

HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

BILL #:	CS/CS/CS/SB 248	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	Rules Committee; Governmental Oversight and Accountability Committee; Criminal Justice Committee; Smith and others	112 Y's	2 N's
COMPANION BILLS:	None	GOVERNOR'S ACTION: Approved	

SUMMARY ANALYSIS

CS/CS/CS/SB 248 passed the House on April 24, 2015.

A body camera is a portable electronic device, typically worn on the outside of a vest or a portion of clothing, which records audio and video data. Nationally, a small number of law enforcement agencies have opted to allow their law enforcement officers to wear body cameras. Similar to the national trend, a handful of Florida law enforcement agencies are implementing body camera programs throughout the state.

Florida law currently does not provide a public record exemption for audio or video data recorded by a law enforcement body camera. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.

The bill creates a new, retroactive public record exemption that makes a body camera recording, or a portion thereof, confidential and exempt from public record disclosure, if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services; or
- In a place that a reasonable person would expect to be private.

The bill provides specific circumstances in which a law enforcement agency *may* disclose a confidential and exempt body camera recording, and additional circumstances in which a law enforcement agency *must* disclose such a recording.

The bill provides for the repeal of the public record exemption on October 2, 2020, unless it is reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

To the extent that law enforcement agencies elect to use body cameras, the bill may have a minimal fiscal impact on state and local government expenditures because such agencies will be required to take administrative and procedural steps to screen body camera recording data for confidential and exempt material before disclosing it to the public.

The bill was approved by the Governor on May 21, 2015, ch. 2015-41, L.O.F., and will become effective on July 1, 2015.

I. SUBSTANTIVE INFORMATION

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: s0248z1.CRJS

DATE: May 27, 2015

A. EFFECT OF CHANGES:

Current Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution.¹ The general law must state with specificity the public necessity justifying the exemption² and must be no more broad than necessary to accomplish its purpose.³

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act⁴ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:⁵

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.

The Act also requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.⁶ Specified questions must be considered by the Legislature during the review process.⁷

Law Enforcement Body Cameras

A body camera is a portable electronic device, typically worn on the outside of a vest or a portion of clothing, which records audio and video data. Nationally, a small number of law enforcement agencies have opted to allow their law enforcement officers to wear body cameras. The Police Executive Research Forum conducted a national study in 2013 to determine the number of law enforcement agencies currently using body cameras,⁸ and sixty-three agencies nationwide reported using them.⁹

¹ FLA. CONST. art. I, s. 24(c). This section requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption.

² This portion of a public record exemption is commonly referred to as a "public necessity statement."

³ FLA. CONST. art. I, s. 24(c).

⁴ s. 119.15, F.S.

⁵ s. 119.15(6)(b), F.S.

⁶ s. 119.15(3), F.S.

⁷ Section 119.15(6)(a), F.S. requires the Legislature to consider the following questions as part of the review process: 1) What specific records or meetings are affected by the exemption? 2) What specific parties does the exemption affect? 3) What is the public purpose of the exemption? 4) Can the information contained in the records or meetings be readily obtained by alternative means? If so, how? 5) Is the record or meeting protected by another exemption? 6) Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

⁸ Lindsay Miller & Jessica Toliver, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, POLICE EXECUTIVE RESEARCH FORUM, 2014.

⁹ *Id.* (The surveyor contacted 500 law enforcement agencies nationwide and received responses from 254 of those agencies. Of the 254 responding agencies, 63 agencies reported using body-worn cameras.)

A limited number of studies have been conducted in the United States to determine the positive and negative effects of using body cameras on law enforcement officers.¹⁰ The empirical studies that have been conducted in the United States focused on the effects of using body cameras in the Rialto Police Department (California) and the Mesa Police Department (Arizona).¹¹ While the relative lack of peer-reviewed research makes it difficult to accurately identify the benefits and drawbacks of requiring the use of body cameras, the findings of the Rialto and Mesa studies indicated a significant reduction of citizen complaints against officers who wore the cameras while on duty.¹²

Similar to the national trend, a handful of Florida law enforcement agencies have equipped law enforcement officers with body cameras. Ocala Police Department,¹³ Orlando Police Department,¹⁴ and Cape Coral Police Department¹⁵ are among the agencies that have begun to deploy body camera programs. Other Florida agencies, including the Orange County Sheriff's Office¹⁶ and the Miami-Dade Police Department,¹⁷ are taking steps to equip their law enforcement officers with body cameras in the near future.

Florida law currently does not provide a public record exemption for law enforcement body camera recording data.

Effect of the Bill

The bill creates a new public record exemption that makes a body camera recording, or a portion thereof, confidential and exempt from public record disclosure, if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services; or
- In a place that a reasonable person would expect to be private.

The bill provides that the public record exemption is retroactive, and does not supersede any other public record exemption that existed prior to July 1, 2015.

The bill provides that law enforcement agencies *may* disclose a confidential and exempt body camera recording, or a portion thereof, in furtherance of its official duties and responsibilities or to another governmental agency in furtherance of its official duties and responsibilities.

The bill provides that law enforcement agencies *must* disclose a confidential and exempt body camera recording, or a portion thereof, as follows:

¹⁰ Michael D. White, *Police Officer Body-Worn Cameras: Assessing the Evidence*, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, 2014.

¹¹ *Id.*; Studies are currently being conducted in the Phoenix Police Department (Arizona), the Orlando Police Department (Florida), the Las Vegas Metro Police Department (Nevada), and the Los Angeles Police Department (California); see Michael D. White, *Police Officer Body-Worn Cameras: Assessing the Evidence*, Office of Community Oriented Policing Services, 2014; Gema Mora, *Department of Criminology to Study the Effectiveness of Body Cameras on Police Officers*, University of South Florida, <http://criminology.cbcs.usf.edu/NewsEvents/ViewNews.cfm?NewsID=908> (last visited April 29, 2015); National Institute of Justice, *Research on Body-Worn Cameras and Law Enforcement*, <http://www.nij.gov/topics/law-enforcement/technology/pages/body-worn-cameras.aspx> (last visited April 29, 2015).

¹² *Id.* (citing to William Farrar, *Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras and Police Use-of-Force*, MESA POLICE DEPARTMENT, 2013.)

¹³ Doug Engle, *OPD Officers Will Soon be Outfitted with Wearable Body Cameras*, OCALA STAR BANNER (Sept. 18, 2014), <http://www.ocala.com/article/20140918/ARTICLES/140919686> (last visited April 28, 2015).

¹⁴ Mark Schlueb, *Orlando Police Warming Up to Body Cameras*, ORLANDO SENTINEL (Dec. 12, 2014), <http://www.orlandosentinel.com/news/breaking-news/os-opd-police-body-cams-20141212-story.html> (last visited April 28, 2015).

¹⁵ Cape Coral Police Department, *Cape Coral Police Department Begins Use of Body Cameras*, CAPECOPS.COM (March 26, 2015), <http://www.capecops.com/newsroom/2015/3/26/cape-coral-police-department-begins-use-of-body-cameras> (last visited April 29, 2015).

¹⁶ Chris Hush, *Funding Approved to Equip Orange County Deputies with Body Cameras*, WESH.COM ORLANDO (Jan. 14, 2015), <http://www.wesh.com/news/orange-county-sheriff-to-request-500-body-cameras/30675474> (last visited April 28, 2015).

¹⁷ Michael E. Miller, *Miami Police Will Test Body Cameras on 50 Officers*, MIAMI NEW TIMES (Sept. 29, 2014), <http://www.miaminewtimes.com/news/miami-police-will-test-body-cameras-on-50-officers-6520078> (last visited April 28, 2015).

- To a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the person's presence in the recording;
- To a personal representative of a person recorded by a body camera; however, a law enforcement agency may disclose only those portions that are relevant to the represented person's presence in the recording;
- To a person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording; however, a law enforcement agency may disclose only those portions that record the interior of such a place;
- Pursuant to a court order.

In determining whether to disclose a body camera recording, a court must consider whether:

- Disclosure is necessary to advance a compelling interest;
- The recording contains information that is otherwise exempt or confidential and exempt under the law;
- The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
- Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
- Disclosure may harm the reputation or jeopardize the safety of a person depicted in the recording;
- Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
- The recording could be redacted to protect privacy interests; and
- There is good cause to disclose all or portions of a recording.

Law enforcement agencies are required to maintain body camera recording data for a minimum of 90 days. In any proceeding to determine the disclosure of a body camera recording, the law enforcement agency that made the recording must be given reasonable notice of the hearing and an opportunity to participate.

The bill creates the following definitions:

- "Body camera" means a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.
- "Law enforcement officer" has the same meaning as provided in s. 943.10, F.S.
- "Personal representative" means a parent, a court-appointed guardian, an attorney, an agent of, or a person holding a power of attorney for, a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney or agent; or the parent or guardian of a surviving minor child of the deceased.

The bill provides for the repeal of the public record exemption on October 2, 2020, unless it is reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the Florida Constitution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have an impact on state revenues.

2. Expenditures:

According to the 2014 Criminal Justice Agency Profile Survey, no Florida state law enforcement agencies reported using body cameras during the 2014 calendar year. To the extent state law enforcement agencies elect to use body cameras, the bill may have a minimal impact on state expenditures because such agencies will be required to take administrative and procedural steps to screen body camera recording data for confidential and exempt material.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

To the extent local law enforcement agencies elect to use body cameras, the bill may have a minimal fiscal impact on local government expenditures because such agencies will be required to take administrative and procedural steps to screen body camera recording data for confidential and exempt material.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.