

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Fiscal Policy

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BILL: SB 7080

INTRODUCER: Criminal Justice Committee

SUBJECT: Law Enforcement Officer Body Cameras

DATE: April 17, 2015

REVISED: \_\_\_\_\_

| ANALYST         | STAFF DIRECTOR  | REFERENCE | ACTION                                |
|-----------------|-----------------|-----------|---------------------------------------|
| <u>Erikson</u>  | <u>Cannon</u>   | <u>FP</u> | <b>CJ Submitted as Committee Bill</b> |
| 1. <u>Jones</u> | <u>Hrdlicka</u> | <u>FP</u> | <b>Pre-meeting</b>                    |

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**I. Summary:**

SB 7080 creates s. 943.1715, F.S., pertaining to body cameras. The bill requires law enforcement agencies that use body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The bill specifies what must be included in those policies and procedures, such as general guidelines for the proper use, maintenance, and storage of body cameras and limitations on recording law enforcement-related encounters and activities.

The bill also requires these agencies to conduct training, retain audio and video data recorded by body cameras, and perform periodic review of practices.

The bill specifies that ch. 934, F.S. (interception of communications), does not apply to body camera recordings made by law enforcement agencies that elect to use body cameras.

**II. Present Situation:**

**Body-Worn Cameras**

Body-Worn Cameras (BWCs) or “body cameras” are currently being used or considered for use by many law enforcement agencies. BWCs are mobile audio and video devices worn by officers to record what they see and hear. They can record officer interactions that previously could only be captured by in-car or interrogation room camera systems.<sup>1</sup>

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<sup>1</sup> National Institute of Justice, *A Primer on Body-Worn Cameras for Law Enforcement*, p. 5 (September 2012), available at <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf> (last viewed on April 13, 2015).

One recent study of BWCs noted some of the perceived benefits and perceived concerns and problems regarding their use:

***Perceived Benefits:***

- BWCs increase transparency and citizen views of police legitimacy;
- BWCs have a civilizing effect, resulting in improved behavior among both police officers and citizens;
- BWCs have evidentiary benefits that expedite resolution of citizen complaints or lawsuits and that improve evidence for arrest and prosecution; and
- BWCs provide opportunities for police training.<sup>2</sup>

***Perceived Concerns and Problems:***

- BWCs create concerns for citizen and police officer privacy;
- BWCs create concerns for officer health and safety;
- BWCs require investments in terms of training and policy development; and
- BWCs require substantial commitment of finances, resources, and logistics.<sup>3</sup>

Florida Police Chiefs Association staff report 13 Florida police departments that currently use BWCs<sup>4</sup> and 9 Florida police departments that have implemented pilot programs to test the use of BWCs.<sup>5</sup> The media has reported that the Flagler County Sheriff's Office is using BWCs<sup>6</sup> and the Pasco County Sheriff has indicated an intent to purchase BWCs.<sup>7</sup> Other Florida sheriffs' offices may be considering whether to use BWCs.

On December 1, 2014, the White House announced that President Barack Obama was proposing "a three-year \$263 million investment package that will increase use of body-worn cameras, expand training for law enforcement agencies (LEAs), add more resources for police department reform, and multiply the number of cities where [Department of Justice] facilitates community and local LEA engagement." The initiative includes a program that would provide a 50 percent match to state or local governments that purchase body worn cameras and requisite storage.<sup>8</sup>

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<sup>2</sup> White, Michael D., 2014, *Police Officer Body-Worn Cameras Assessing the Evidence*, Washington, DC:

Office of Community Oriented Policing Services, p. 6-7 (2014), available at

<https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf> (last viewed on April 13, 2015).

<sup>3</sup> *Id.* at 7-9.

<sup>4</sup> Police departments: Eustis; City of Miami; Cocoa; Daytona Beach; Daytona Beach Shores; Florida State University (motorcycle officers); Gulfport; Palm Bay (SWAT Officers); Pensacola; West Melbourne; Windermere; Miami Beach; and Rockledge.

<sup>5</sup> Police departments: Clearwater; Ft. Myers; Marianna; Orlando (University of South Florida study); Plant City; Sarasota; St. Petersburg; Tampa; and West Palm Beach. (Information is on file with the Senate Criminal Justice Committee staff).

<sup>6</sup> Metz, Claire. "Flagler County deputies fitted with new body cameras." WESH.com (Orlando), (August 28, 2014), available at <http://www.wesh.com/flagler-county-deputies-fitted-with-new-body-cameras/27779830> (last viewed on April 13, 2015).

<sup>7</sup> Behrman, Elizabeth. "Local law enforcement split on body cameras." *The Tampa Tribune*, (December 26, 2014), available at <http://tbo.com/news/crime/-20141226/> (last viewed on April 13, 2015).

<sup>8</sup> The White House, Office of the Press Secretary, *FACT SHEET: Strengthening Community Policing*, (December 1, 2014) available at <http://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing> (last viewed on April 13, 2015).

Currently, Florida law does not require law enforcement agencies to have policies in place that govern the use of such technology.

### **Interception of Communications**

Chapter 934, F.S., governs the security of various types of communications in the state, and limits the ability to intercept, monitor, and record such communications. Chapter 934, F.S., also provides for criminal penalties<sup>9</sup> and civil remedies<sup>10</sup> when communications are intercepted in violation of the chapter. For example, it is a third degree felony<sup>11</sup> to intentionally “intercept”<sup>12</sup> an “oral communication.”<sup>13</sup>

The statute provides for a number of exceptions to this general prohibition.<sup>14</sup> For example, it is lawful for:

- A law enforcement officer to intercept an oral communication if the officer is a party to the communication or one of the parties to the communication has given prior consent to the interception and the purpose of the interception is to obtain evidence of a criminal act;<sup>15</sup> or
- A person to intercept an oral communication when all of the parties to the communication have given prior consent to the interception.<sup>16</sup>

The contents of an intercepted communication and any evidence derived from the contents may not be received in evidence in court proceedings and other specified proceedings if the disclosure of the information would violate ch. 934, F.S.<sup>17</sup>

Florida state courts have not addressed whether a body camera recording that records “oral communications” constitutes an “intercept” within the meaning of that term in s. 934.02, F.S. However, the Florida Supreme Court has previously held that other recordings of “oral communications” constituted an “intercept.”<sup>18</sup> Body camera recordings are not expressly addressed in any existing exception in ch. 934, F.S., or otherwise excluded from ch. 934, F.S. Assuming body camera recordings are an “intercept,” some recordings might fall under an existing exception but others might not. Absent the recording falling under a current exception or otherwise being excluded from ch. 934, F.S., it might be in violation of ch. 934, F.S., and therefore inadmissible.

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<sup>9</sup> Sections 934.04, 934.21, 934.215, 934.31, and 934.43, F.S.

<sup>10</sup> Section 934.05, F.S.

<sup>11</sup> A third degree felony is punishable by up to 5 years in state prison and a fine of up to \$5,000. ss. 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. s. 775.082(10), F.S.

<sup>12</sup> Section 934.02(3), F.S., defines “intercept” as the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

<sup>13</sup> Sections 934.03(1)(a) and (4)(a), F.S. Section 934.02(2), F.S., defines “oral communication” as any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

<sup>14</sup> Section 934.03(2)(a)-(j), F.S.

<sup>15</sup> Section 934.03(2)(c), F.S.

<sup>16</sup> Section 934.03(2)(d), F.S.

<sup>17</sup> Section 934.06, F.S.

<sup>18</sup> See *Guilder v. State*, 899 So. 2d 412 (Fla. 4th DCA 2005).

### III. Effect of Proposed Changes:

The bill creates s. 943.1718, F.S., pertaining to body cameras.

The bill defines a “body camera” as a portable electronic recording device that is worn on a law enforcement officer’s person and records audio and video data of the officer’s law-enforcement-related encounters and activities.

A “law enforcement agency” is defined as an agency that has a primary mission of preventing and detecting crime and enforcing the penal, criminal, traffic, and motor vehicle laws of the state and in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10, F.S. A “law enforcement officer” is any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.<sup>19</sup>

The bill requires law enforcement agencies that use body cameras to establish policies and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras.
- Any limitations on which law enforcement officers are permitted to wear body cameras.
- Any limitations on law-enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras.
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.

The bill requires a law enforcement agency that permits its law enforcement officers to wear body cameras to:

- Ensure that all personnel who wear, use, maintain, or store body cameras are trained in the law enforcement agency’s policies and procedures concerning them.
- Ensure that all personnel who use, maintain, store, or release audio or video data recorded by body cameras are trained in the law enforcement agency’s policies and procedures.
- Retain audio and video data recorded by body cameras in accordance with the requirements of s. 119.021, F.S. (maintenance of public records), except as otherwise provided by law.
- Perform a periodic review of actual agency body camera practices to ensure conformity with the agency’s policies and procedures.

The bill provides that ch. 934, F.S. (interception of communications), does not apply to body camera recordings made by law enforcement agencies that elect to use body cameras. Therefore, a body camera recording cannot be considered an “intercept” and the general prohibition against interception of wire, oral, and electronic communications does not apply to such recordings.

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<sup>19</sup> Section 943.10(1), F.S. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

The bill is effective upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, section 18(a) of the Florida Constitution, provides that no county or municipality is bound by any general law requiring a county or municipality to spend funds or take an action requiring the expenditure of funds. To the extent the bill requires a local government to spend funds to comply with its terms, the mandate provisions may apply. To be binding on counties and municipalities the Legislature must find that the law fulfills an important state interest and one of the following must apply:

- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law is approved by a two-thirds vote of each house of the Legislature.

The mandates provision may apply because the bill requires county or municipal governments (local law enforcement agencies) that choose to use body cameras to develop policies and procedures on body cameras, conduct training, retain audio and video data recorded by body cameras, and perform periodic review of practices. The provisions of the bill appear to apply to call persons similarly situated – all state and local law enforcement agencies.

Under Art. VII, s. 18(d) of the Florida Constitution, bills having insignificant fiscal impact are exempt from the mandates provisions. If the bill's requirements implicate the mandates provision, the exemption may apply if the bill results in an insignificant fiscal impact to county or municipal governments.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

If an agency chooses to use body cameras, the bill may have a minimal impact on state expenditures because the bill creates a new requirement for state law enforcement agencies that use body cameras to establish policies and procedures governing body cameras and to train personnel accordingly.

The bill may also have a minimal impact on local expenditures because the bill creates a new requirement for local law enforcement agencies that use body cameras to establish policies and procedures governing body cameras, and to train personnel accordingly.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 943.1718 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.