

HOUSE BILL NO. 5019

June 15, 2021, Introduced by Reps. Whitsett, Yancey, Aiyash, Morse, Brabec, Sowerby, Hertel, Brixie, O'Neal, Rogers, Stone, Bolden, Brenda Carter, Thanedar, Cynthia Johnson, Rabhi, Young, Kuppa and Jones and referred to the Committee on Government Operations.

A bill to provide for the use by law enforcement officers of cameras worn on the body; to require the retention and provide for the production by law enforcement agencies of recordings made using the cameras; to create certain presumptions in a court proceeding; to provide for the reimbursement of certain costs to local law enforcement agencies; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "law

1 enforcement body-worn camera act".

2 Sec. 2. As used in this act:

3 (a) "A device that uses electro-muscular disruption
4 technology" means that term as defined in section 224a of the
5 Michigan penal code, 1931 PA 328, MCL 750.224a.

6 (b) "Department" means the department of state police.

7 (c) "Law enforcement agency" means an entity that is
8 established and maintained in accordance with the laws of this
9 state and is authorized by the laws of this state to appoint or
10 employ law enforcement officers.

11 (d) "Law enforcement officer" means that term as defined in
12 section 2 of the Michigan commission on law enforcement standards
13 act, 1965 PA 203, MCL 28.602.

14 (e) "Person" means an individual, partnership, corporation,
15 association, governmental entity, or other legal entity.

16 Sec. 3. (1) A law enforcement officer who, as part of his or
17 her duties, is required to carry a firearm or a device that uses
18 electro-muscular disruption technology and is required to wear a
19 uniform shall wear a body-worn camera and record the events that
20 occur while he or she is on duty with the body-worn camera.

21 (2) Subject to subsections (3) and (6), a law enforcement
22 officer required to wear a body-worn camera under subsection (1)
23 shall activate the recording function of the body-worn camera
24 whenever the officer is on duty, continuously record with the body-
25 worn camera, and make his or her best effort to record interactions
26 with other individuals with the body-worn camera.

27 (3) A law enforcement officer may temporarily stop recording
28 with a body-worn camera when the officer is engaged in a personal
29 matter, such as a personal conversation or using the bathroom.

1 (4) A law enforcement officer shall read, agree to, and sign a
2 written waiver that consists of a consent to be filmed by a body-
3 worn camera and an acknowledgment of the requirements of this act
4 and the related policies of the law enforcement agency by which the
5 law enforcement officer is employed.

6 (5) As practicable, a law enforcement officer required to wear
7 a body-worn camera under subsection (1) shall notify another
8 individual if the individual is being recorded by the camera.

9 (6) When entering a residence under nonexigent circumstances,
10 a law enforcement officer shall ask the residents whether they want
11 the officer to stop recording with the body-worn camera while in
12 the residence. The officer shall record the exchange to document
13 the wishes of the residents.

14 Sec. 4. A law enforcement agency or law enforcement officer
15 shall not allow a computerized facial recognition program or
16 application to be used with a body-worn camera or a recording made
17 by a body-worn camera unless the use has been authorized by a
18 warrant issued by a court.

19 Sec. 5. (1) A law enforcement agency shall retain video and
20 audio recorded by a body-worn camera under this act for 2 weeks,
21 unless subsection (2) applies.

22 (2) A law enforcement agency shall retain video and audio
23 recorded by a body-worn camera under this act for 3 years if any of
24 the following apply:

25 (a) The recording is of an incident involving the use of
26 force.

27 (b) The recording is of an incident that leads to detention or
28 arrest of an individual.

29 (c) The recording is relevant to a formal or informal

1 complaint against a law enforcement officer or the law enforcement
2 agency.

3 (d) A request regarding the recording has been made under
4 subsection (4).

5 (e) A request for a copy of the recording has been made under
6 section 6(1).

7 (3) A law enforcement agency shall post on the law enforcement
8 agency's public website its policies relating to the retention of
9 recordings made by body-worn cameras under this act, requests for
10 the retention of the recordings, and requests for copies of the
11 recordings.

12 (4) A person described in subsection (6) may request that a
13 recording made by a body-worn camera under this act be retained
14 under subsection (2). It is not necessary for the person to file a
15 complaint or for there to be a related open investigation for the
16 person to make a request under this subsection.

17 (5) If evidence that may be useful in a criminal prosecution
18 is obtained from a recording made by a body-worn camera under this
19 act, the law enforcement agency shall retain the recording for any
20 time in addition to the time periods under subsections (1) and (2)
21 and in the same manner as is required by law for other evidence
22 that may be useful in a criminal prosecution.

23 (6) Any of the following may make a request under subsection
24 (4) or section 6(1):

25 (a) An individual who is a subject of the recording.

26 (b) A person whose property has been seized or damaged in
27 relation to, or is otherwise involved with, a crime to which the
28 recording is related.

29 (c) A parent of an individual described in subdivision (a) or

1 (b).

2 (d) A legal guardian of an individual described in subdivision
3 (a) or (b).

4 (e) An attorney for a person described in subdivision (a) or
5 (b).

6 (f) A person not described in subdivisions (c) to (e) that a
7 person described in subdivision (a) or (b) has given the authority
8 in writing to make the request.

9 Sec. 6. (1) A person described in section 5(6) may request a
10 copy of a recording made by a body-worn camera under this act. The
11 law enforcement agency shall provide the individual with a copy of
12 the requested recording.

13 (2) An individual who is not the subject of a recording made
14 by a body-worn camera under this act may request a copy of the
15 recording. If the individuals who are the subjects of the recording
16 consent, the law enforcement agency shall provide the individual
17 who is not the subject of the recording but who made the request
18 under this subsection with a copy of the requested recording. If
19 the individuals who are the subjects of the recording do not
20 consent, the recording is not a public record and is not subject to
21 disclosure under the freedom of information act, 1976 PA 442, MCL
22 15.231 to 15.246.

23 Sec. 7. Before deleting or otherwise disposing of a recording
24 made by a body-worn camera under this act, an individual who has
25 the responsibility on behalf of the law enforcement agency of
26 deleting or disposing of the recording shall review all applicable
27 and available records, files, and databases to ascertain whether
28 there is any reason why the recording cannot be deleted or disposed
29 of under this act or the policies of the law enforcement agency.

1 The individual shall not delete or dispose of the recording if he
2 or she ascertains that there is any such reason.

3 Sec. 8. If, in connection with a criminal prosecution or civil
4 action, a law enforcement agency is unable to produce a recording
5 that is required to be made and retained under this act, there is a
6 presumption that the recording would corroborate the version of the
7 facts advanced by the defendant in a criminal action or the party
8 opposing the law enforcement officer or law enforcement agency in a
9 civil action.

10 Sec. 9. (1) A local or county law enforcement agency may
11 request that the department reimburse the agency for the cost of
12 purchasing equipment, or any other expense incurred, to implement
13 this act.

14 (2) The department shall reimburse a local or county law
15 enforcement agency for reasonable costs contained in a request for
16 reimbursement under subsection (1).

17 (3) The department may adopt guidelines under the
18 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
19 24.328, to cover the submission and payment of requests for
20 reimbursement under this section.

House Bill No. 5019 as introduced

Sponsor: Rep. Karen Whitsett

Committee: Government Operations

SUMMARY

HB 5019 would create a new law requiring all law enforcement officers in uniform and carrying a firearm or electro muscular disruption technology to wear a body camera to record their actions while on duty.

The act defines the following terms as follows:

- ***Device that uses electro-muscular disruption technology*** as device to which both of the following apply:
 - Device is capable of creating an electro-muscular disruption and is used or intended to be used as a defensive device capable of temporarily incapacitating or immobilizing a person by the direction or emission of conducted energy.
 - Device contains an identification and tracking system that, when the device is initially used, dispenses coded material traceable to the purchaser through records kept by the manufacturer, and the manufacturer of the device has a policy of providing that identification and tracking information to a police agency upon written request by that agency. However, this subdivision does not apply to a launchable device that is used only by law enforcement agencies.
- ***Department*** as the department of the state police.
- ***Law enforcement agency*** as an entity that is established and maintained in accordance with the laws of this state and is authorized by such to appoint or employ law enforcement officers.
- ***Law enforcement officer*** as an individual employed by a law enforcement agency to perform duties including prevention and detection of crime and enforcement of the general criminal laws of the state. To see further definition, see Sec. 2 of the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.602
- ***Person*** as an individual, partnership, corporation, association, governmental entity, or other legal entity.

Under this act, while the officer is on duty, the body-worn camera would need to record continuously. The officer may temporarily pause the recording if he is having a private conversation or using the restroom. While on duty, the officer shall inform the individuals he interacts with that they are being recorded as practicable.

HB 5019 also creates requirements for the storage of audio and video files by law enforcement agencies. Facial recognition software may only be used on the body-worn camera recording if authorized by a warrant. Recordings are to be kept for two weeks. If the recording meets any of the following criteria, the recordings must be kept for three years:

- The interaction involves the use of force
- The interaction leads to the detention or arrest of an individual in the recording
- The recording involves an officer as a part of an informal or formal complaint
- A request for the recording is made, or copy of the recording has been made

Additionally, if the recording contains evidence that is useful for criminal prosecution, then the recording must be kept for the time required for evidence to be kept in a criminal prosecution. If a

request is made during a criminal prosecution and the law enforcement agency is unable to provide a recording as evidence, then the assumption is that the evidence on the recording would go against the word of the agency or law enforcement officer involved.

APPARENT PROBLEM

The bill sponsors hold that

- 1) Law enforcement officers have the capacity to use excessive force with the public, and
- 2) Allegations may be falsely raised against law enforcement officers for using excessive force, and
- 3) Evidence of an interaction between the law enforcement officers and the public based only on witness testimony may not always be sufficient or reliable.

This act aims to mitigate each of these risks by providing video footage of officer interactions with the public to reduce the risk of an incident and provide evidence in the case an incident arises.

FISCAL IMPACT

HB 5019 would have significant fiscal impact on local and state units of government. The fiscal impact would depend on the number of body-worn cameras needed for each law enforcement agency to meet the requirements of the bill. Additionally, each law enforcement agency needs to properly keep the body-worn cameras and the recordings for the prescribed duration of time.

The bill would also have significant fiscal impacts on the Department of State Police. Each law enforcement agency may request the department to cover the costs associated with this bill. The bill provides that the law enforcement agency may request that the department, the Michigan State Police, reimburse “reasonable costs” associated with getting the law enforcement agency in line with the provisions of this act.

SUPPORTING ARGUMENTS

Proponents of the bill argue that body-worn cameras provide greater transparency for the law enforcement officers and for the public. Through recording every interaction with the public and having the ability to make requests for copies of recordings, anyone who has an interaction with a law enforcement officer is able to see exactly what happened. Additionally, if multiple officers are involved, having additional information of different camera angles can greatly aid in the understanding of what happened. Body-worn cameras also provide transparency for the officers as well. If an individual makes a claim that is verified as false by the recording, then the individual may not file a report in error. Additionally, proponents of the bill say that the “first on the scene” footage the body-worn cameras provide is vital, especially in cases of domestic abuse. Body-worn cameras can provide visual evidence that might change over the duration of a trial and individuals may feel more secure if they have visual and audio evidence to support them.

OPPOSING ARGUMENTS

Critics of the bill say that the privacy of the public is endangered as the body-worn camera must be recording the entire time the officer is on duty. They also note that, the bill states that the individual law enforcement agencies may ask for the Michigan State Police to cover “reasonable costs”; however, the extent of those costs is not clear. The initial cost to purchase body-worn cameras for an entire law enforcement agency will vary based on the number of officers in the agency. Additionally, the agencies will need to maintain the cameras and store the data, which both add substantially to the costs of the cameras. Others have noted that in certain states, such as California, no evidence was shown to demonstrate that the presence of body cameras did little to prevent officer violence on civilians.

Legislative and Fiscal Analyst: J.J.P

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