

BILL ANALYSIS

Senate Research Center
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S.B. 332
By: West
Criminal Justice
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 332 would create uniform policy regarding the retention, storage, and review of video recorded by dash cameras and body-worn cameras. Under S.B. 332, statutes approved regarding the activation of body-worn cameras would apply to the activation of in-car cameras now used by Texas law enforcement agencies for patrol functions and other calls for police services.

S.B. 332 would amend language now found in Article 2, Code of Criminal Procedure, related to racial profiling approved by the legislature in 2001, in 2009, and in 2017 under S.B.1849.

As proposed, S.B. 332 amends current law relating to preventing racial profiling and to video and audio equipment and recordings of certain law enforcement motor vehicle stops, and creates an offense.

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. Amends Article 2.131, Code of Criminal Procedure, as follows:

Art. 2.131. RACIAL PROFILING PROHIBITED. Prohibits a peace officer from engaging in an act of racial profiling, as defined by the written policy required by Article 2.132(b) (relating to certain required components of the required written policy on racial profiling) and adopted by the law enforcement agency employing the officer, rather than prohibiting a peace officer from engaging in racial profiling.

SECTION 2. Amends Article 2.132, Code of Criminal Procedure, by amending Subsection (d) and adding Subsection (d-1), as follows:

(d) Provides that if a law enforcement agency installs video or audio equipment or equips peace officers with body worn cameras as provided by this subsection, the policy adopted by the agency under Subsection (b) is required to include:

- (1) guidelines for when a peace officer should activate the camera or other equipment or discontinue a recording currently in progress;
- (2) provisions relating to data retention, including a provision requiring the retention of video and audio recordings for a minimum period of 90 days, rather than standards for reviewing video and audio;
- (3) provisions relating to storage of video and audio recordings, creation of backup copies of the recordings, and maintenance of data security;
- (4) guidelines for public access, through open records requests, to recordings that are public information;

(5) procedures for supervisory or internal review; and

(6) the handling and documenting of equipment and malfunctions of equipment, rather than required to include documentation.

(d-1) Requires a policy adopted under this article (Law Enforcement Policy on Racial Profiling) to be consistent with the Federal Rules of Evidence and Texas Rules of Evidence.

SECTION 3. Amends Chapter 2, Code of Criminal Procedure, by adding Articles 2.1325, 2.13851, 2.13852, 2.13853, 2.13854, and 2.13855, as follows:

Art. 2.1325. RECORDING INTERACTIONS WITH THE PUBLIC. (a) Defines "motor vehicle stop."

(b) Requires a peace officer who uses a law enforcement motor vehicle or motorcycle equipped with video or audio equipment described by Article 2.132(d) 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 the equipment is required to be activated.

(c) Requires a peace officer who does not activate video or audio equipment in response to a call for assistance or on making a motor vehicle stop to include in the officer's incident report or otherwise note in the case file or record the reason for not activating the equipment.

(d) Provides that any justification for failing to activate the equipment 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.

Art. 2.13851. RECORDINGS DOCUMENTING CERTAIN CONDUCT OF LAW ENFORCEMENT OFFICER. (a) Prohibits deleting, destructing, or releasing to the public a video or audio recording under Article 2.1325 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 until all criminal matters have been finally adjudicated and all related administrative investigations have concluded, except as provided by Subsection (b).

(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 article 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.

Art. 21.13852. RELEASE OF VIDEO OR AUDIO RECORDING. (a) Requires a member of the public, when submitting a written request to a law enforcement agency for a video or audio recording under Article 2.1325, 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.

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

(c) Provides that a recording described by Subsection (a) that is held by a law enforcement agency is not subject to the requirements of Section 552.021

(Availability of Public Information), Government Code, except as provided by Subsection (d).

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

(f) Requires the Texas attorney general (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 article. Requires the fee amount to 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.

(g) Establishes that a recording is confidential and excepted from the requirements of Chapter 552, Government Code, if the recording was not required to be made under law or under a policy adopted by the appropriate law enforcement agency and does not relate to a law enforcement purpose.

Art. 2.13853. VIDEO AND AUDIO RECORDINGS; REQUEST FOR ATTORNEY GENERAL DECISION. (a) Provides that a governmental body's request for a decision from the attorney general about whether a requested recording under Article 2.1325 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, notwithstanding Section 552.301(b) (relating to a requirement that a governmental body perform certain actions not later than the 10th business day after the date of receiving a certain written request), Government Code.

(b) Provides that a governmental body's response to a requestor regarding a requested recording is considered timely if made not later than the 20th business day after the date of receipt of the written request, notwithstanding Section 552.301(d) (relating to a requirement that a governmental body provide certain written information in response to certain requests not later than the 10th business day after the date of receiving that request), Government Code.

(c) Provides that a governmental body's submission to the attorney general of the information required by that subsection regarding a requested recording is considered timely if made not later than the 25th business day after the date of receipt of the written request, notwithstanding Section 552.301(e) (relating to a requirement that a governmental body that requests attorney general decision fulfill certain requirements not later than the 15th business day after the date of receiving a certain written request), Government Code.

(d) Provides that a governmental body's submission to a requestor of the information required by that subsection regarding a requested recording is considered timely if made not later than the 25th business day after the date of receipt of the written request, notwithstanding Section 552.301(e-1) (relating to a requirement for certain documents to be submitted to the attorney general in response to a certain written request), Government Code.

Art. 2.13854. PRODUCTION OF VIDEO OR AUDIO RECORDING IN RESPONSE TO VOLUMINOUS PUBLIC INFORMATION REQUESTS. (a) Provides that an officer for public information who is employed by a governmental body and who in accordance

with Article 2.13853 receives a voluminous request for recordings under Article 2.1325 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 that section before the 21st business day after the date of receipt of the written request, notwithstanding Section 552.221(d) (relating to certain required actions if an officer of public information cannot produce public information for inspection or duplication within 10 business days after the date the information is requested), Government Code.

(b) Provides that the definition of "voluminous request" includes a request for recordings from more than five separate incidents, more than five separate requests for recordings from the same person in a 24-hour period, regardless of the number of incidents included in each request, or a request or multiple requests from the same person in a 24-hour period for recordings that, taken together, constitute more than five total hours of video or audio recordings.

Art. 2.13855. OFFENSE. (a) Provides that a peace officer or other employee of a law enforcement agency commits an offense if the officer or employee releases without permission of the applicable law enforcement agency a recording.

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

SECTION 4. (a) Authorizes a law enforcement agency operating video or audio equipment on the effective date of this Act to submit any existing policy of the agency regarding the use of the equipment to the Texas Commission on Law Enforcement to determine whether the policy complies with Article 2.132(d), Code of Criminal Procedure, as amended by this Act.

(b) Provides that a law enforcement agency operating video or audio equipment on the effective date of this Act is not required to adopt or implement a policy that complies with that article before September 1, 2020, notwithstanding Article 2.132(d), Code of Criminal Procedure, as amended by this Act.

(c) Provides that Articles 2.13851, 2.13852, 2.13853, 2.13854, and 2.13855, Code of Criminal Procedure, as added by this Act, apply to a release of a recording on or after the effective date of this Act, regardless of whether the incident that is the subject of the recording occurred before, on, or after the effective date of this Act.

SECTION 5. Effective date: September 1, 2019.