcement, Select — committee substitute recommended

VOTE: 5 ayes — Fletcher, Flynn, Koop, Martinez, J. White

0 nays

2 absent — Dukes, Márquez

SENATE VOTE: On final passage, April 23 — 22-8 (Burton, Campbell, Creighton, Hancock, Huffman, Kolkhorst, Nichols, V. Taylor)

WITNESSES: For — Jason Dusterrhoft, Austin Police Department; Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Gary Tittle, Dallas Police Department; Jessica Anderson, Houston Police Department; Vincent Harding; (*Registered, but did not testify*: Frank Dixon, Austin Police Department; T.J. Patterson, City of Fort Worth; John Kreager, Texas Criminal Justice Coalition; Joshua Houston, Texas Impact; Yannis Banks, Texas NAACP; Lon Craft, Texas Municipal Police Association)

Against — None

On — Justin Gordon, Office of the Attorney General; (*Registered, but did not testify*: John Helenberg, Texas Commission on Law Enforcement; William Diggs, Texas Department of Public Safety)

DIGEST: CSSB 158 would establish a grant program through the governor's office for local law enforcement agencies to help defray the cost of body worn cameras for law enforcement officers and would establish requirements for law enforcement agency policies for the cameras.

State grants for body worn camera programs. CSSB 158 would authorize municipal police departments, sheriffs, and the Department of

Public Safety to apply to the governor's office for grants to defray the cost of implementing the bill and to equip peace officers with body worn cameras. This would apply to law enforcement agencies that employed officers who were engaged in traffic or highway patrol, regularly detained or stopped motor vehicles, or were primary responders. Sheriffs would need the approval of their commissioners court to apply for a grant.

The governor's office would be required to create and implement a matching grant program with federal, state, local, and other funding sources. Local law enforcement agencies would have to match 25 percent of any grant received from the governor's office, but DPS would not be required to match the grants.

Law enforcement agencies would be required to report annually to the Texas Commission on Law Enforcement (TCOLE) about the costs of a body worn camera program. The commission would be required to compile the information and report it to the governor and Legislature by December 1 annually.

Local policies. Law enforcement agencies that received a state grant for body worn cameras or that operated a program with the cameras would have to adopt a policy on their use. The policy would have ensure that a camera was activated only for law enforcement purposes and could not require that the cameras be activated for the entire period of an officer's shift. The policies would have to include:

- guidelines on activating and discontinuing a recording;
- provisions for data retention, including requiring a minimum of 90 days retention;
- provisions for storage, backup, and security of the recordings;
- guidelines for public access to recordings that were public information;
- provisions for officer access to recordings before an officer had to make a statement about an incident that was recorded;
- procedures for supervisory or internal review; and
- handling and documenting equipment and equipment malfunctions.

The bill would authorize law enforcement agencies to enter into interagency or interlocal contracts to receive body worn camera services and have certain operations performed through a Department of Information Resources program.

The bill would restrict the use of personally owned equipment and establish requirements for agencies that authorized the use of privately owned equipment.

Training. The bill would require the training of officers and other personnel who would work with the cameras and their data. TCOLE, in consultation with other entities, would be required to develop or approve a training curriculum by January 1, 2016.

Interactions with the public. Peace officers equipped with the cameras would be required to act consistent with their agency's policy on when a camera would have to be activated. Officers would be authorized to choose to deactivate a camera or discontinue recording for any non-confrontational encounter with a person, including witnesses and victims. Officers choosing not to activate a camera in response to a call for help would have to note the reason for non-activation.

Handling of recordings. Recordings documenting an incident involving the use of deadly force by a peace officer or that were related to a criminal or administrative investigation of an officer could not be deleted, destroyed, or released to the public until all criminal matters had been finally adjudicated and all investigations concluded. Such recordings could be released to the public if the agency determined that the release furthered a law enforcement purpose.

Release of recordings. The bill would establish requirements for what would have to be in requests from the public for the recordings, including the date and approximate time of the recording, the location, and the name of one or more persons known to be a subject of the recording.

Information recorded by a body camera and held by a law enforcement agency would not be subject to disclosure under the Public Information Act requirements in Government Code, sec. 552.021, except that information that was or could be used as evidence in a criminal prosecution would be subject to the requirements.

Law enforcement agencies could seek to withhold public information under current provisions that allow certain information to be withheld from public disclosure. The agencies could assert any exceptions to disclosure that are currently in Government Code, ch. 552 or other law, or they could release information in a redacted form.

The bill would prohibit the release of certain types of recordings, including ones made in private spaces and those involving fine-only misdemeanors that do not result in arrests. These recordings could be released upon consent of the subject of the recording.

The attorney general would be required to set a proposed fee for members of the public seeking to obtain a copy of a recording.

The bill would lengthen the deadlines in current law for responses to requests for information when a law enforcement agency asked the attorney general whether a request was excepted from public disclosure. Law enforcement agencies would have 20 days, instead of the current 10, from the date of a request to ask the attorney general whether the recording fell within an exception to required public disclosure. Agencies also would have 20 days, instead of the current 10, to give a response to a requestor of the information. The bill would extend other deadlines for submitting information and comments about the request to the attorney general and for giving the requestor the comments given to the attorney general. These deadlines would be extended from 15 days to 25 days.

The bill also would adjust the deadline for agencies to respond to a public information request for a recording if the request was considered voluminous under criteria that would be established by the bill. The agency would be considered to be in compliance with requirements to

promptly produce information if it took the required actions within 21 days. The bill would define voluminous requests as including:

- a request for recordings from more than five separate incidents;
- more than five requests from the same person in a 24-hour period;
or
- a request or multiple requests from the same person in a 24-hour period that when taken together would constitute more than five hours of footage.

Offense. It would be class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) offense for a peace officer or other law enforcement agency employee to release a recording from a camera without the permission of the law enforcement agency.

The bill would take effect September 1, 2015. Agencies operating a body worn camera program on that date would not be required to adopt or implement a policy that complied with the bill or to implement the bill's required training program before September 1, 2016.

**SUPPORTERS
SAY:**

CSSB 158 would help ensure that law enforcement agencies that elect to use body cameras developed policies within the same broad framework and would allow the state to offer support to those agencies through a grant program. The bill would not mandate the use of cameras, allowing that decision to continue to be made on the local level.

The use of recording devices worn by peace officers can help both the public and the police by documenting encounters. The equipment has been part of a recent national debate over law enforcement interactions with the public and can contribute to reductions in complaints against police officers, the use of force, and lawsuits filed against police.

CSSB 158 would support agencies that would like to use the cameras by establishing a grant program. The grants could be used to help the agencies with the cost of equipping officers and could be used to defray any costs associated with a program, including the costs of data storage.

The grant program could use funding from the governor's office as well as federal funds but would require a match by local agencies. The interagency and interlocal agreements that would be authorized by the bill also could help agencies defray the costs of body camera programs and data storage, including through a program established by the Department of Information Resources.

CSSB 158 would recognize that as the use of cameras grows, there is a need for a statewide framework for local policies. Some uniformity across the state is necessary to ensure that local policies address common issues and that the policies properly balance concerns about the use of cameras.

The bill would meet this need by broadly outlining what would have to be addressed in local policies on the use of body cameras but allowing details about the policies to be established at the local level. This would give local agencies the necessary flexibility to develop policies to meet their needs. For example, a local policy would determine when officers should turn the cameras on and off. Localities currently using the cameras could submit their policy to TCOLE for review and make any necessary adjustments to meet the bill. CSSB 158 also would support local law enforcement agencies by having TCOLE collaborate with other entities to develop a training curriculum.

The bill would address privacy concerns of both officers and the public by allowing cameras to be deactivated for non-confrontational encounters with witnesses and victims and prohibiting the release of recordings made in private spaces and those involving fine-only misdemeanors that do not result in arrests.

CSSB 158 would address concerns about agencies' ability to meet open records requests by lengthening deadlines for responses to the requests and establishing guidelines for handling voluminous requests. Within the guidelines in the bill, agencies could set parameters on what was recorded so that they would not be overwhelmed by data.

CSSB 158 would not create a long-term funding obligation for the state.

In 2017, the Legislature could evaluate the use of state funds under the bill and make a decision about continued funding.

OPPONENTS
SAY:

A state law on the use of body cameras by law enforcement officers is unnecessary and could infringe on local policies designed to meet local needs. Given the emerging nature of the use of body cameras and the many unresolved issues with their use, it would be premature to establish a statewide framework on how the equipment and data should be handled. For example, there are unanswered questions related to privacy and the handling of large amounts of data that could be produced by the cameras. Local agencies are in the best position to craft such policies, and they should continue to be able to develop standards and practices tailored to meet their needs without being required to meet certain guidelines.

The state should not set up a situation in which it could have an ongoing obligation to local law enforcement agencies for their body camera programs or in which it imposed costs on those programs. The cost of outfitting officers with cameras, storing the data, responding to requests for the recordings, and maintaining the equipment would be high, and local agencies could look to the state as the resource for these expenses if the state required certain policies.