~~Indicates Matter Stricken~~

Indicates New Matter

AMENDED

May 13, 2015

**S. 47**

Introduced by Senators Malloy, Kimpson, Johnson, Pinckney, Thurmond, Setzler, Grooms, Lourie, McElveen, Allen, Shealy, Coleman, Campsen, Scott and Nicholson

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Read the first time April 30, 2015.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 23‑1‑240, SO AS TO PROVIDE THAT ALL STATE AND LOCAL LAW ENFORCEMENT OFFICERS MUST BE EQUIPPED WITH BODY‑WORN CAMERAS.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 1, Title 23 of the 1976 Code is amended by adding:

“Section 23‑1‑240. (A) For purposes of this section, ‘Body‑worn camera’ means an electronic device worn on a person’s body that records both audio and video data.

(B) State and local law enforcement agencies, under the direction of the Law Enforcement Training Council, shall implement the use of body‑worn cameras pursuant to guidelines established by the Law Enforcement Training Council.

(C) Within the first one hundred eighty days after the effective date of this section, the Law Enforcement Training Council, in consultation with a member of the South Carolina Association of Criminal Defense Lawyers appointed by the president of the association, shall conduct a thorough study of the use, implementation procedures, and costs, and any other related aspects associated with body-worn cameras in those jurisdictions with body-worn cameras currently in use or which begin their use during this period. At the end of the first one hundred eighty day period, The Law Enforcement Training Council, in consultation with a member of the South Carolina Association of Criminal Defense Lawyers appointed by the president of the association, shall have an additional one hundred eighty days to develop guidelines for the use of body‑worn cameras by state and local law enforcement agencies and is authorized to promulgate these guidelines by regulation which must be in effect not later than three hundred and sixty days from the effective date of this act. In addition, the Law Enforcement Training Council, in consultation with a member of the South Carolina Association of Criminal Defense Lawyers appointed by the president of the association, shall have continuing authority to update the guidelines by regulation as necessary. The guidelines must include, but are not limited to, specifying which law enforcement officers must wear body‑worn cameras, when body‑worn cameras must be worn and activated, restrictions on the use of body‑worn cameras, the process to obtain consent of victims and witnesses before using body‑worn cameras during an interview, the retention and release of data recorded by body‑worn cameras, and access to the data recorded by body‑worn cameras pursuant to subsection (G). The Law Enforcement Training Council shall provide the guidelines to state and local law enforcement agencies.

(D) The Law Enforcement Training Council, in consultation with a member of the South Carolina Association of Criminal Defense Lawyers appointed by the president of the association, shall develop policies and procedures for the use of body-worn cameras pursuant to the guidelines established by the Law Enforcement Training Council. Individual State and local law enforcement agencies may submit any requested modifications to the policies and procedures for their jurisdiction to the Law Enforcement Training Council. The Law Enforcement Training Council shall review and approve or disapprove of the modifications to the policies and procedures. If the Law Enforcement Training Council disapproves of the policies and procedures, the law enforcement agency shall modify and resubmit the policies and procedures. In addition to the other requirements of this section, The Law Enforcement Training Council, by three hundred sixty days from the effective date of this section, shall submit a report to the General Assembly which must include:

(1) a specific retention policy that each state and local law enforcement agency must follow in order to ensure that body-worn camera audio and video data is retained for an appropriate amount of time while balancing when that data should be destroyed to ensure it is, in fact, destroyed in a timely manner for the protection of all parties concerned;

(2) A detailed privacy policy regarding the release of body-worn camera audio or video data including the limitation on its access in order to ensure the privacy rights of all parties concerned;

(3) In conjunction with the retention policy and privacy protections required by the provisions of items (1) and (2), suggested penalties for a violation by a state and local law enforcement agency in order to ensure and reinforce compliance with these mandates;

(4) any other recommendations for further statutory provisions necessary to ensure the provisions of this section are appropriately and efficiently managed and carried out; and

(5) the fiscal impact associated with the use of body-worn cameras as required by the provisions of this section, updated continuously as necessary.

(E)(1) A ‘Body‑Worn Cameras Fund’ is established within the Department of Public Safety for the purpose of assisting state and local law enforcement agencies, the Attorney General’s office, solicitors’ offices, and public defenders’ offices in implementing the provisions of this section including, but not limited to, the initial purchase, maintenance, and replacement of body‑worn cameras and ongoing costs related to the maintenance and storage of data recorded by body‑worn cameras. The Public Safety Coordinating Council shall oversee the fund, and shall, within one hundred eighty days of the effective date of this act, establish a process for the application for and disbursement of monies to state and local law enforcement agencies, the Attorney General’s office, solicitors’ offices, and public defenders’ offices. The Public Safety Coordinating Council shall disburse the funds in a fair and equitable manner, taking into consideration priorities in funding.

(2) Upon implementation of policies and procedures relating to body-worn cameras, a State or local law enforcement agency may apply to the Public Safety Coordinating Council for funding to implement the agency’s use of body‑worn cameras pursuant to this section including, but not limited to, the initial purchase, maintenance, and replacement of body‑worn cameras and ongoing costs related to the maintenance and storage of data recorded by body‑worn cameras. A state or local law enforcement agency is not required to implement the use of body‑worn cameras pursuant to this section until the agency has received full funding.

(F) Nothing in this section prohibits a state or local law enforcement agency’s use of body‑worn cameras pursuant to the agency’s existing policies and procedures and funding while the agency is awaiting receipt of the Law Enforcement Training Council’s guidelines, the policies and procedures from the Law Enforcement Training Council, and funding from the Public Safety Coordinating Council. Such an agency is eligible to apply to the Public Safety Coordinating Council for reimbursement including, but not limited to, the initial purchase, maintenance, and replacement of body‑worn cameras and ongoing costs related to maintenance and storage of data recorded by body‑worn cameras.

(G)(1) Data recorded by a body‑worn camera is not a public record subject to disclosure under the freedom of information act.

(2) The State Law Enforcement Division, the Attorney General, and a circuit solicitor may request and must receive data recorded by a body‑worn camera for any legitimate criminal justice purpose.

(3) A law enforcement agency, the State Law Enforcement Division, the Attorney General, or a circuit solicitor may release data recorded by a body‑worn camera in its discretion.

(4) A law enforcement agency may request and must receive data recorded by a body‑worn camera if the recording is relevant to an internal investigation regarding misconduct or disciplinary action of a law enforcement officer.

(5) In addition to the persons who may request and must receive data recorded by a body‑worn camera provided in item (2), the following are also entitled to request and receive such data pursuant to the South Carolina Rules of Criminal Procedure or the South Carolina Rules of Civil Procedure:

(a) a person who is the subject of the recording;

(b) a criminal defendant if the recording is relevant to a pending criminal action;

(c) a civil litigant if the recording is relevant to a pending civil action;

(d) a person whose property has been seized or damaged in relation to, or is otherwise involved with, a crime to which the recording is related;

(e) a parent or legal guardian of a minor or incapacitated person described in subitem (A) or (B); and

(f) an attorney for a person described in subitems (a) through (e).

(H) Nothing in this section may be construed to require the dismissal of a charge for a violation of a criminal offense when a body-worn camera malfunctions or otherwise fails to record an incident or alleged criminal violation or if an officer equipped with a body-worn camera fails to record such incident or alleged criminal violation so long as such failure is not both wilful and malicious. If such failure is deemed by a court of competent jurisdiction to be wilful and malicious, the court must make a specific finding on the record, based upon the totality of the circumstances, and the court may prohibit the prosecution from introducing evidence related to the charges or may provide other relief as the court deems just under the circumstances.

(I) If the video or audio data recorded by a ‘body‑worn camera’ is destroyed, deleted, altered, or stolen, the court may not use this occurrence alone as a ground to dismiss a civil or criminal action against a defendant.”

SECTION 2. This act takes effect upon approval by the Governor.

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