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Bill Analysis

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SUMMARY

Force

Force and deadly force

- Provides that a peace officer may only use force if the force is reasonably necessary to achieve a lawful objective, including to effect a lawful arrest, prevent the escape of an offender, or defend the peace officer or another person from physical harm.
- Provides that a peace officer may only use deadly force if the peace officer has an objectively reasonable belief that deadly force is necessary to defend the peace officer or another person from serious physical harm or death.

Excessive force

- Creates the offense “failure to intervene in excessive use of force” which prohibits a peace officer from recklessly failing to intervene to prevent or to stop another peace officer from using excessive force while placing a person under arrest or in detention, taking a person into custody, booking a person, or while controlling or managing a crowd.
- Requires a peace officer who intervenes in another peace officer’s use of excessive force to report the intervention to the peace officer’s immediate supervisor.
- Allows a prosecuting attorney to file charges or a law enforcement agency to take disciplinary action against a peace officer who fails to intervene in another peace officer’s use of excessive force.
- Prohibits an employer from discharging or discriminating against a peace officer who intervenes in another peace officer’s use of excessive force.

Body-worn and dashboard cameras

Activation and deactivation

- Requires every law enforcement agency to provide body-worn cameras to each peace officer of a law enforcement agency who interacts with the public or who is a correctional officer in a jail.
- Requires a peace officer to activate a body-worn camera or dashboard camera when engaging in an enforcement action or, if the peace officer is a correctional officer in a jail, when performing a task that requires an anticipated use of force.
- Allows a peace officer to deactivate a body-worn camera or dashboard camera under specified circumstances.
- Provides that if a peace officer fails to activate a body-worn camera or dashboard camera there is a permissive inference that the missing recording would have demonstrated misconduct by the peace officer and a rebuttable presumption of inadmissibility in specified circumstances.
- Allows a law enforcement agency to take disciplinary action against a peace officer who fails to activate a body-worn camera or dashboard camera.
- Provides that the above provisions prevail over any conflicting provision of a collective bargaining agreement entered into on or after the effective date of the bill.

Release

- Requires every law enforcement agency to establish and follow a retention schedule for body-worn and dashboard camera recordings.
- Requires a law enforcement agency that receives a complaint peace officer misconduct, to release to the public all unedited video and audio recordings to the public, subject to certain exceptions.
- Requires a law enforcement agency to provide, upon request, any audio or video recording described above that includes the death of a person to the person's spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or legal representative.
- Requires a law enforcement agency to redact or obscure any restricted portion of a body-worn camera or dashboard camera recording, subject to certain exceptions.

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DETAILED ANALYSIS

Force

Force and deadly force

The bill provides that a peace officer may only use force if the force is reasonably necessary to achieve a lawful objective, including to effect a lawful arrest, prevent the escape of an offender, defend the peace officer from physical harm, or defend another person from physical harm. A peace officer may only use deadly force if the peace officer has an objectively reasonable belief that deadly force is necessary to defend the peace officer or another person from serious physical harm or death.¹

¹ R.C. 2935.42(A) and (B).

Excessive force

Failure to intervene in excessive use of force

The bill creates the offense of “failure to intervene in excessive use of force” which prohibits a peace officer from recklessly failing to intervene to prevent or to stop another peace officer from using excessive force while placing a person under arrest or in detention, taking a person into custody, booking a person, or while controlling or managing a crowd.²

The penalty for a violation of the offense is a first degree misdemeanor.³

Report on intervention in excessive use of force

The bill requires that a peace officer who intervenes in another peace officer’s use of excessive force to report that intervention to the peace officer’s immediate supervisor. The peace officer must, at a minimum, include all of the following in that report:⁴

- The date, time, and location of the occurrence;
- The identity, if known, and a description of the participants involved in the occurrence;
- A description of the intervention actions taken by the peace officer.

Charges by the prosecuting attorney

If an internal investigation by a law enforcement agency finds that a peace officer employed by a law enforcement agency violated “failure to intervene in excessive use of force,” the bill requires the chief law enforcement officer of the law enforcement agency to inform the prosecuting attorney of this finding to allow the prosecuting attorney to determine whether the prosecuting attorney should file charges against the peace officer. Nothing prohibits a prosecuting attorney from filing charges against a peace officer for a violation of “failure to intervene in excessive use of force” before the conclusion of the internal investigation.⁵

If the prosecuting attorney charges a peace officer with any offense related to and based on the use of excessive force, including a violation of “failure to intervene in excessive use of force,” but does not file charges against any other peace officer who was present during the other peace officer’s use of excessive force, the bill requires the prosecuting attorney to prepare a written report explaining the prosecuting attorney’s basis for the decision to not charge any other peace officer who was present during the use of excessive force with any offense related to and based on the use of excessive force.⁶

² R.C. 2935.43(B).

³ R.C. 2935.43(D).

⁴ R.C. 2935.43(C).

⁵ R.C. 2935.43(E).

⁶ R.C. 2935.43(G)(1).

The bill requires the prosecuting attorney to release the written report to the public, and to post the report on the website of the prosecuting attorney's office, if applicable, within 21 days of the filing of the charges against the peace officer. If the public disclosure of the report would substantially interfere with or jeopardize an ongoing criminal investigation, the prosecuting attorney may delay the public disclosure of the report for not more than 45 days from the date the charges are filed against the peace officer for any offense related to or based on the use of excessive force.⁷

Discipline by law enforcement agency

The bill provides that, in addition to any criminal penalty, if an internal investigation by the law enforcement agency finds that the incident in which the peace officer that is employed by the law enforcement agency failed to intervene resulted in the death or serious physical harm to any person, the law enforcement agency must discipline the peace officer to the extent permitted by any applicable existing collective bargaining agreement.⁸

Discharge or discrimination by employer

The bill prohibits an employer who employs a peace officer from discharging without just cause or otherwise discriminating against a peace officer with respect to tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, if the peace officer, while performing the officer's duties, intervenes in another peace officer's use of excessive force, reports unconstitutional conduct to the employer, or fails to comply with an order that the peace officer reasonably believes is unconstitutional.⁹

The bill prohibits an employer from discriminating in any manner against a peace officer or any other person because that peace officer or other person has reported another peace officer's use of excessive force, or testified, assisted, or participated in any manner in any investigation, proceeding, or hearing relating to that use of excessive force.¹⁰

Definitions

The bill uses the following definitions:¹¹

- **"Excessive force"** means force used by a peace officer that exceeds the minimum amount of force necessary to diffuse an incident or to protect the peace officer or others from serious physical harm. The use of excessive force is presumed when a peace officer continues to use force in excess of the force permitted (see, **"Force and deadly force,"** above) to a person who has been rendered incapable to resist arrest.

⁷ R.C. 2935.43(G)(2).

⁸ R.C. 2935.43(F).

⁹ R.C. 2935.43(H).

¹⁰ R.C. 2935.43(I).

¹¹ R.C. 2935.43(A).

- **“Unconstitutional conduct”** means, under the color of law, statute, ordinance, regulation, or custom, willfully subjecting a person to the deprivation of any rights, privileges, or immunities secured or protected by the United States Constitution or the Ohio Constitution.

Body-worn and dashboard cameras

Activation and deactivation

Provision of body-worn cameras

The bill requires every law enforcement agency in the state, on or before July 1, 2023, to provide body-worn cameras for each peace officer of the law enforcement agency who interacts with the public or who is a correctional officer in a jail. A law enforcement agency may apply to the Attorney General for funds to purchase body-worn cameras for the law enforcement agency.¹²

Required activation of a body-worn or dashboard camera

The bill requires a peace officer to wear and activate a body-worn camera or, if the peace officer’s vehicle is equipped with a dashboard camera, activate a dashboard camera when engaging in an enforcement action or, if the peace officer is a correctional officer in a jail, when performing a task that requires an anticipated use of force, including removing an inmate in a restraint chair.¹³

Exceptions to activation of a body-worn or dashboard camera

The bill allows a peace officer to deactivate a body-worn camera or dashboard camera under the following circumstances: (1) to avoid recording personal information that is not related to a specific case, (2) when working on an assignment that is not related to a specific case, (3) when there is an extended period of inactivity in the enforcement activity or there is contact between the peace officer and an individual that is not related to the enforcement activity, and (4) when the peace officer is involved in administrative, tactical, or management discussions.¹⁴

The requirements to wear and activate do not apply to any of the following: (1) a peace officer who is undercover, (2) a peace officer who is a correctional officer in a jail if the jail is equipped with video cameras, and (3) a peace officer who is assigned to a courtroom.¹⁵

¹² R.C. 2935.40(B) and (F).

¹³ R.C. 2935.40(C).

¹⁴ R.C. 2935.40(D).

¹⁵ R.C. 2935.40(E).

Failure to activate a body-worn or dashboard camera

Permissible inference

The bill specifies that if a peace officer fails to activate a body-worn camera or dashboard camera as described above or tampers with the operation of or any portion of a body-worn camera or dashboard camera recording when required to activate the body-worn camera or dashboard camera, there is a permissive inference in any internal investigation or administrative or civil proceeding that the missing recording would have demonstrated misconduct by the peace officer.¹⁶

Rebuttable presumption

The bill specifies that if a peace officer fails to activate or reactivate the peace officer's body-worn camera or dashboard camera as described above or tampers with the operation of or any portion of a body-worn camera or dashboard camera recording when required to activate the body-worn camera or dashboard camera, there is a rebuttable presumption of inadmissibility in either of the following circumstances:¹⁷

- A statement by the peace officer is sought to be introduced that was not recorded due to the peace officer's failure to activate or reactivate the body-worn camera or dashboard camera;
- A statement by the peace officer is sought to be introduced that was not recorded by other means.

The above provision does not apply if the peace officer did not activate the body-worn camera or dashboard camera because of a malfunction of the body-worn camera or dashboard camera and the peace officer was not aware of that malfunction or was unable to rectify it prior to the incident, provided that the law enforcement agency that employs the peace officer has documentation that demonstrates that the peace officer checked the functionality of the body-worn camera or dashboard camera at the beginning of the peace officer's shift.¹⁸

Disciplinary action

The bill provides that, in addition to any criminal penalty, if a court or internal investigation finds that a peace officer intentionally failed to activate a body-worn camera or dashboard camera or tampered with any body-worn camera or dashboard camera, the law enforcement agency that employs the peace officer must discipline the peace officer to the extent allowed by any applicable existing collective bargaining agreement.¹⁹

¹⁶ R.C. 2953.41(A).

¹⁷ R.C. 2953.41(B).

¹⁸ R.C. 2935.41(C).

¹⁹ R.C. 2935.41(D).

Collective bargaining

The bill provides that the above provisions prevail over any conflicting provision of a collective bargaining agreement entered into on or after the effective date of the bill.²⁰

Release

Retention schedule for body-worn cameras or dashboard cameras

The bill requires every law enforcement in the state to establish and follow a retention schedule for body-worn camera recordings and dashboard camera recordings.²¹

Release of body-worn camera or dashboard camera recordings

The bill provides that, if a law enforcement agency receives a complaint alleging misconduct by a peace officer while conducting an enforcement action, regarding a peace officer employed by the agency, from another peace officer, a nonprofit organization, or a member of the public, that employing agency must release to the public all unedited video and audio recordings of the enforcement action, including those from a body-worn camera, dashboard camera, or otherwise collected during an investigation, within 21 days after the law enforcement agency receives notice of the complaint.²²

The bill requires a law enforcement agency to provide, upon request, any audio or video recording described above that includes the death of a person to the person's spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or legal representative.²³

The bill requires the law enforcement agency to notify the person described above of the person's right to receive and review the audio or video recording at least 72 hours prior to the release of the audio or video recording to the public.²⁴

Restricted portion of a body-worn or dashboard camera recording

If any audio or video recording that is to be released to the public includes a restricted portion of a body-worn camera or dashboard camera recording, the bill requires the law enforcement agency to redact or obscure that recording before releasing the recording to the public. The bill prohibits any law enforcement agency from releasing any unredacted or unobscured recording without obtaining the written authorization of the person in the recording, or, if the person is deceased, incapacitated, or a child, the written release of the person's next of kin.²⁵

²⁰ R.C. 2935.40(G).

²¹ R.C. 149.437(B).

²² R.C. 149.437(C).

²³ R.C. 149.437(D)(1).

²⁴ R.C. 149.437(D)(2).

²⁵ R.C. 149.437(E)(1).

A person who is the subject of an audio or video recording may waive, in writing, the person's privacy interest that is implicated in the audio or video recording. The law enforcement agency must notify that person, if the person's contact information is available, within 20 days after a complaint of peace officer misconduct, that the person has a right to waive the person's privacy interest that is implicated in the audio or video recording.²⁶

The bill provides that, if a law enforcement agency receives a written waiver from that person, the law enforcement agency must not redact, obscure, or withhold the release of the audio or video recording to the public.²⁷

If redacting or obscuring an audio or video recording is insufficient to protect the identity of the privacy interests of the person in the audio or video recording, the bill requires the law enforcement agency, upon request, to release the audio or video recording to the person or, if the person is deceased, incapacitated, or a child, to the person's spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or legal representative within 20 days after the law enforcement agency receives the complaint of the peace officer misconduct.²⁸

Interference with an active or ongoing investigation

The bill provides that, if an audio or video recording would substantially interfere with or jeopardize an active or ongoing investigation, the law enforcement agency may withhold the audio or video recording from being released to the public for not more than 45 days from the date of the allegation of peace officer misconduct. The prosecuting attorney, village solicitor, city director of law, or other similar chief law enforcement officer must prepare a written explanation of the reasons why release of the audio or video recording to the public would substantially interfere with or jeopardize an ongoing investigation. Upon release of the audio or video recording to the public, the prosecuting attorney, village solicitor, city director of law, or other similar chief law enforcement officer must release that written explanation to the public.²⁹

Objection to release of body-worn camera or dashboard camera recording

The bill provides that, if criminal charges have been filed against any person involved in the enforcement action, that person has the right to object to the public release of any body-worn camera or dashboard camera recording. The person must file the objection with the court within 21 days of the appointment of counsel, the filing of an entry of appearance by counsel, or the person's election to proceed *pro se*, whichever is later. If the person elects to proceed *pro se*, the court must advise the person of the deadline to file an objection to the public

²⁶ R.C. 149.437(E)(2)(a).

²⁷ R.C. 149.437(E)(2)(b).

²⁸ R.C. 149.437(F).

²⁹ R.C. 149.437(G).

release of any body-worn camera or dashboard camera recording not later than seven days after the filing of the objection with the court and the court must issue a ruling not later than three days after the hearing.³⁰

Definitions

The bill uses the following definitions:³¹

- **“Body-worn camera”** means a visual and audio recording device worn on the person of a peace officer while the peace officer is engaged in the performance of the peace officer’s duties.
- **“Dashboard camera”** means a visual and audio recording device mounted on a peace officer’s vehicle or vessel that is used while the peace officer is engaged in the performance of the peace officer’s duties.
- **“Enforcement action”** means any of the following:
 - A call for service or a self-initiated service activity;
 - An investigatory stop;
 - A traffic or pedestrian stop;
 - A pursuit by foot, vehicle, bicycle, or any other available means of transportation;
 - A use of force;
 - An arrest;
 - A forced entry into a structure, vehicle, or other premises.
- **“Law enforcement agency”** means a government entity that employs peace officers to perform law enforcement duties.
- **“Restricted portions of a body-worn camera or dashboard camera recording”** means any visual or audio portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following:
 - The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when the law enforcement agency knows or has reason to know the person is a child based on the law enforcement agency’s records or the content of the recording;
 - The death of a person or a deceased person’s body, unless the death was caused by a peace officer or the consent of the decedent’s executor or administrator has been obtained;

³⁰ R.C. 149.437(H).

³¹ R.C. 149.437(A) and 2935.40(A).

- The death of a peace officer, firefighter, paramedic, or other first responder, occurring while the decedent was engaged in the performance of official duties, unless the consent of the decedent's executor or administrator has been obtained;
- Grievous bodily harm, unless the injury was effected by a peace officer or the consent of the injured person or the injured person's guardian has been obtained;
- An act of severe violence against a person that results in serious physical harm to the person, unless the act and injury was effected by a peace officer or the consent of the injured person or the injured person's guardian has been obtained;
- Grievous bodily harm to a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless the consent of the injured person or the injured person's guardian has been obtained;
- An act of severe violence resulting in serious physical harm against a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was engaged in the performance of official duties, unless the consent of the injured person or the injured person's guardian has been obtained;
- A person's nude body, unless the person's consent has been obtained;
- Protected health information, the identity of a person in a health care facility who is not the subject of a law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a law enforcement encounter;
- Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence;
- Information, that does not constitute a confidential law enforcement investigatory record, that could identify a person who provides sensitive or confidential information to a law enforcement agency when the disclosure of the person's identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person;
- Personal information of a person who is not arrested, cited, charged, or issued a written warning by a peace officer;
- Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety;
- A personal conversation unrelated to work between peace officers or between a peace officer and an employee of a law enforcement agency;
- A conversation between a peace officer and a member of the public that does not concern law enforcement activities;
- The interior of a residence, unless the interior of a residence is the location of an adversarial encounter with, or a use of force by, a peace officer;

- Any portion of the interior of a private business that is not open to the public, unless an adversarial encounter with, or a use of force by, a peace officer occurs in that location.

HISTORY

Action	Date
Introduced	07-01-21
