

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 368

**56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

AN ACT

RELATING TO LAW ENFORCEMENT; PROVIDING EXCEPTIONS IN CERTAIN SITUATIONS TO THE REQUIREMENT THAT LAW ENFORCEMENT USE BODY-WORN CAMERAS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 29-1-18 NMSA 1978 (being Laws 2020 (1st S.S.), Chapter 7, Section 1) is amended to read:

"29-1-18. REQUIRING CERTAIN LAW ENFORCEMENT AGENCIES TO USE BODY-WORN CAMERAS WHILE ON DUTY--EXCEPTIONS--ADOPTION OF POLICIES AND PROCEDURES GOVERNING USE.--

A. A law enforcement agency shall require peace officers the agency employs and who routinely interact with the public to wear a body-worn camera while on duty, except as provided in Subsection B of this section. Each law enforcement agency subject to the provisions of this section shall adopt

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1 policies and procedures governing the use of body-worn cameras,  
2 including:

3 (1) requiring activation of a body-worn camera  
4 whenever a peace officer is responding to a call for service or  
5 at the initiation of any other law enforcement or investigative  
6 encounter between a peace officer and a member of the public;

7 (2) prohibiting deactivation of a body-worn  
8 camera until the conclusion of a law enforcement or  
9 investigative encounter;

10 (3) requiring that any video recorded by a  
11 body-worn camera shall be retained by the law enforcement  
12 agency for not less than one hundred twenty days; and

13 (4) establishing disciplinary rules for peace  
14 officers who:

15 (a) fail to operate a body-worn camera  
16 in accordance with law enforcement agency policies;

17 (b) intentionally manipulate a body-worn  
18 camera recording; or

19 (c) prematurely erase a body-worn camera  
20 recording in violation of law enforcement agency policies.

21 B. The provisions of Subsection A of this section  
22 shall not apply when a peace officer:

23 (1) conducts an undercover operation  
24 sanctioned by a law enforcement agency; or

25 (2) conducts an explosive recovery and

1 disposal operation to render safe or disassemble an explosive  
2 or incendiary device and materials.

3 [B-] C. Peace officers who fail to comply with the  
4 policies and procedures required to be adopted pursuant to  
5 Subsection A of this section [~~shall~~] may be presumed to have  
6 acted in bad faith and [~~shall~~] may be deemed liable for the  
7 independent tort of negligent spoliation of evidence or the  
8 independent tort of intentional spoliation of evidence.

9 [G-] D. As used in this section:

10 (1) "body-worn camera" means an electronic  
11 device worn on a person's body that records both audio and  
12 video data;

13 (2) "law enforcement agency" means the police  
14 department of a municipality, the sheriff's office of a county,  
15 the New Mexico state police or the department of public safety;  
16 [~~and~~]

17 (3) "peace officer" means any full-time  
18 salaried or certified part-time salaried officer who by virtue  
19 of office or public employment is vested by law with the duty  
20 to maintain the public peace; and

21 (4) "undercover operation" means an operation  
22 that:

23 (a) is conducted by one or more law  
24 enforcement agencies that is focused on a suspect or suspects  
25 who are the target of an ongoing criminal investigation;

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1                                   (b) involves one or more covert  
2 operatives whose identities are concealed and kept  
3 confidential; and

4                                   (c) is designed to either obtain  
5 information about criminal activity of individuals or  
6 organizations through the development of ongoing relationships  
7 with individuals or organizations or to effect an arrest."

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