

BILL ANALYSIS

Senate Research Center
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S.B. 1487
By: West
Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1074, approved by the Texas Legislature in 2001, established statewide policy that prohibits racial profiling by members of law enforcement in Texas. S.B. 1074 provided funding for in-car (dash camera) audio-visual recording equipment for law enforcement vehicles used for patrol duties. However, state law to date does not address the release of dash camera video.

S.B. 158, approved by the Texas Legislature in 2015, established statewide policy on the operation, storage, retention, and release of body-worn camera video, in addition to addressing issues related to the privacy rights of private citizens and officers.

S.B. 1487 creates a single policy regarding the release of video recorded by dash cameras and body-worn cameras. Under S.B. 1487, statutes approved regarding the release of body-worn camera video would also apply to the release of video recorded by dash cameras now used by Texas law enforcement agencies for patrol functions and other calls for police services.

S.B. 1487 does not make substantive changes to existing law regarding the release or retention of body-worn camera video.

In addition, S.B. 1487 transfers statutes now found in Chapter 2, Code of Criminal Procedure, related to racial profiling, to Chapter 1701 of the Texas Occupations Code.

Also under S.B. 1487, statutory provisions regarding the defendant's access to video recorded during arrests on offenses for driving while intoxicated are moved to Chapter 1701, Occupations Code.

As proposed, S.B. 1487 amends current law relating to preventing racial profiling and video and audio equipment and recordings of certain law enforcement motor vehicle stops, and creates an offense.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to Texas Department of Public Safety (DPS) is transferred to the director of DPS in SECTION 3 (Section 1701.715, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 2.131, Code of Criminal Procedure, to prohibit a peace officer from engaging in an act of racial profiling, as defined by the written policy required by Section 1701.702, Occupations Code, and adopted by the law enforcement agency employing the officer.

SECTION 2. Amends Chapter 1701, Occupations Code, by adding Subchapter O and adding a subchapter heading, to read as follows:

SUBCHAPTER O. RACIAL PROFILING; MOTOR VEHICLE STOPS

SECTION 3. Transfers Articles 2.132, 2.133, 2.134, 2.135, 2.136, 2.137, 2.138, and 2.1385, Code of Criminal Procedure, to Subchapter O, Chapter 1701, Occupations Code, as added by this

Act, redesignates them as Sections 1701.701, 1701.702, 1701.704, 1701.705, 1701.707, 1701.708, 1701.709, 1701.710, 1701.711, 1701.712, 1701.713, 1701.714, 1701.715, and 1701.716, Occupations Code, and amends them as follows:

Sec. 1701.701. DEFINITIONS. Defines "department," "law enforcement agency (agency)," "motor vehicle stop," and "race and ethnicity."

Sec. 1701.702. POLICY OF LAW ENFORCEMENT AGENCY ON RACIAL PROFILING. (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Creates this subsection from existing text and makes a nonsubstantive change.

(c) Makes a nonsubstantive change.

Sec. 1701.704. VIDEO AND AUDIO EQUIPMENT FOR LAW ENFORCEMENT MOTOR VEHICLES AND MOTORCYCLES. Creates this section from text of existing Subsection (d) of Article 2.132. Requires an agency, on adopting a policy regarding racial profiling under Section 1701.702, rather than Subsection (b), to examine the feasibility of installing video camera and transmitter-activated audio equipment in each agency law enforcement motor vehicle and motorcycle regularly used to make motor vehicle stops.

Sec. 1701.705. POLICY FOR USE OF VIDEO AND AUDIO EQUIPMENT. (a) Requires the agency, if an agency installs video or audio equipment as provided by Section 1701.704, to adopt a policy for the use of the equipment.

(b) Sets forth requirements regarding provisions and guidelines in an adopted policy.

(c) Requires a policy to be consistent with the Federal Rules of Evidence and Texas Rules of Evidence.

Sec. 1701.707. INVESTIGATION OF COMPLAINT; USE OF RECORDING. Requires an agency, on commencement of an investigation by an agency of a complaint described by Section 1701.702(b)(3), rather than Subsection (b)(3), in which a video or audio recording of the occurrence on which the complaint is based was made, to promptly provide a copy of the recording to the peace officer who is the subject of the complaint on written request by the officer. Deletes existing subsection (e) prohibiting a report from including identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by a peace officer and providing that Subsection (e) does not affect the collection of information as required by policy. Deletes existing Subsection (g) requiring the Texas Commission of Law Enforcement (TCOLE), on a finding by TCOLE that the chief administrator of a law enforcement agency intentionally failed to submit a report required, to begin disciplinary procedures against the chief administrator.

Sec. 1701.708. REPORTS REQUIRED FOR MOTOR VEHICLE STOPS. Creates this section from existing text of Subsection (b) of Article 2.133 and deletes Subsection (b) designation. Deletes existing Subsection (a) defining "race or ethnicity." Makes no further changes to this section.

Sec. 1701.709. COMPILATION AND ANALYSIS OF INFORMATION COLLECTED. (a) Creates from existing text. Requires an agency to compile and analyze the information contained in each report received by the agency under Section 1701.708, rather than Article 2.133. Deletes existing text defining "motor vehicle stops" and "race or ethnicity." Makes a nonsubstantive change.

(b) Makes a conforming change.

(c) Makes a conforming change.

(d) Provides that this subsection does not affect the reporting of information required under Section 701.708(1), rather than Article 2.133(b)(1)

(e) Makes conforming and nonsubstantive changes.

(f) Makes a nonsubstantive change.

Sec. 1701.710. FAILURE TO SUBMIT REPORT; DISCIPLINARY PROCEDURES. Requires TCOLE, on a finding by the commission that the chief administrator of an agency intentionally failed to submit a report required under Section 1701.702(b)(7) or 1701.709, rather than Subsection (b), to begin disciplinary procedures against the chief administrator. Makes a conforming and a nonsubstantive change.

Sec. 1701.711. New heading: PARTIAL REPORTING EXEMPTION FOR AGENCIES USING VIDEO AND AUDIO EQUIPMENT. Creates this section from existing text of Subsection (a) of Article 2.135 and makes nonsubstantive and conforming changes.

Sec. 1701.712. RETENTION OF VIDEO AND AUDIO RECORDINGS. (a) Creates this section from existing text of Subsection (b) of Article 2.135. Requires an agency that is exempt from the requirements under Section 1701.709, rather than Article 2.134, except as otherwise provided by this section, rather than subsection, to retain the video and audio or audio documentation of each motor vehicle stop for at least 90 days after the date of the stop.

(b) Creates this subsection from existing text and makes no further changes.

(c) Provides that this section, rather than article, does not affect the collection or reporting requirements under Section 1701.702, rather than Article 2.132. Deletes existing Subsection (d) defining "motor vehicle stop."

Sec. 1701.713. LIABILITY. Creates this section from existing text of Article 2.136 and makes nonsubstantive changes.

Sec. 1701.714. PROVISION OF FUNDING OR EQUIPMENT. (a) Requires the Texas Department of Safety (DPS) to adopt rules for providing funds or video and audio equipment to agencies for the purpose of installing video and audio equipment as described by Section 1701.711(1)(A), rather than Article 2.135(a)(1)(A), including specifying criteria to prioritize funding or equipment provided to agencies.

(b) to (d) Makes conforming changes.

Sec. 1701.715. RULES. Authorizes the public safety director of the DPS, rather than DPS, to adopt rules to implement this subchapter, rather than Articles 2.131 to 2.137.

Sec. 1701.716. CIVIL PENALTY. (a) Creates this section from existing text and makes a conforming change.

(b) Makes a conforming change.

(c) Makes a nonsubstantive change.

SECTION 4. Amends Subchapter O, Chapter 1701, Occupations Code, by adding Sections 1701.703, 1701.706, 1701.718, 1701.719, 1701.720, 1701.721, and 1701.722, as follows:

Sec. 1701.703. IDENTIFYING INFORMATION IN REPORT. (a) Prohibits a report required under Section 1701.702(b)(7) from including identifying information about a peace officer who makes a motor vehicle stop or about an individual who is stopped or arrested by peace officer.

(b) Provides this section does not affect the collection of information as required by a policy under Section 1701.702(b)(6).

Sec. 1701.706. RECORDING INTERACTIONS WITH THE PUBLIC. (a) Requires a peace officer who uses a motor vehicle or motorcycle equipped with video or audio equipment to act in a manner that is consistent with the policy of the agency that employs the officer with respect to when and under what circumstance the equipment must be activated.

(b) Requires a peace officer who does not activate video or audio equipment in response to a call for assistance or on making a motor vehicle stop to include in the officer's incident report or otherwise note in the case file or record the reason for not activating the equipment.

(c) Provides that any justification for failing to activate the equipment because it is unsafe, unrealistic, or impracticable is based on whether a reasonable officer under the same or similar circumstances would have made the same decision.

Sec. 1701.718. RECORDINGS DOCUMENTING CERTAIN CONDUCT OF LAW ENFORCEMENT OFFICER. (a) Prohibits a video or audio recording under this subchapter documenting an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer, except as provided by Subsection (b), from being deleted, destroyed or released to the public until all criminal matters have been finally adjudicated and all related administrative investigations have concluded.

(b) Authorizes an agency to release to the public a recording described by Subsection (a) if the agency determines that the release furthers a law enforcement purpose.

(c) Provides that this section does not affect the authority of a law enforcement agency to withhold certain information.

Sec. 1701.719. RELEASE OF VIDEO OR AUDIO RECORDING. (a) Provides that a member of the public is required to provide certain information when submitting a written request to an agency for a video or audio recording.

(b) Prohibits a failure to provide all the information required to be part of a request for a recording from precluding the requestor from making a future request for the same recording.

(c) Provides that, except as provided by Subsection (d), a recording held by a law enforcement agency under this subchapter is not subject to the requirements of Section 552.021 (Availability of Public Information), Government Code.

(d) Provides that a recording that is or could be used as evidence in a criminal prosecution is subject to the requirements of Section 552.021, Government Code.

(e) Authorizes an agency to seek to withhold a recording subject to Subsection (d) in accordance with procedures provided by Section 552.301 (Request for Attorney General Decision), Government Code; assert any exceptions to disclosure in Chapter 552 (Public Information), Government Code, or other law; or release a recording requested in accordance with Subsection (a) after the agency redacts any information made confidential under Chapter 552, Government Code, or other law.

(f) Prohibits an agency from releasing any portion of a recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only and does not result in arrest without written authorization from the person who is

the subject of that portion of the recording or, if the person is deceased, from the person's authorized representative.

(g) Requires the Texas attorney general (attorney general) to set a proposed fee to be charged to members of the public who seek to obtain a copy of a recording. Requires that the fee amount be sufficient to cover the cost of reviewing and making the recording. Authorizes an agency to provide a copy without charge or at a reduced charge if the agency determines that waiver or reduction of the charge is in the public interest.

(h) Provides that a recording is confidential and excepted from the requirements of Chapter 552, Government Code, if the recording was not required to be made under this subchapter or another law or under a policy adopted by the appropriate agency, and does not relate to a law enforcement purpose.

Sec. 1701.720. VIDEO AND AUDIO RECORDINGS; REQUEST FOR ATTORNEY GENERAL DECISION. (a) Provides that, notwithstanding Section 552.301(b) (relating to requiring the governmental body to ask for the attorney general's decision), Government Code, a governmental body's request for a decision from the attorney general about whether a requested recording falls within an exception to public disclosure is considered timely if made by a certain date.

(b) Provides that, notwithstanding Section 552.301(d) (relating to requiring a governmental body that requests an attorney general's decision to provide certain information), Government Code, a governmental body's response to a requestor regarding a requested recording is considered timely if made by a certain date.

(c) Provides that, notwithstanding Section 552.301(e) (relating to requiring a governmental body that requests an attorney general's decision by a certain date to submit certain information), Government Code, a governmental body's submission to the attorney general of the information requested by that subsection regarding a requested recording is considered timely if made by a certain date.

(d) Provides that, notwithstanding Section 552.301(e-1) (relating to requiring a governmental body that requests an attorney general's decision by a certain date to submit certain information), Government Code, a governmental body's submission to a requestor of the information required by that subsection regarding a requested recording is considered timely if made by a certain date.

Sec. 1701.721. PRODUCTION OF VIDEO OR AUDIO RECORDING IN RESPONSE TO VOLUMINOUS PUBLIC INFORMATION REQUESTS. (a) Provides that, notwithstanding Section 552.221(d) (relating to requiring an officer to certify fact in writing to the requestor if the officer cannot produce public information for inspection or duplication by a certain date), Government Code, an officer for public information who is employed by a governmental body and who receives a voluminous request in accordance with Section 1701.719(a) is considered to have promptly produced the information for purposes of Section 552.221 (Application for Public Information; Production of Public Information), Government Code, if the officer takes the required actions before a certain date.

(b) Defines "voluminous request."

Sec. 1701.722. OFFENSE. (a) Provides that a peace officer or other employee of an agency commits an offense if the officer or employee releases a recording under this subchapter without permission of the applicable agency.

(b) Provides that an offense under this section is a Class A misdemeanor.

SECTION 5. Amends Article 2.139, Code of Criminal Procedure, as added by Chapter 1124 (H.B. 3791), Acts of the 84th Legislature, Regular Session, 2015, by transferring it to Subchapter

O, Chapter 1701, Occupations Code, as added by this Act, redesignating it as Section 1701.717, Occupations Code, and amending it, as follows:

Sec. 1701.717. VIDEO RECORDINGS OF ARRESTS FOR INTOXICATION OFFENSES. Creates this section from existing text and makes no further changes.

SECTION 6. Amends Section 1701.164, Occupations Code, as follows:

Sec. 1701.164. COLLECTION OF CERTAIN INCIDENT-BASED DATA SUBMITTED BY LAW ENFORCEMENT AGENCIES. Requires TCOLE to collect and maintain incident-based data submitted to the commission under Section 1701.709, rather than Article 2.134, Code of Criminal Procedure, including incident-based data compiled by an agency under Section 1701.708. Makes conforming changes.

SECTION 7. Amends Section 1701.501(a), Occupations Code, to change references to Articles 2.132 and 2.134 to Sections 1701.702 and 1701.709 to reflect redesignation and transference.

SECTION 8. (a) Authorizes an agency operating video or audio equipment on the effective date of this Act to submit any existing policy of the agency regarding the use of the equipment to TCOLE to determine whether the policy complies with Section 1701.705, Occupations Code, as added by this Act.

(b) Provides that notwithstanding Section 1701.705, Occupations Code, as added by this Act, an agency operating video or audio equipment on the effective date of this Act is not required to adopt or implement a policy that complies with Section 1701.705 before September 1, 2018.

(c) Provides that Sections 1701.717, 1701.718, 1701.719, 1701.720, 1701.721, and 1701.722, Occupations Code, as added by this Act, apply to a release of a recording on or after the effective date of this Act, regardless of whether the incident that is the subject of the recording occurred before, on, or after the effective date of this Act.

SECTION 9. Provides that to the extent of any conflict, this Act prevails over another Act of the 85th Legislature, Regular Session, 2017, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 10. Effective date: September 1, 2017.