

- After reading and giving a copy of the warrant to the person to be searched or to the person in apparent control of the property. If unoccupied, the peace officer shall leave a copy suitably affixed to the premises.

Section 2: A new Section to KRS Chapter 455 is created to require that all peace officers present during the execution of a search warrant be equipped with an operating body-worn camera, that the camera shall be activated at least five minutes prior to the execution of the search warrant, and shall not deactivate the camera any earlier than five minutes following the completion of the execution of warrant.

Section 3: Creates a new Section of KRS Chapter 455 that makes peace officers subject to disciplinary action for violations of Section 1 or 2 of this legislation. This includes suspension or dismissal.

Section 4: A new Section to KRS Chapter 15 is created that requires a peace officer to wear and activate body-worn camera in accordance with Section 2 above, when responding to a call for service, or during any interaction with the public initiated by the officer for the purpose of enforcing the law or investigating a possible violation of the law.

This Section also establishes a rebuttable presumption in any investigative or legal proceeding, excluding any legal proceedings against the peace officer, that if an officer fails to activate a body-worn camera or tampers with its footage or its operation, that the missing footage would have reflected misconduct by the police officer. Further, there shall be a rebuttable presumption of inadmissibility of any statements sought to be introduced in a prosecution through the peace officer related to the incident that were not recorded due to the officer's failure to activate the camera or were not recorded by other means.

In addition to any criminal liability and penalty under the law, if it is determined that an officer intentionally failed to activate or tampered with a body-worn camera, the employer shall impose discipline up to and including termination. If it is determined that the intent was to conceal unlawful or inappropriate actions or to obstruct justice, the officer's certification shall be revoked for a period of not less than one year. The revocation can only be lifted if the peace officer is exonerated by a court within the revocation period. If the incident resulted in a civilian death, the certification shall be revoked permanently and may only be overturned if the officer is exonerated by a court.

Section 5: Amends KRS Chapter 61.168 to require a law enforcement agency to release all unedited video and audio recordings from body-worn cameras, or otherwise collected through investigation, within 21 days of receipt of a formal complaint against a peace officer or the agency. If release of the recordings would substantially jeopardize or interfere with an ongoing investigation, recordings must be released no later than 45 days from the date of the complaint. The prosecuting attorney must issue a written statement justifying the delay in releasing the recordings.

This section also provides that if the incident resulted in a death, the victim's personal representative will be notified of their right to receive and review recordings at least 72

hours prior to public release of the recordings. Lastly, it allows a witness, victim, criminal defendant, or other person with a privacy interest, to waive their individual privacy interest that may be implicated by public release of a recording, in writing. Upon receipt of a written waiver, the law enforcement agency may not redact or withhold a release to protect that privacy interest.

Section 6: Amends KRS 344.450 to expand scope of permissible suits against state and local governments and limit defenses. It makes a person who deprives another person or party of any rights, privileges or immunities secured by the Constitution and laws of Kentucky or the United States, to be liable to the injured party. This section adds punitive damages to the list of damages already included in KRS 344.450.

Section 7: Amends KRS 15.410 to add and define “Deadly incident”.

Section 8: Amends KRS 15.440 to require law enforcement agencies to create policies requiring mandatory drug and alcohol testing for officers who have discharged a firearm or who have been involved in a deadly incident in order to be eligible to share in the distribution of funds from the Law Enforcement Foundation Program (LEFP) fund. The written policy must include the requirement that the drug and alcohol testing be done as soon as practicable but no later than two hours after the discharge of firearm or deadly incident. Any officer who refuses mandatory testing within the two-hour timeframe shall:

- Be suspended without pay for a period of not less than 90 days;
- Be required to include a written statement detailing the reasons the officer did not submit to the testing be included in the officer’s personnel file; and
- Require the written statement be provided to the Kentucky Law Enforcement Council (KLEC).

Further, any peace officer who tests positive for either drugs or alcohol shall be suspended without pay for a period of not less than 180 days and that the police department submit its final determination to KLEC regarding its disposition of the investigation.

Sections 9, 10, 11, 12, 13: Amends KRS 15.340, KRS 15.460, KRS 15.520, KRS 15.512, KRS 61.169, respectively, to conform.

Section 14: Refers to Sections 1-8 of this legislation as “Breonna’s Law”.

The overall fiscal impact of this legislation on local law enforcement is not determinable. The size of the agency and its budget will determine the fiscal impact and could range from moderate to substantial, based on department size and budgets.

The overall implementation costs of a body-worn camera program appears to average about \$35,000 to \$41,000 per year. Hardware and software costs, staff time, and records maintenance and retention are the common issues raised by local law enforcement, especially the smaller departments.

According to the Kentucky League of Cities (KLC), the average cost to a local police department to operate a body-worn camera program was \$41,000 a year. The Kentucky Sheriffs' Association (KSA), the Kentucky Fraternal Order of Police (FOP), and the Kentucky Association of Chiefs of Police (KACP) also report similar costs and each of these agencies support the implementation and use of a body-worn camera program but acknowledge that smaller agencies struggle with costs and availability of staff to manage the program.

A survey conducted by KLC on body-worn cameras during the summer of 2020, indicated that 95% of city police departments with 50 or more full-time officers, operate a body-worn camera program and requires their usage. Sixty-five percent of city police departments with 10-49 full-time officers and 39% of police departments with fewer than 10 full-time officers required body-worn cameras. Cities without a body-worn camera program cited cost, record retention, and staff time as their main reasons for not implementing a program.

The FOP responded using the City of Independence's actual costs. The city entered into a five-year agreement for cameras, equipment, licenses, storage, and software for an approximate cost of \$174,000.

Another respondent for FOP was the Clark County Sheriff, who indicated they were currently implementing a body-worn camera program. Their camera costs were approximately \$650 each and the annual maintenance, storage, retrieval, and other operating costs were approximately \$31,000. They were able to partner with the local police department who currently operate a body-worn camera program, to manage the sheriff's program and be the custodians of the videos at no cost to the sheriff's department.

In addition to the hard costs mentioned above, there are related costs associated with staff time, training, and potentially additional staffing needs. KLC reports that city police departments average 30 open records requests each year and that each request averages five hours to compile.

The use of body-worn cameras is supported by KSA, KACP, and FOP. The only hesitancy to implementing a program is cost, especially costs related to storage and maintenance of the recordings as they have indicated this is most expensive component of a functioning body-worn camera program.

The fiscal impact of Section 6 expanding the scope of permissible lawsuits against local government with limited defenses is undeterminable. The potential impact could be substantial.

According to KLC, civil liability can be quite costly for cities. A court decision could force a city to raise taxes or fees. A monetary judgment in excess of insurance policy limits could force a city to raise taxes and fees, reduce services to the public, and lay off personnel or eliminate positions entirely. Smaller cities with limited or no cash reserves and low tax revenue would be devastated.

Pooled insurance programs are offered by KLC through which cities may purchase insurance. It is unclear whether the discriminatory practice created by this legislation would be covered and would depend on the alleged claim. Most cities would have insurance covering general liability, public officials, law enforcement, workers' compensation, auto, and more. However, certain claims are not covered, such as intentional breach of contract or COVID-19.

Any claim paid likely would increase the premiums paid by the organization as part of their regular loss-ratio review. If an exceptionally large insurance claim was paid, the pool may force premiums for other cities participating in the insurance pool to increase.

Kentucky League of Cities indicated that most cities, especially the smaller ones, retain their city attorney on contract and pay on an hourly basis. In FY 2020, the average hourly rate was \$107. In defending a court case, cities attorneys are likely to spend many hours researching and defending these cases and legal costs would be quite costly to local governments.

The potential loss of LEFP funds, outlined in Section 7, on local government is indeterminable. It is likely the loss of these funds would be moderate to substantial, again based on the budget and size of the department. Local law enforcement agencies who fail to develop, implement, and comply, with a written policy and procedures manual related to mandatory drug and alcohol testing of police officers after the discharge of a firearm or a deadly incident provided for in Section 8, will not be eligible to receive funding from LEFP.

The LEFP fund was created by the General Assembly to support law enforcement by attracting and retaining competent, highly-qualified and experienced officers. According to the FOP, LEFP funds ensures that officers are regularly trained and is recognized for its law enforcement training practices. LEFP also provides an annual supplement to qualified peace officers in the amount of \$4,000. Each unit of local government receives an amount equal to the required employer's contribution on the supplement to the retirement plan and duty category to which the officer belongs. Additionally, each agency receives an administrative expense reimbursement equal to 7.65% of the total annual supplement received for each qualified peace officer, subject to the fund having sufficient funds. The average amount an agency receives for each officer receiving the supplement is \$333 per year.

Loss of the annual supplement may result in higher vacancies as qualified peace officers leave for other agencies. This would result in higher personnel costs related to recruiting and training of new officers. According to the Kentucky Department of Criminal Justice Training (DCJT), the cost for pre-employment screening of prospective law enforcement officers ranges between \$400 and \$500. Reimbursement is sought from the requesting agency of \$181 with the balance covered by KLEC. The cost of law enforcement basic training is borne entirely by DCJT, whose primary funding source is the Kentucky LEFP fund. Kentucky law enforcement agencies do not pay for any costs of basic training,

however, the hiring agencies pay salary to their cadets throughout their training. The Law Enforcement Basic Training Academy takes 20 weeks to complete the 824.5-hour curriculum. During this time, local agencies pay the cadets salary. Additionally, it is likely the agency will also have increased salary costs due to overtime for existing officers to cover the vacancies.

According to KLEC, there are 369 law enforcement agencies that participate in LEFP fund distribution which provides supplements to 7,715 qualified peace officers.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II, above, pertains to the bill as drafted.

Data Source(s): Kentucky League of Cities, Kentucky Sheriffs' Association, Kentucky Fraternal order of Police, Kentucky Association of Chiefs of Police, Kentucky Department of Criminal Justice Training, Kentucky Law Enforcement Council, LRC Staff

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