

By: Menéndez

S.B. No. 1547

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a body worn camera pilot program for certain Department
3 of Family and Protective Services employees investigating a report
4 of child abuse or neglect; creating a criminal offense; authorizing
5 a fee.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Chapter 40, Human Resources Code, is amended by
8 adding Subchapter D to read as follows:

9 SUBCHAPTER D. BODY WORN CAMERA PILOT PROGRAM

10 Sec. 40.101. DEFINITIONS. In this subchapter:

11 (1) "Body worn camera" has the meaning assigned by
12 Section 1701.651, Occupations Code.

13 (2) "Pilot program" means the body worn camera pilot
14 program for department employees established under this chapter.

15 (3) "Private space" has the meaning assigned by
16 Section 1701.651, Occupations Code.

17 Sec. 40.102. PILOT PROGRAM. The department shall establish
18 a pilot program to provide body worn cameras to department
19 employees in Bexar County to evaluate the costs of implementing a
20 statewide body worn camera program, including all known equipment
21 costs and costs for data storage.

22 Sec. 40.103. INTERAGENCY CONTRACTS. The department may
23 enter into an interagency contract to receive body worn camera
24 services and have the identified operations performed through a

1 program established by the Department of Information Resources.

2 Sec. 40.104. BODY WORN CAMERA POLICY. (a) As part of the
3 pilot program, the department shall adopt a policy ensuring that a
4 body worn camera is activated only when investigating a report of
5 child abuse or neglect and must include:

6 (1) guidelines for when a department employee should
7 activate a camera or discontinue a recording currently in progress,
8 considering the need for privacy in certain situations and at
9 certain locations;

10 (2) provisions relating to data retention, including a
11 provision requiring the retention of video for a minimum period of
12 90 days;

13 (3) provisions relating to storage of video and audio,
14 creation of backup copies of the video and audio, and maintenance of
15 data security;

16 (4) guidelines for public access, through open records
17 requests, to recordings that are public information;

18 (5) provisions entitling a department employee to
19 access any recording of an incident involving the department
20 employee before the department employee is required to make a
21 statement about the incident;

22 (6) procedures for supervisory or internal review; and

23 (7) the handling and documenting of equipment and
24 malfunctions of equipment.

25 (b) A policy described by Subsection (a) may not require a
26 department employee to keep a body worn camera activated for the
27 entire period of the department employee's shift.

1 (c) A policy adopted under this section must be consistent
2 with the Federal Rules of Evidence and Texas Rules of Evidence.

3 Sec. 40.105. TRAINING. (a) Before the department may
4 operate the pilot program, the department must provide training to:

- 5 (1) employees who will wear the body worn cameras; and
6 (2) any other personnel who will come into contact
7 with video and audio data obtained from the use of body worn
8 cameras.

9 (b) The department shall develop a curriculum for a training
10 program under this section.

11 Sec. 40.106. RECORDING INTERACTIONS WITH THE PUBLIC. (a) A
12 department employee equipped with a body worn camera shall act in a
13 manner that is consistent with the policy of the department with
14 respect to when and under what circumstances a body worn camera must
15 be activated.

16 (b) A department employee equipped with a body worn camera
17 may choose not to activate a camera or may choose to discontinue a
18 recording currently in progress for any nonconfrontational
19 encounter with a person, including an interview of a witness or
20 victim.

21 (c) A department employee who does not activate a body worn
22 camera in responding to an investigation of child abuse or neglect
23 must include in the employee's documentation or otherwise note in
24 the child's case file the reason for not activating the camera.

25 (d) Any justification for failing to activate the body worn
26 camera because it is unsafe, unrealistic, or impracticable is based
27 on whether a reasonable department employee under the same or

1 similar circumstances would have made the same decision.

2 Sec. 40.107. USE OF PERSONAL EQUIPMENT. (a) A department
3 employee who is on duty may only use a body worn camera that is
4 issued and maintained by the department.

5 (b) A department employee who has not been provided with a
6 body worn camera by the department may operate a body worn camera
7 that is privately owned only if permitted by the department.

8 (c) If the department authorizes the use of privately owned
9 body worn cameras under Subsection (b), the department must make
10 provisions for the security and compatibility of the recordings
11 made by those cameras.

12 Sec. 40.108. OFFENSE. (a) A department employee commits an
13 offense if the employee releases a recording created with a body
14 worn camera under this subchapter without permission of the
15 department.

16 (b) An offense under this section is a Class A misdemeanor.

17 Sec. 40.109. RECORDINGS AS EVIDENCE. (a) Except as
18 provided by Subsection (b), a recording created with a body worn
19 camera and documenting an incident that is related to an
20 administrative or criminal investigation of a department employee
21 may not be deleted, destroyed, or released to the public until all
22 criminal matters have been finally adjudicated and all related
23 administrative investigations have concluded.

24 (b) The department may release to the public a recording
25 described by Subsection (a) if the department determines that the
26 release furthers the department's purpose.

27 Sec. 40.110. RELEASE OF INFORMATION RECORDED BY BODY WORN

1 CAMERA. (a) A member of the public is required to provide the
2 following information when submitting a written request to the
3 department for information recorded by a body worn camera:

- 4 (1) the date and approximate time of the recording;
5 (2) the specific location where the recording
6 occurred; and
7 (3) the name of one or more persons known to be a
8 subject of the recording.

9 (b) A failure to provide all of the information required by
10 Subsection (a) to be part of a request for recorded information does
11 not preclude the requestor from making a future request for the same
12 recorded information.

13 (c) Except as provided by Subsection (d), information
14 recorded by a body worn camera and held by the department under this
15 subchapter is not subject to the requirements of Section [552.021](#),
16 Government Code.

17 (d) Information that is or could be used as evidence in a
18 criminal prosecution is subject to the requirements of Section
19 [552.021](#), Government Code.

20 (e) The department may:

21 (1) seek to withhold information subject to Subsection
22 (d) in accordance with procedures provided by Section [552.301](#),
23 Government Code;

24 (2) assert any exceptions to disclosure in Chapter
25 [552](#), Government Code, or other law; or

26 (3) release information requested in accordance with
27 Subsection (a) after the department redacts any information made

1 confidential under Chapter 552, Government Code, or other law.

2 (f) The department may not release any portion of a
3 recording made in a private space, or of a recording involving the
4 investigation of conduct that constitutes a misdemeanor punishable
5 by fine only and does not result in arrest, without written
6 authorization from the person who is the subject of that portion of
7 the recording or, if the person is deceased, from the person's
8 authorized representative.

9 (g) The attorney general shall set a proposed fee to be
10 charged to members of the public who seek to obtain a copy of a
11 recording under this section. The fee amount must be sufficient to
12 cover the cost of reviewing and making the recording. The
13 department may provide a copy without charge or at a reduced charge
14 if the department determines that waiver or reduction of the charge
15 is in the public interest.

16 (h) A recording is confidential and excepted from the
17 requirements of Chapter 552, Government Code, if the recording:

18 (1) was not required to be made under this subchapter
19 or another law or under a policy adopted by the department; and

20 (2) does not relate to a department purpose.

21 Sec. 40.111. BODY WORN CAMERA RECORDINGS; REQUEST FOR
22 ATTORNEY GENERAL DECISION. (a) Notwithstanding Section 552.301(b),
23 Government Code, a governmental body's request for a decision from
24 the attorney general about whether a requested body worn camera
25 recording falls within an exception to public disclosure is
26 considered timely if made not later than the 20th business day after
27 the date of receipt of the written request.

1 (b) Notwithstanding Section 552.301(d), Government Code, a
2 governmental body's response to a requestor regarding a requested
3 body worn camera recording is considered timely if made not later
4 than the 20th business day after the date of receipt of the written
5 request.

6 (c) Notwithstanding Section 552.301(e), Government Code, a
7 governmental body's submission to the attorney general of the
8 information required by that subsection regarding a requested body
9 worn camera recording is considered timely if made not later than
10 the 25th business day after the date of receipt of the written
11 request.

12 (d) Notwithstanding Section 552.301(e-1), Government Code,
13 a governmental body's submission to a requestor of the information
14 required by that subsection regarding a requested body worn camera
15 recording is considered timely if made not later than the 25th
16 business day after the date of receipt of the written request.

17 Sec. 40.112. PRODUCTION OF BODY WORN CAMERA RECORDING IN
18 RESPONSE TO VOLUMINOUS PUBLIC INFORMATION REQUESTS. (a)
19 Notwithstanding Section 552.221(d), Government Code, if the
20 department receives a voluminous request in accordance with Section
21 40.110(a), the department is considered to have promptly produced
22 the information for purposes of Section 552.221, Government Code,
23 if the department takes the actions required under Section 552.221,
24 Government Code, before the 21st business day after the date of
25 receipt of the written request.

26 (b) For purposes of this section, "voluminous request"
27 includes:

1 (1) a request for body worn camera recordings from
2 more than five separate incidents;

3 (2) more than five separate requests for body worn
4 camera recordings from the same person in a 24-hour period,
5 regardless of the number of incidents included in each request; or

6 (3) a request or multiple requests from the same
7 person in a 24-hour period for body worn camera recordings that,
8 taken together, constitute more than five total hours of video
9 footage.

10 Sec. 40.113. REPORT. Not later than September 1, 2022, the
11 department shall prepare and submit a written report on the pilot
12 program to the governor, lieutenant governor, speaker of the house
13 of representatives, and each member of the legislature. The report
14 must include:

15 (1) an evaluation of the interaction between
16 department employees involved in the pilot program and the public;

17 (2) an evaluation of the extent to which the
18 department policies regarding body worn cameras were allowed during
19 the pilot program; and

20 (3) a recommendation on whether the pilot program
21 should continue, be expanded, or be terminated.

22 Sec. 40.114. EXPIRATION. This chapter expires September 1,
23 2023.

24 SECTION 2. This Act takes effect September 1, 2019.