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FISCAL IMPACT REPORT

SPONSOR Baca ORIGINAL DATE 3/13/21
LAST UPDATED _____ HB _____
SHORT TITLE Law Enforcement Body Cam Exceptions SB 411
ANALYST Glenn

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	Indeterminate-Likely Minimal					

(Parenthesis () Indicate Expenditure Decreases)

Relates to, conflicts with SB220

SOURCES OF INFORMATION

LFC Files

Responses Received From

Law Offices of the Public Defender (LOPD)
Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
Department of Public Safety (DPS)
Sentencing Commission (NMSC)
Office of the Attorney General (NMAG)

SUMMARY

Synopsis of Bill

Senate Bill 411 amends Section 29-1-18 NMSA 1978 to provide that peace officers employed by a law enforcement agency are not required to wear a body-worn camera while on duty when they are operating under the direct supervision of a federal agency.

There is no effective date of this bill. It is assumed the effective date is 90 days following adjournment of the Legislature.

FISCAL IMPLICATIONS

AOC states there will be a minimal administrative cost for statewide update, distribution, and

documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and any challenges to this law and appeals from the same. New laws, amendments to existing laws, and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

SIGNIFICANT ISSUES

LOPD notes SB411 does not define “operations under the direct supervision of a federal agency.” Depending on how it is applied, the bill might exempt use of body cameras by state officers involved in federal Drug Enforcement Administration, Immigration and Customs Enforcement, and Bureau of Alcohol, Tobacco, Firearms and Explosives investigations, and possibly some investigations on tribal lands. Absent a definition, a law enforcement agency or a district attorney’s office might take a broad view of the proposed exemption that could have unintended consequences. For example, New Mexico law enforcement agencies often work with federal agents on “task forces” to address narcotics or vice crimes in regional areas of the state but which primarily constitute local investigative operations. LOPD states it is unclear whether all operations performed as part of such a task force would be exempted from the requirements of Section 29-1-18.

LOPD also notes the U.S. Department of Justice (DOJ) recently announced local law enforcement officers may use body cameras during joint operations with federal law enforcement. The policy was the result of a pilot program conducted by DOJ in coordination with a number of state and local law enforcement associations. DOJ’s policy “permit[s] federally deputized [local] officers to activate a body-worn camera while serving arrest warrants, or during other planned arrest operations, and during the execution of search warrants.”¹ DOJ officials stated “allowing local officers to use the cameras will provide a new level of transparency about the work of federal task forces.”² LOPD concludes, with DOJ now encouraging local law enforcement use of cameras in federal operations, the utility of SB411 is unclear.

Similarly, AOC states the need for the exception from the body cam requirement is unclear. AOC posits a possible reason for the exception is to allow peace officers to act consistently with whatever body cam policy might apply to a supervising federal agency. Even so, AOC notes a local law enforcement agency might wish to document the actions and interactions of its officers while being supervised by a federal agency. AOC observes the Police Executive Research Forum (PERF), with support from the U.S. Department of Justice’s Office of Community Oriented Policing (COPS Office), researched the use of body-worn cameras in police agencies and published a list of policy recommendations, which do not include prohibiting a law enforcement agency from requiring a peace officer operating under the direct supervision of a federal agency to wear a body-worn camera while on duty.³

AODA counters by observing there are many occasions where state and local government peace officers work under the direct supervision of federal agencies, such as narcotics task forces, game and fish operations, etc. Federal agencies are not required to use body-worn cameras. According

¹ “Department of Justice Announces the Use of Body-Worn Cameras on Federal Task Forces,” <https://www.justice.gov/opa/pr/department-justice-announces-use-body-worn-cameras-federal-task-forces> (last visited 2/19/21)

² “U.S. to Lift Ban on Police Use of Body Cameras Alongside Federal Agents,” <https://www.wsj.com/articles/u-s-to-lift-ban-on-police-use-of-body-cameras-alongside-federal-agents-11603983608> (last visited 2/19/21)

³ https://cops.usdoj.gov/html/dispatch/10-2014/body_worn_camera_program.asp

to AODA, SB411's exception to the body cam requirement eliminates the concern federal agencies may have in working with local and state peace officers who are required to have body-worn cameras.

DPS notes certain State Police units fall under the supervision of a federal agency. At this time, the K9 Unit is under the supervision of Homeland Security Investigations and hold federal credentials. Violent Crime Task Force agents and a State Police agent assigned to the U.S. Marshal are considered task force officers and also hold federal credentials. The exception created by the bill might be workable if it is interpreted as making body-worn cameras optional. If it is interpreted to mandate that body-worn cameras not be used, the exception would be problematic for DPS's operations. According to DPS, State Police agents and officers assist when federal agencies are conducting operations that include warrant service. If the exception applied when State Police agents and officers participated in serving warrants in federal operations, it would be inconsistent with current DPS policies.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

SB411 relates to and conflicts with SB220, which also amends Section 29-1-18 NMSA 1978 to add a different exception to the body-worn camera requirement.

OTHER SUBSTANTIVE ISSUES

NMSC notes that, as the use of body worn cameras by law enforcement agencies has expanded throughout the nation, there has been an increased focus on needed exceptions to the general rule that officers should use the cameras when on duty. The Brennan Center for Justice has compiled a table showing exceptions in various jurisdictions around the nation.⁴

DPS suggests the Legislature consider additional amendments addressing issues arising under Section 29-1-18:

- An exemption for undercover operations from the body-worn camera mandate and a provision to make the recording of those operations optional.
- Clarification of which officers should be considered as "routinely interact[ing] with the public," particularly as it applies to officers who work in a "plain clothes" capacity.
- Specific definition of the types of encounters that qualify as "any other law enforcement or investigative encounter" requiring a body-camera to be activated. DPS notes several examples that might be considered a "law enforcement or investigative encounter" where continuous recording may not be desirable or practical, including 8 to 12 hour shifts providing security during the legislative session and the state fair, being approached by community members for non-law-enforcement purposes (such as requesting directions), and providing testimony at or attending city council meetings, legislative committee hearings, and court proceedings.
- Provision to consider hardware or software malfunctions as potential exemptions from liability for not being able to record an interaction.
- Provision to address sudden, unexpected incidents as potential exemptions from liability

⁴<https://www.brennancenter.org/our-work/research-reports/police-body-camera-policies-privacy-and-first-amendment-protections>

for not being able to record an interaction.

- Exemption from being required to activate body-cameras when conducting investigations that are otherwise being recorded with audio and video on another device, such as during interviews by investigators at offices already equipped with cameras. DPS notes that this would reduce redundancy of recordings and strain on available storage capacity.

BG/sb