

Department of Planning and Budget 2019 Fiscal Impact Statement

1. Bill Number: SB1033

| | | | | | | |
|-----------------|-------------------------------------|--------------|--------------------------|------------|--------------------------|-----------|
| House of Origin | <input checked="" type="checkbox"/> | Introduced | <input type="checkbox"/> | Substitute | <input type="checkbox"/> | Engrossed |
| Second House | <input type="checkbox"/> | In Committee | <input type="checkbox"/> | Substitute | <input type="checkbox"/> | Enrolled |

2. Patron: Stanley

3. Committee: Courts of Justice

4. Title: Inspection of body-worn camera recordings by defendants

5. Summary: Provides a procedure for a defendant to inspect and copy or photograph any body-worn camera recordings that are known by the attorney for the Commonwealth to be within the Commonwealth's possession, custody, or control. A defendant must demonstrate that such recordings may be material to the defendant's preparation, and that the request is reasonable. The bill allows the Commonwealth to redact certain identifying information of witnesses, victims, members of their families, and any person whose information is contained in the material. The bill provides that the Commonwealth may designate any body-worn camera recording subject to disclosure as "Counsel Only Material" and that any unlawful reproduction or dissemination of such designated recordings is punishable as a Class 1 misdemeanor.

Additionally, the proposed legislation provides that body-worn camera recordings must be retained and not deleted for: (i) two years for recordings containing traffic infractions or Class 3 or 4 misdemeanors; (ii) five years for recordings that contain only Class 1 or 2 misdemeanors; (iii) 10 years for recordings that contain certain felony offenses; and (iv) 100 years for recordings containing data on first and second degree murder, robbery, carjacking, or any criminal sexual assault punishable as a felony. The bill requires all such requests for body-worn camera recordings to comply with the Virginia Freedom of Information Act (FOIA) pursuant to § 2.2-3700 of the Virginia Code.

6. Budget Amendment Necessary: Yes. Item 419.

7. Fiscal Impact Estimates: Preliminary. See Item 8.

8. Fiscal Implications: This bill could have fiscal impact on local and state law enforcement agencies to the extent that the recordings are in their possession; however, not all state agencies have been able to determine the cost.

Currently, the Department of State Police (VSP) has a pilot program of five body-worn cameras (BWC) in Area 6 (Chesterfield County). The recordings are retained only for one year. If the proposed legislation is enacted, VSP has determined that there would be a one-time cost of \$21,775 to upgrade the existing server storage from one year to five years for the five pilot program BWCs in Chesterfield County. VSP reports that it will continue to store

media beyond five years, as necessary, on physical USB flash drives. Additionally, VSP has indicated that it has an additional 341 BWCs in inventory that it plans to roll out in the next eighteen months in eleven area offices across the Commonwealth; however, the agency has not yet found a contractor to implement the rollout. According to VSP's estimates, there would be a one-time cost of \$239,525 to upgrade eleven servers to meet the storage requirements related to retention as proposed in the bill.

The proposed legislation provides that the Commonwealth "may" redact personal information, should the court order the attorney for the Commonwealth to permit the defendant to inspect and to copy or photograph any BWC recordings. VSP believes that additional positions will be needed for redaction and FOIA purposes at each area office where any BWC program may be present if the legislation is enacted. VSP has concluded it needs sworn positions in each office where the BWC program is implemented at an annual cost of \$124,044 (salary and benefits). If non-sworn positions are provided, the annual cost for each position would be approximately \$80,000. It is not possible to estimate the number of defendants who would request to inspect copies or photographs of BWCs recordings, therefore, the impact on VSP's workload is indeterminate at this time. Additionally, there is insufficient information to determine the number of FOIA request that may materialize as a result of the proposed legislation.

VSP estimates it could implement a full statewide BWC program at the remaining 38 area offices in approximately 4.7 years. If the legislation is enacted, there could be an operational cost in the out years.

The Virginia Alcoholic Beverage Control Authority (Virginia ABC) has law enforcement and arrest powers responsibilities. According to Virginia ABC, they do not currently use BWCs, and there is no expected fiscal impact on the agency as a result of the proposed legislation at this time.

This bill may also have a fiscal impact on college and university police departments, however, it is not currently known how many college and university police departments use BWCs.

According to the Indigent Defense Commission, there is no anticipated fiscal impact on its operations as a result of this proposed legislation.

The expected fiscal impact on Commonwealth's Attorneys is indeterminate at this time. The Governor's introduced budget (HB1700/SB1100) included language requiring the Executive Secretary of the Compensation Board to study the impact that BWCs have on workloads in Commonwealth's Attorneys' offices. It is anticipated that this report will demonstrate the need for additional resources to meet these demands.

Currently, the Library of Virginia's Records Retention and Disposition Schedule governs the retention requirements for body-worn camera video. Currently there is no directive that requires the retention of such video beyond the adjudication of a relevant court case and the point in time at which the video is no longer administratively useful to an agency

This bill also creates a Class 1 misdemeanor for anyone who misuses BWC information designated by the Commonwealth as “Counsel Only Material.” Therefore, this bill may increase the number of people sentenced to jail. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. There is not enough information available to estimate reliably how many additional inmates in jail could result from this proposal. Ultimately, the presiding judge will decide if there is to be any time served in jail; however, any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$4.00 a day for each misdemeanant or otherwise local responsible prisoner held in a jail. It also funds a large portion of the jails’ operating costs, e.g. correctional officers. The state’s share of these costs on a per prisoner, per day basis varies from locality to locality. According to the Compensation Board’s most recent Jail Cost Report (November 2018), the estimated total state support for local jails averaged \$33.83 per inmate, per day in FY 2017.

- 9. Specific Agency or Political Subdivisions Affected:** Virginia Alcoholic Beverage Control Authority, Department of State Police, College and University Police Departments, Local law enforcement agencies, Commonwealth’s Attorneys, Indigent Defense Commission, Department of Motor Vehicle, Department of Game and Inland Fisheries, and Virginia Maurine Resource Commission, and local law enforcement agencies.

10. Technical Amendment Necessary: No.

11. Other Comments: None.