

HOUSE OF REPRESENTATIVES

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2018 REGULAR SESSION
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Amend printed copy of **HB 373/HCS 1**

On page 2, delete lines 2 through 5 in their entirety, and insert in lieu thereof:

"(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."; and

On page 2, delete lines 15 through 16 in their entirety, and insert in lieu thereof:

"(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;" and

On page 3, delete lines 22 through 27 in their entirety, and insert in lieu thereof:

"(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."; and

On page 4, delete lines 1 through 24 in their entirety and insert in lieu thereof:

Amendment No. HFA 1

Rep. Rep. Robert Benvenuti III

Committee Amendment

Signed: _____

Floor Amendment

LRC Drafter: Kemper, Chandani

Adopted: _____

Date: _____

Rejected: _____

Doc. ID: XXXX

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"(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."**; and

On page 5, delete lines 2 through 3 in their entirety and insert in lieu thereof:

"(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"; and

On page 5, starting at line 7 and continuing through page 6 line 27, delete in the entirety, and

insert in lieu thereof:

"(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).