

LFC Requester:

Scott Sanchez

## AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

### SECTION I: GENERAL INFORMATION

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** February 25, 2025

*Check all that apply:*

**Bill Number:** SB 505

Original  Correction   
Amendment  Substitute

**Sponsor:** Sen. Joseph Cervantes

**Agency Name and Code Number:** 305 – New Mexico Department of Justice

**Person Writing**

**Short Title:** LAW ENFORCEMENT USE OF BODY CAMERAS

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### SECTION II: FISCAL IMPACT

#### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis ( ) indicate expenditure decreases)

#### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis ( ) indicate revenue decreases)

#### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:  
 Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE**

*This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.*

**BILL SUMMARY**

Synopsis: SB 505 amends Section 29-1-18 NMSA 1978, which requires law enforcement agencies to use body-worn cameras while on duty. SB 505 creates an automatic presumption that a peace officer who fails to comply with his or her department’s body-worn camera policies has acted in bad faith. This bad faith presumption makes an officer liable for the independent tort of negligent spoliation of evidence or the independent tort of intentional spoliation of evidence if his or her body-worn camera is not in compliance with his or her agencies policies and procedures. This bad faith presumption is created by modifying the language in Section 1 (C) by replacing the word *may* with the word *shall* in two different places. In addition, SB 505 expands the definition of “law enforcement agency” to also include police departments associated with public post-secondary educational institution such as community colleges, universities, and trade schools.

Amendment proposed by the Rules Committee for SB 505 changes the language on page 3 for lines 10, 11 and 12 to strike “independent tort of” and changes it to “engaged in.” According to the proposed amendment the language for NMSA 1978 Section 29-1-18 (C) will read as follows:

[p]eace officers who fail to comply with the policies and procedures required to be adopted pursuant to Subsection A of this section shall be presumed to have acted in bad faith and shall be deemed liable for the engaged in negligent spoliation of evidence or the engaged in intentional spoliation of evidence.

The language of the proposed bill may need to be further modified to be grammatically correct by also removing “for the” from page 3, line10; and removing “the” from page 3, line 11.

**FISCAL IMPLICATIONS**

N/A

**SIGNIFICANT ISSUES**

Creating an automatic presumption of bad faith will leave peace officers more susceptible to civil

litigation if and when body-worn camera policies and procedures are not followed. An automatic presumption such as this may not contemplate situations where a body-worn camera malfunctions or human error occurs, and peace officers lack a bad intent. SB 505 could have the unintended consequence of deterring current and future peace officers from the profession over fear of civil tort litigation.

Critics of strict liability believe it is unfair to punish someone when they neither had bad intentions nor acted negligently. Without requiring proof that someone acted with bad intent, a law allows strict liability to capture otherwise law-abiding people. Imposing liability for conduct that average people don't recognize as criminal (or tortious) may make it difficult for reasonable people to know what the law requires. Paul J. Larkin, Jr., *Strict Liability Offenses, Incarceration, and the Cruel and Unusual Punishments Clause*, 37 Harvard J.L. & Pub. Pol'y 1065 (2014).

## **PERFORMANCE IMPLICATIONS**

SB 505 would also apply to peace officers with the NMDNJ.

## **ADMINISTRATIVE IMPLICATIONS**

N/A

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

N/A

## **TECHNICAL ISSUES**

N/A

## **OTHER SUBSTANTIVE ISSUES**

Police departments associated with public post-secondary educational institutions will have to adopt policy and procedures for body-worn cameras and may even need to invest in body-worn cameras if not already purchased. This could be a financial burden especially for smaller police departments associated with public post-secondary educational institutions.

## **ALTERNATIVES**

N/A

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Status quo.

## **AMENDMENTS**

N/A