

Department of Planning and Budget
2021 Fiscal Impact Statement
REVISED 1/21/2021

1. Bill Number: HB1941

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: Rasoul

3. Committee: Courts of Justice

4. Title: Required release of video or audio recording; discharge of firearm or use of stun weapon or chemic

5. Summary: Provides that whenever a law enforcement officer (i) discharges a firearm or (ii) uses a stun weapon or chemical irritant on a person resulting in death or serious bodily injury, any video or audio recording that relates to such incident produced or obtained by the officer shall be open to inspection and available for release and posted on a website that is maintained by the agency or on any other website on which the agency generally posts information and that is available to the public or that clearly describes how the public may access such data within 15 days of producing or obtaining such video or audio recording. Exceptions to this requirement are as follows:

- The release of the video or audio recording is likely to jeopardize an ongoing investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, in which case such video or audio recording may be withheld until such damage is no longer likely to occur from release of the video or audio recording.
- The release of the video or audio recording would jeopardize the safety or privacy of any person depicted in the recording, in which case the agency shall, if possible, use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that jeopardize any person's safety or privacy. However, the redaction shall not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording, and the recording shall not otherwise be edited or altered. If the safety or privacy of a person depicted in the recording cannot adequately be protected through redaction and the interest in protecting such person's safety or privacy outweighs the public interest in release, such video or audio recording may be withheld.
- The release of the video or audio recording would result in disclosure of information prohibited or restricted elsewhere in the Code.

According to the provisions of the bill, any person denied the rights and privileges conferred by this section may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction pursuant to the Virginia Freedom of Information Act.

6. **Budget Amendment Necessary:** Yes, Items 4, 57, and 427.
7. **Fiscal Impact Estimates:** Preliminary. See Item 8 below.
8. **Fiscal Implications:** According to the Division of Capitol Police (DCP), the proposed legislation would require additional staff time to compile the audio and video files, and to post them for public access. The estimated cost for one additional position is \$95,000 annually (salary and benefits).

The fiscal impact statement is being revised based upon additional information received from the Office of the Attorney General (OAG). According to the OAG, the proposed legislation would result in an increase in FOIA litigation for state agencies with law enforcement officers, with a corresponding increase in workload for OAG as agency counsel. The proposal authorizes a writ of mandamus, thus providing two avenues for litigation, and impacting OAG further. OAG estimates it will need two additional attorney positions and one administrative staff position at a total cost of \$361,494 annually.

According to the Department of State Police (VSP), the proposed legislation would require additional resources. Instances where use of a weapon resulted in serious bodily injury or death may involve multiple agencies, officers, and systems (including body camera, in-vehicle videos, and videos obtained from other sources, including bystanders). Each video would need to be reviewed and redacted to comply with the provisions of the bill. VSP estimates this effort would take approximately two hours of staff time per one hour of video/audio, and staffing would need to be sufficient to ensure the information is posted within 15 days of the event, as required by the bill. VSP estimates it will need three program support technician positions, at an annual cost of \$72,537 per position, to comply with the provisions of the bill. Additionally, the agency would need one-time funding of \$116,960 in the first year to cover supplies, office furniture, and office space rental costs. The ongoing costs for office space rental, information technology services and supplies, postage, and other office supplies is \$81,207 annually.

The proposed legislation is not anticipated to have a fiscal impact on the Office of the State Inspector General (OSIG), the Virginia Alcoholic Beverage Control Authority (ABC), or the Department of Corrections (DOC). According to the Department of Conservation and Recreation (DCR), any additional costs are likely to be negligible and can be absorbed with existing resources.

Any potential fiscal impact to other state or local law enforcement agencies cannot be determined at this time. The fiscal impact statement will be updated if additional information is available from other law enforcement agencies.

9. **Specific Agency or Political Subdivisions Affected:** Department of State Police, Department of Motor Vehicles, Department of Corrections, Department of Juvenile Justice, Virginia Alcoholic Beverage Control Authority, Department of Conservation and Recreation, College and University Police Departments, Division of Capitol Police, Department of

Wildlife Resources, Marine Resources Commission, Virginia Lottery, Office of the State Inspector General, Sheriff's offices, and local law enforcement agencies.

10. Technical Amendment Necessary: No.

11. Other Comments: None.