

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>SJC</u>	LAST UPDATED _____
	ORIGINAL DATE <u>3/5/23</u>
	BILL <u>CS/Senate Bill</u>
SHORT TITLE <u>Law Enforcement Body Cam Exceptions</u>	NUMBER <u>368/SJCS</u>
	ANALYST <u>Daly</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses () indicate expenditure decreases.
*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From (on original bill)

Administrative Office of the District Attorneys (AODA)
 Department of Public Safety (DPS)
 Law Offices of the Public Defender (LOPD)
 New Mexico Attorney General (NMAG)
 New Mexico Counties (Counties)
 New Mexico Corrections Department (NMCD)

SUMMARY

Synopsis of the SJC Substitute for Senate Bill 368

The Senate Judiciary Committee Substitute for Senate Bill 368 (SB368/cs) provides two exceptions to the existing requirement that peace officers employed by law enforcement agencies, who routinely interact with the public, wear body-worn cameras while on duty. An officer is not required to wear a body-worn camera when the officer:

- Conducts an undercover operation (newly defined in Subsection (D)(4)) sanctioned by a law enforcement agency, or
- Conducts an explosive recovery and disposal operation to render safe or disassemble an explosive or incendiary device and materials.

Additionally, SB368/cs modifies the language of the existing presumption of bad faith when a peace officer fails to comply with policies and procedures addressing body-worn cameras (contained in Subsection C) from “shall” to “may.” The Substitute makes a similar change in that same section as to the officer’s liability for the independent torts of either negligent or intentional spoliation of evidence, changing “shall” to “may.”

This bill does not contain an effective date and, as a result, would go into effect June 16, 2023, (90 days after the Legislature adjourns) if signed into law.

FISCAL IMPLICATIONS

No fiscal impact is anticipated to the state.

SIGNIFICANT ISSUES

As both LOPD and New Mexico Counties noted in their analyses of the original bill, these exceptions address secrecy of ongoing investigations and officer safety. Similarly, in its earlier analysis, DPS believed these exceptions address some ambiguities and operational difficulties under the existing statute. In addition, DPS suggested one other exception to be considered is that for dignitary details. Those units do not normally engage in investigative encounters, yet the statute requires activation of body-worn cameras whenever an officer is “responding to a call for service” or “at the initiation of any other law enforcement encounter” between an officer and a member of the public. (See Section 1(A)(1))

OTHER SUBSTANTIVE ISSUES

Additional exceptions for children and people experiencing mental health episodes might be considered, which may require a balancing of their interests with the overall public interest governing police behavior.

On a related topic, LOPD pointed out in its earlier analysis that the bill does not address an agency’s obligation to release footage and comments it does not appear there are any laws in New Mexico regulating the release of body-worn camera footage to the public. It calls attention to a *New York Times* article that outlines recent public concern with regard to the release of recordings in cases of police misconduct. “As Body Cameras Become Commonplace, A Debate Over When to Release the Footage.” (May 2, 2021) at <https://www.nytimes.com/2021/05/02/us/police-body-cameras-andrew-brown-north-carolina.html>

MD/ne/al