HOUSE BILL NO. 5019

June 15, 2021, Introduced by Reps. Whitsett, Yancey, Aiyash, Morse, Brabec, Sowerby, Hertel, Brixie, O'Neal, Rogers, Stone, Bolden, Brenda Carter, Thanedar, Cynthia Johnson, Rabhi, Young, Kuppa and Jones and referred to the Committee on Government Operations.

A bill to provide for the use by law enforcement officers of cameras worn on the body; to require the retention and provide for the production by law enforcement agencies of recordings made using the cameras; to create certain presumptions in a court proceeding; to provide for the reimbursement of certain costs to local law enforcement agencies; and to provide for the powers and duties of certain state and local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "law
Sec. 2. As used in this act:

(a) "A device that uses electro-muscular disruption technology" means that term as defined in section 224a of the Michigan penal code, 1931 PA 328, MCL 750.224a.

(b) "Department" means the department of state police.

(c) "Law enforcement agency" means an entity that is established and maintained in accordance with the laws of this state and is authorized by the laws of this state to appoint or employ law enforcement officers.

(d) "Law enforcement officer" means that term as defined in section 2 of the Michigan commission on law enforcement standards act, 1965 PA 203, MCL 28.602.

(e) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

Sec. 3. (1) A law enforcement officer who, as part of his or her duties, is required to carry a firearm or a device that uses electro-muscular disruption technology and is required to wear a uniform shall wear a body-worn camera and record the events that occur while he or she is on duty with the body-worn camera.

(2) Subject to subsections (3) and (6), a law enforcement officer required to wear a body-worn camera under subsection (1) shall activate the recording function of the body-worn camera whenever the officer is on duty, continuously record with the body-worn camera, and make his or her best effort to record interactions with other individuals with the body-worn camera.

(3) A law enforcement officer may temporarily stop recording with a body-worn camera when the officer is engaged in a personal matter, such as a personal conversation or using the bathroom.
(4) A law enforcement officer shall read, agree to, and sign a written waiver that consists of a consent to be filmed by a body-worn camera and an acknowledgment of the requirements of this act and the related policies of the law enforcement agency by which the law enforcement officer is employed.

(5) As practicable, a law enforcement officer required to wear a body-worn camera under subsection (1) shall notify another individual if the individual is being recorded by the camera.

(6) When entering a residence under nonexigent circumstances, a law enforcement officer shall ask the residents whether they want the officer to stop recording with the body-worn camera while in the residence. The officer shall record the exchange to document the wishes of the residents.

Sec. 4. A law enforcement agency or law enforcement officer shall not allow a computerized facial recognition program or application to be used with a body-worn camera or a recording made by a body-worn camera unless the use has been authorized by a warrant issued by a court.

Sec. 5. (1) A law enforcement agency shall retain video and audio recorded by a body-worn camera under this act for 2 weeks, unless subsection (2) applies.

(2) A law enforcement agency shall retain video and audio recorded by a body-worn camera under this act for 3 years if any of the following apply:

(a) The recording is of an incident involving the use of force.

(b) The recording is of an incident that leads to detention or arrest of an individual.

(c) The recording is relevant to a formal or informal
complaint against a law enforcement officer or the law enforcement agency.

(d) A request regarding the recording has been made under subsection (4).

(e) A request for a copy of the recording has been made under section 6(1).

(3) A law enforcement agency shall post on the law enforcement agency's public website its policies relating to the retention of recordings made by body-worn cameras under this act, requests for the retention of the recordings, and requests for copies of the recordings.

(4) A person described in subsection (6) may request that a recording made by a body-worn camera under this act be retained under subsection (2). It is not necessary for the person to file a complaint or for there to be a related open investigation for the person to make a request under this subsection.

(5) If evidence that may be useful in a criminal prosecution is obtained from a recording made by a body-worn camera under this act, the law enforcement agency shall retain the recording for any time in addition to the time periods under subsections (1) and (2) and in the same manner as is required by law for other evidence that may be useful in a criminal prosecution.

(6) Any of the following may make a request under subsection (4) or section 6(1):

(a) An individual who is a subject of the recording.

(b) A person whose property has been seized or damaged in relation to, or is otherwise involved with, a crime to which the recording is related.

(c) A parent of an individual described in subdivision (a) or
(d) A legal guardian of an individual described in subdivision (a) or (b).
(e) An attorney for a person described in subdivision (a) or (b).
(f) A person not described in subdivisions (c) to (e) that a person described in subdivision (a) or (b) has given the authority in writing to make the request.

Sec. 6. (1) A person described in section 5(6) may request a copy of a recording made by a body-worn camera under this act. The law enforcement agency shall provide the individual with a copy of the requested recording.
(2) An individual who is not the subject of a recording made by a body-worn camera under this act may request a copy of the recording. If the individuals who are the subjects of the recording consent, the law enforcement agency shall provide the individual who is not the subject of the recording but who made the request under this subsection with a copy of the requested recording. If the individuals who are the subjects of the recording do not consent, the recording is not a public record and is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

Sec. 7. Before deleting or otherwise disposing of a recording made by a body-worn camera under this act, an individual who has the responsibility on behalf of the law enforcement agency of deleting or disposing of the recording shall review all applicable and available records, files, and databases to ascertain whether there is any reason why the recording cannot be deleted or disposed of under this act or the policies of the law enforcement agency.
The individual shall not delete or dispose of the recording if he or she ascertains that there is any such reason.

Sec. 8. If, in connection with a criminal prosecution or civil action, a law enforcement agency is unable to produce a recording that is required to be made and retained under this act, there is a presumption that the recording would corroborate the version of the facts advanced by the defendant in a criminal action or the party opposing the law enforcement officer or law enforcement agency in a civil action.

Sec. 9. (1) A local or county law enforcement agency may request that the department reimburse the agency for the cost of purchasing equipment, or any other expense incurred, to implement this act.

(2) The department shall reimburse a local or county law enforcement agency for reasonable costs contained in a request for reimbursement under subsection (1).

(3) The department may adopt guidelines under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to cover the submission and payment of requests for reimbursement under this section.