

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

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

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

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

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

23 (c) The recording is relevant to a formal or informal complaint
24 against a law enforcement officer or the law enforcement agency.

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

3 (e) A request for a copy of the recording has been made under
4 section 6.1.

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

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

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

21 (6) Any of the following may make a request under subsection
22 (4) or section 6.1:

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

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

27 (c) A parent of an individual described in subdivision (a) or
28 (b).

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

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

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

8 Sec. 6. (1) A person described in section 5.6 may request a
9 copy of a recording made by a body-worn camera under this act. The
10 law enforcement agency shall provide the individual with a copy of
11 the requested recording.

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

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

Definitions

A device that uses electro-muscular disruption technology: commonly known as a taser, as defined by the Michigan penal code 750.224a: “a portable device or weapon from which an electrical current, impulse, wave, or beam may be directed, which current, impulse, wave, or beam is designed to incapacitate temporarily, injure, or kill.”

Department: the department of Michigan State Police.

Law enforcement officers: as described by Michigan Commission on Law Enforcement Standards Act 203 of 1965 - “[a]n individual authorized by law, including common law, to prevent and detect crime and enforce the general criminal laws of this state.”

Law enforcement agency: local law enforcement agencies that employ or appoint law enforcement officers.

Body worn camera: a wearable camera (recording both audio and visual) that attaches to clothing and is typically worn on a helmet or on the torso.

History

While the Michigan State Police has a policy on the use of body-worn cameras, there is not an overarching policy for local law enforcement agencies and body-worn cameras.

Note:

When you are researching this bill, please note that the LEAD version is edited. Staff edited this bill for the ease of debate.

Summary:

This bill would create a new law requiring all law enforcement officers in uniform and carrying a weapon or taser to wear a body camera. 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 does not need to notify the individuals he interacts with that they are being recorded.

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
- A copy of the recording has been made

Additionally, if the recording contains evidence that is useful for a 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.

Finally, 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.

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 department will reimburse the law enforcement agencies for the reasonable costs associated with this bill.

Arguments:

For:

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 the 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.

Against:

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. While the officer can turn off the camera for private conversations, (or when he is using the restroom), the officer is not required to say that he is recording when talking with the public, entering a building, or any other interaction. While 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.