**South Carolina General Assembly**

119th Session, 2011-2012

**H. 4907**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Cole, D.C. Moss, Tallon, Forrester, V.S. Moss and G.R. Smith

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Introduced in the House on February 28, 2012

Currently residing in the House Committee on **Judiciary**

Summary: Video recording of breath test

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/28/2012 House Introduced and read first time ([House Journal‑page 13](file:///h:\hj%20archive\2012\02-28-12.docx))

2/28/2012 House Referred to Committee on **Judiciary** ([House Journal‑page 13](file:///h:\hj%20archive\2012\02-28-12.docx))

3/1/2012 House Member(s) request name added as sponsor: G.R.Smith

**VERSIONS OF THIS BILL**

[2/28/2012](file:///p:\pprever\2011-12\4907_20120228.docx)

**A** **BILL**

TO AMEND SECTION 56‑5‑2953, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE VIDEO RECORDING OF A PERSON’S CONDUCT AT THE INCIDENT SITE AND THE BREATH TEST SITE WHEN THE PERSON IS CHARGED WITH DRIVING UNDER THE INFLUENCE OF ALCOHOL OR ANOTHER ILLEGAL SUBSTANCE, SO AS TO PROVIDE THAT UNDER CERTAIN CIRCUMSTANCES THE PERSON’S CONDUCT IS NOT REQUIRED TO BE RECORDED, TO DELETE THE PROVISION THAT REQUIRES THE RECORDING OF THE PERSON’S CONDUCT DURING THE TWENTY‑MINUTE PRE‑TEST WAITING PERIOD, AND TO REVISE THE PROVISIONS THAT EXCUSE AN OFFICER FROM PRODUCING CERTAIN VIDEO RECORDINGS.

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

SECTION 1. Section 56‑5‑2953(A) and (B) of the 1976 Code, as last amended by Act 201 of 2008, is further amended to read:

“(A) A person who violates Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 must have his conduct at the incident site and the breath test site video recorded unless explained in a sworn affidavit by the arresting officer as listed below in this section.

(1)(a) The video recording at the incident site must:

( i) not begin later than the activation of the officer’s blue lights;

( ii) include any field sobriety tests administered; and

(iii) include the arrest of a person for a violation of Section 56‑5‑2930 or Section 56‑5‑2933, or a probable cause determination in that the person violated Section 56‑5‑2945, and ~~show~~ an audible recording of the person being advised of his Miranda rights.

(b) A refusal to take a field sobriety test does not constitute disobeying a police command.

(2) The video recording at the breath test site must:

(a) include the entire breath test procedure, the person being informed that he is being video recorded, and that he has the right to refuse the test; and

(b) include the person taking or refusing the breath test and the actions of the breath test operator while conducting the test~~; and~~

~~(c)~~ ~~also include the person’s conduct during the required twenty‑minute pre‑test waiting period, unless the officer submits a sworn affidavit certifying that it was physically impossible to video record this waiting period~~.

(3) The video recordings of the incident site and of the breath test site are admissible pursuant to the South Carolina Rules of Evidence in a criminal, administrative, or civil proceeding by any party to the action.

(B) Nothing in this section may be construed as prohibiting the introduction of other relevant evidence in the trial of a violation of Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945. Failure by the arresting officer to produce the video recording required by this section is not alone a ground for dismissal of any charge made pursuant to Section 56‑5‑2930, 56‑5‑2933, or 56‑5‑2945 if the arresting officer: (1) submits a sworn affidavit certifying that the video or audio recording equipment was in an inoperable condition at the time of the arrest or probable cause determination~~,~~ or ~~video equipment~~ at the breath test facility ~~was in an inoperable condition, stating which~~ and that reasonable efforts have been made to maintain the equipment in an operable condition~~,~~ ~~and certifying~~ ; or (2) certifies that there was no other operable breath test facility available in the county within the two hour limit required by Section 56‑5‑2950(A). ~~or, in~~ In the alternative, ~~submits~~ he may submit a sworn affidavit certifying that it was physically impossible to produce the video recording because the person needed emergency medical treatment, there were video or audio equipment malfunctions, or exigent circumstances existed. ~~In~~ Exigent circumstances ~~including~~ include, but are not limited to, road blocks, traffic accident investigations, ~~and~~ a person’s actions affecting the officer’s ability to videotape them, citizens’ arrests, or where an arrest has been made and the video recording equipment has not been activated by blue lights, the failure by the arresting officer to produce the video recordings required by this section is not alone a ground for dismissal. However, as soon as video recording is practicable in these circumstances, video recording must begin and conform with the provisions of this section. Nothing in this section prohibits the court from considering any other valid reason for the failure to produce the video recording based upon the totality of the circumstances; nor do the provisions of this section prohibit the person from offering evidence relating to the arresting law enforcement officer’s failure to produce the video recording.”

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

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