

CHAPTER 139

(HB 373)

AN ACT relating to disclosure of body-worn camera recordings.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Body-worn camera" means a video or audio electronic recording device that is carried by or worn on the body of a public safety officer. This definition does not include a dashboard mounted camera or recording device used in the course of clandestine investigations;*
- (b) *"Body-worn camera recording" or "recording" means a video or audio recording, or both, that is made by a body-worn camera during the course of a public safety officer's official duties;*
- (c) *"Personal representative" means a court-appointed guardian, attorney, or agent possessing written authorization to act on behalf of a person that is involved in an incident contained in a body-worn camera recording, a person holding a power of attorney for a person that is involved in an incident contained in a body-worn camera recording, or the parent or guardian of a minor child depicted in a body-worn camera recording. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person, the deceased person's surviving spouse, parent, or adult child, the deceased person's attorney, or the parent or guardian of a surviving minor child of the deceased;*
- (d) *"Public agency" has the same meaning as in KRS 61.870(1);*
- (e) *"Public safety officer" means any individual that is an employee of a public agency who is certified as a first responder under KRS Chapter 311A or whose employment duties include law enforcement or firefighting activities; and*
- (f) *"Use of force" means any action by a public safety officer that results in death, physical injury as defined in KRS 500.080(13), discharge of a personal body weapon, chemical agent, impact weapon, extended range impact weapon, sonic weapon, sensory weapon, conducted energy weapon, or a firearm, or involves the intentional pointing of a public safety officer's firearm at a member of the public.*

(2) *Except as provided in this section, the disclosure of body-worn camera recordings shall be governed by the Kentucky Open Records Act, as set forth in KRS 61.870 to 61.884.*

(3) *The retention of body-worn camera video recordings shall be governed by KRS 171.410 to 171.740, and the administrative regulations promulgated by the Kentucky Department of Libraries and Archives.*

(4) *Notwithstanding KRS 61.878(4), unless the request meets the criteria provided under subsection (5) of this section, a public agency may elect not to disclose body-worn camera recordings containing video or audio footage that:*

- (a) *Includes the interior of a place of a private residence where there is a reasonable expectation of privacy, unless the legal owner or lessee with legal possession of the residence requests in writing that the release be governed solely under the provisions of KRS 61.870 to 61.874;*
- (b) *Includes the areas inside of a medical facility, counseling, or therapeutic program office where a patient is registered to receive treatment, receiving treatment, waiting for treatment, or being transported in the course of treatment;*
- (c) *Would disclose health care information shared with patients, their families, or with a patient's care team or that is considered protected health information under the Health Insurance Portability and Accountability Act of 1996;*
- (d) *Includes the areas inside of a correctional facility when disclosure would reveal details of the facility that would jeopardize the safety, security, or well-being of those in custody, the staff of the correctional facility, or law enforcement officers;*

- (e) *Is of a sexual nature or video footage that contains nude images of an individual's genitals, pubic area, anus, or the female nipple;*
 - (f) *Is of a minor child, including but not limited to footage involving juvenile custody matters;*
 - (g) *Includes the body of a deceased individual;*
 - (h) *Would reveal the identity of witnesses, confidential law enforcement informants, or undercover law enforcement officers, or if the release could jeopardize the safety, security, or well-being of a witness or confidential informant;*
 - (i) *Would reveal the location information of a domestic violence program or emergency shelter;*
 - (j) *Would reveal information related to schools, colleges, and universities that is protected by the federal Family Educational Rights and Privacy Act;*
 - (k) *Would result in the disclosure of nonpublic or confidential data classified Criminal Justice Information Services data by the Federal Bureau of Investigation;*
 - (l) *Includes a public safety officer carrying out duties directly related to the hospitalization of persons considered mentally ill;*
 - (m) *Includes the depiction of the serious injury or death of a public safety officer; or*
 - (n) *Includes footage made in conjunction with a law enforcement exercise that includes special response team actions, hostage negotiations, or training events, but only where the public release of tactics, operational protocol, or methodology would disadvantage the capability of public safety officers to successfully respond in emergency or other dangerous situations.*
- (5) *If the recording contains video or audio footage that:*
- (a) *Depicts an encounter between a public safety officer where there is a use of force, the disclosure of the record shall be governed solely by the provisions of KRS 61.870 to 61.884, including all of the exceptions contained therein;*
 - (b) *Depicts an incident which leads to the detention or arrest of an individual or individuals, the disclosure of the record shall be governed solely by the provisions of KRS 61.870 to 61.884, including all of the exceptions contained therein;*
 - (c) *Depicts an incident which is the subject of a formal complaint submitted against a public safety officer under KRS 15.520, 67C.326, or 95.450, or depicts an incident which is the subject of a formal legal or administrative complaint against the agency employing the public safety officer, the release of the record shall be governed by the provisions of KRS 61.870 to 61.884, including all of the exceptions contained therein; or*
 - (d) *Is requested by a person or other entity or the personal representative of a person or entity that is directly involved in the incident contained in the body-worn camera recording, it shall be made available by the public agency to the requesting party for viewing on the premises of the public agency, but the public agency shall not be required to make a copy of the recording except as provided in Section 2 of this Act. The requesting parties shall not be limited in the number of times they may view the recording under this paragraph.*
- (6) *Nothing in this section or Section 2 of this Act shall be interpreted to override any provision related to:*
- (a) *Reports by law enforcement officers and criminal justice agencies under KRS 17.150;*
 - (b) *The law and rules governing discovery or the submission and display of evidence in any court proceeding, whether criminal or civil, or any administrative proceeding; or*
 - (c) *The provisions of KRS 189A.100.*
- ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO READ AS FOLLOWS:
- (1) *Subject to the provisions of KRS 61.870 to 61.884 and the following requirements, a copy of a recording that may be viewed under subsection (5)(d) of Section 1 of this Act shall, upon request, be made for and provided to an attorney that:*
- (a) *Is licensed to practice law in the Commonwealth of Kentucky;*

- (b) *Represents the person or entity that is directly involved in the incident contained in the body-worn camera recording;*
- (c) *Has not been disqualified under subsection (3) of this section; and*
- (d) *Executes an affidavit in support of limited release regarding the attorney's responsibility for the care and custody of the copy of the recording that specifically stipulates that he or she:*
 - 1. *Will only use the recording for the sole purposes of evaluating or preparing for an existing or potential court case or administrative proceeding or in consulting with insurance companies on matters related to insurance coverage of incidents that are depicted in the recording;*
 - 2. *Will not distribute duplicate copies of the recording except for the sole purpose of having an expert or other professional consultant provide analysis to the attorney for the purposes of evaluating or preparing for an existing or potential court case or administrative proceeding or with an insurance company for the purposes of accessing claims coverage, settlement, or other matters involving an insurance contract;*
 - 3. *Will execute a contract with any expert, professional consultant, or insurance company that is provided a duplicate copy of the recording pursuant to this paragraph that requires the expert or professional consultant to be bound by the same limitations and requirements as the attorney for the care and custody of the recording as required by this paragraph;*
 - 4. *Will not allow individuals or others that are not under the attorney's control or supervision the ability to view the contents of the recording in any form except for the sole purpose of preparation for an existing or potential court or administrative proceeding, communications regarding matters related to insurance, or for the purposes of displaying the recording as evidence in any court or administrative proceeding;*
 - 5. *Will destroy any copy of the recording when the recording is no longer used for the purposes of this section or the court or administrative proceeding has been finally adjudicated to its conclusion; and*
 - 6. *Acknowledges that as an officer of the court he or she may be subject to professional discipline or other legal liability for a breach of an affidavit executed under this section.*
- (2) *If an attorney violates an affidavit executed under subsection (1) of this section, the public agency shall refer the matter to the Kentucky Bar Association for it to consider any appropriate action under the Kentucky Rules of Professional Conduct. The public agency may take any additional legal action against an attorney for such a violation.*
- (3) *Any attorney who has been disciplined under the Rules of Professional Conduct or has otherwise been found by a court of law to have violated an affidavit executed under subsection (1) of this section shall be disqualified from making any subsequent requests for copies of recordings under the provisions of this section.*
- (4) *A public agency that produces a copy of a recording pursuant to this section may treat the request for the recording as a commercial request and charge a reasonable fee for the costs of production as authorized under KRS 61.874(4)(c).*

Signed by Governor April 10, 2018.