

BODY CAMERAS FOR LAW ENFORCEMENT OFFICERS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Code of Criminal Procedure and the Government Records Access and Management Act to address the use of body cameras by law enforcement officers.

Highlighted Provisions:

This bill provides:

- ▶ that a recording made by a body-worn camera by a law enforcement officer constitutes a private record, as specified;
- ▶ that a law enforcement agency that uses body-worn cameras by law enforcement officers shall have a written policy governing the use of body-worn cameras that meets or exceeds the minimum guidelines provided;
 - ▶ minimum guidelines for activation and use of body-worn cameras;
 - ▶ for prohibited uses of body-worn cameras by law enforcement officers;
 - ▶ the minimum level of retention for recordings made by body-worn cameras;
 - ▶ minimum guidelines for the use, disclosure, and access to recordings made by body-worn cameras;
 - ▶ guidelines for the technological requirements of any agency retention system that is used to store recordings made by body-worn cameras; and
- ▶ that a law enforcement agency may charge a fee for the cost of providing copies of recordings if the request is not part of a judicial proceeding.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **63G-2-302**, as last amended by Laws of Utah 2014, Chapter 373

35 ENACTS:

36 **77-7a-101**, Utah Code Annotated 1953

37 **77-7a-102**, Utah Code Annotated 1953

38 **77-7a-103**, Utah Code Annotated 1953

39 **77-7a-104**, Utah Code Annotated 1953

40 **77-7a-105**, Utah Code Annotated 1953

41 **77-7a-106**, Utah Code Annotated 1953

42 **77-7a-107**, Utah Code Annotated 1953

43 **77-7a-108**, Utah Code Annotated 1953

44 **77-7a-109**, Utah Code Annotated 1953

45 **77-7a-110**, Utah Code Annotated 1953



47 *Be it enacted by the Legislature of the state of Utah:*

48 Section 1. Section **63G-2-302** is amended to read:

49 **63G-2-302. Private records.**

50 (1) The following records are private:

51 (a) records concerning an individual's eligibility for unemployment insurance benefits,
52 social services, welfare benefits, or the determination of benefit levels;

53 (b) records containing data on individuals describing medical history, diagnosis,
54 condition, treatment, evaluation, or similar medical data;

55 (c) records of publicly funded libraries that when examined alone or with other records
56 identify a patron;

57 (d) records received by or generated by or for:

58 (i) the Independent Legislative Ethics Commission, except for:

- 59 (A) the commission's summary data report that is required under legislative rule; and
60 (B) any other document that is classified as public under legislative rule; or
61 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
62 unless the record is classified as public under legislative rule;
- 63 (e) records received by, or generated by or for, the Independent Executive Branch
64 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review
65 of Executive Branch Ethics Complaints;
- 66 (f) records received or generated for a Senate confirmation committee concerning
67 character, professional competence, or physical or mental health of an individual:
- 68 (i) if, prior to the meeting, the chair of the committee determines release of the records:
69 (A) reasonably could be expected to interfere with the investigation undertaken by the
70 committee; or
71 (B) would create a danger of depriving a person of a right to a fair proceeding or
72 impartial hearing; and
73 (ii) after the meeting, if the meeting was closed to the public;
- 74 (g) employment records concerning a current or former employee of, or applicant for
75 employment with, a governmental entity that would disclose that individual's home address,
76 home telephone number, Social Security number, insurance coverage, marital status, or payroll
77 deductions;
- 78 (h) records or parts of records under Section 63G-2-303 that a current or former
79 employee identifies as private according to the requirements of that section;
- 80 (i) that part of a record indicating a person's Social Security number or federal
81 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
82 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;
- 83 (j) that part of a voter registration record identifying a voter's:
84 (i) driver license or identification card number;
85 (ii) Social Security number, or last four digits of the Social Security number;
86 (iii) email address; or
87 (iv) date of birth;
- 88 (k) a voter registration record that is classified as a private record by the lieutenant
89 governor or a county clerk under Subsection 20A-2-104(4)(f);

- 90 (l) a record that:
- 91 (i) contains information about an individual;
- 92 (ii) is voluntarily provided by the individual; and
- 93 (iii) goes into an electronic database that:
- 94 (A) is designated by and administered under the authority of the Chief Information
- 95 Officer; and
- 96 (B) acts as a repository of information about the individual that can be electronically
- 97 retrieved and used to facilitate the individual's online interaction with a state agency;
- 98 (m) information provided to the Commissioner of Insurance under:
- 99 (i) Subsection 31A-23a-115(2)(a);
- 100 (ii) Subsection 31A-23a-302(3); or
- 101 (iii) Subsection 31A-26-210(3);
- 102 (n) information obtained through a criminal background check under Title 11, Chapter
- 103 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 104 (o) information provided by an offender that is:
- 105 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap
- 106 Offender Registry; and
- 107 (ii) not required to be made available to the public under Subsection 77-41-110(4);
- 108 (p) a statement and any supporting documentation filed with the attorney general in
- 109 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
- 110 homeland security;
- 111 (q) electronic toll collection customer account information received or collected under
- 112 Section 72-6-118 and customer information described in Section 17B-2a-815 received or
- 113 collected by a public transit district, including contact and payment information and customer
- 114 travel data;
- 115 (r) an email address provided by a military or overseas voter under Section
- 116 20A-16-501;
- 117 (s) a completed military-overseas ballot that is electronically transmitted under Title
- 118 20A, Chapter 16, Uniform Military and Overseas Voters Act;
- 119 (t) records received by or generated by or for the Political Subdivisions Ethics Review
- 120 Commission established in Section 11-49-201, except for:

- 121 (i) the commission's summary data report that is required in Section [11-49-202](#); and
- 122 (ii) any other document that is classified as public in accordance with Title 11, Chapter
- 123 49, Political Subdivisions Ethics Review Commission; [~~and~~]
- 124 (u) a record described in Subsection [53A-11a-203](#)(3) that verifies that a parent was
- 125 notified of an incident or threat[-]; and
- 126 (v) any record described in Title 77, Chapter 7a, Law Enforcement Use of Body-Worn
- 127 Cameras, that:
- 128 (i) (A) occurs in a situation that constitutes a reasonable expectation of privacy; and
- 129 (B) does not constitute a recording of interest; or
- 130 (ii) contains images:
- 131 (A) that can be used to identify an individual; and
- 132 (B) that is not relevant to a recording of evidence or a recording of interest as defined
- 133 in Section [77-7a-102](#).
- 134 (2) The following records are private if properly classified by a governmental entity:
- 135 (a) records concerning a current or former employee of, or applicant for employment
- 136 with a governmental entity, including performance evaluations and personal status information
- 137 such as race, religion, or disabilities, but not including records that are public under Subsection
- 138 [63G-2-301](#)(2)(b) or [63G-2-301](#)(3)(o) or private under Subsection (1)(b);
- 139 (b) records describing an individual's finances, except that the following are public:
- 140 (i) records described in Subsection [63G-2-301](#)(2);
- 141 (ii) information provided to the governmental entity for the purpose of complying with
- 142 a financial assurance requirement; or
- 143 (iii) records that must be disclosed in accordance with another statute;
- 144 (c) records of independent state agencies if the disclosure of those records would
- 145 conflict with the fiduciary obligations of the agency;
- 146 (d) other records containing data on individuals the disclosure of which constitutes a
- 147 clearly unwarranted invasion of personal privacy;
- 148 (e) records provided by the United States or by a government entity outside the state
- 149 that are given with the requirement that the records be managed as private records, if the
- 150 providing entity states in writing that the record would not be subject to public disclosure if
- 151 retained by it; and

152 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
153 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
154 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

155 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
156 records, statements, history, diagnosis, condition, treatment, and evaluation.

157 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
158 doctors, or affiliated entities are not private records or controlled records under Section
159 63G-2-304 when the records are sought:

160 (i) in connection with any legal or administrative proceeding in which the patient's
161 physical, mental, or emotional condition is an element of any claim or defense; or

162 (ii) after a patient's death, in any legal or administrative proceeding in which any party
163 relies upon the condition as an element of the claim or defense.

164 (c) Medical records are subject to production in a legal or administrative proceeding
165 according to state or federal statutes or rules of procedure and evidence as if the medical
166 records were in the possession of a nongovernmental medical care provider.

167 Section 2. Section 77-7a-101 is enacted to read:

168 **CHAPTER 7a. LAW ENFORCEMENT USE OF BODY-WORN CAMERAS**

169 **77-7a-101. Title.**

170 This chapter is known as "Law Enforcement Use of Body-Worn Cameras."

171 Section 3. Section 77-7a-102 is enacted to read:

172 **77-7a-102. Definitions.**

173 (1) "Agency retention system" means the system selected by the law enforcement
174 agency for the extraction and storage of video and audio recordings.

175 (2) (a) "Body-worn camera" means a video recording device that is carried by, or worn
176 on the body of, a law enforcement officer and that is capable of recording the operations of the
177 officer.

178 (b) "Body-worn camera" does not include dashboard mounted cameras.

179 (3) "General recording" means any recording captured by a body-worn camera that is
180 not a recording of evidence or a recording of interest.

181 (4) "Law enforcement agency" means any public agency having general police power
182 and charged with making arrests in connection with enforcement of the criminal statutes of this

183 state or the criminal ordinances of any political subdivision of this state.

184 (5) "Law enforcement encounter" means:

185 (a) enforcement stops;

186 (b) dispatched responses for which the primary purpose is not a medical emergency;

187 (c) field interrogations and interviews;

188 (d) uses of force;

189 (e) pursuits; or

190 (f) execution of warrants.

191 (6) "Recording of evidence" means a recording that contains evidence of a crime or
192 information materially related to a possible investigation.

193 (7) (a) "Recording of interest" means a recording:

194 (i) of any encounter that includes a use of force by a law enforcement officer or an
195 instance when an officer draws and displays, or discharges, a firearm;

196 (ii) that records a detention, citation, arrest, search, seizure, or execution of a warrant;

197 (iii) that an officer reasonably believes may become the subject of a complaint; and

198 (iv) that has been requested for reclassification by a subject of a recording or

199 authorized agent of an identifiable subject in the recording as provided in Subsection

200 [77-7a-106\(7\)](#).

201 (b) "Recording of interest" does not include a recording of evidence.

202 Section 4. Section **77-7a-103** is enacted to read:

203 **77-7a-103. Body-worn cameras -- Written policies and procedures.**

204 (1) Any law enforcement agency that uses body-worn cameras shall have a written
205 policy governing the use of body-worn cameras by law enforcement officers that is consistent
206 with the provisions of this chapter.

207 (2) (a) Any written policy under Subsection (1) regarding the use of body-worn
208 cameras by a law enforcement agency shall, at a minimum, comply with and include the
209 requirements contained in this chapter.

210 (b) This chapter does not prohibit a law enforcement agency from adopting body-worn
211 camera policies that are more expansive than the minimum guidelines provided in this chapter.

212 Section 5. Section **77-7a-104** is enacted to read:

213 **77-7a-104. Activation and use of body-worn cameras.**

214 (1) A law enforcement officer using a body-worn camera shall inspect and verify that
215 the equipment is properly functioning as is reasonably within the officer's ability to do so.

216 (2) A law enforcement officer using a body-worn camera shall activate the body-worn
217 camera in a conspicuous manner so as to be clearly visible to the person being recorded.

218 (3) A law enforcement officer shall activate the body-worn camera in accordance with
219 the officer's law enforcement agency policy.

220 (4) A law enforcement officer shall record in an uninterrupted manner until after the
221 conclusion of a law enforcement encounter, except as permitted to interrupt a recording under
222 Subsection 77-7a-104(3), or as permitted by the officer's approved law enforcement agency
223 policy.

224 Section 6. Section 77-7a-105 is enacted to read:

225 **77-7a-105. Notice and privacy.**

226 (1) A law enforcement officer using a body-worn camera shall record during any entry
227 of a private residence when the entry is conducted on the basis of or the execution of a warrant.

228 (2) When a law enforcement officer wearing a body-worn camera enters a private
229 residence and the entry is not conducted pursuant to a warrant, the officer shall:

230 (a) give notice to the occupants of the residence that a body-worn camera is in use; and

231 (b) comply with all reasonable requests to turn off the camera, unless the officer
232 reasonably believes that a recording of interest may result from continued recording or the
233 reactivation of the camera.

234 (3) A law enforcement agency shall make its policy regarding the use of a body-worn
235 camera available to the public and shall place the policy on the agency's public website, when
236 possible.

237 Section 7. Section 77-7a-106 is enacted to read:

238 **77-7a-106. Retention and release of recordings.**

239 (1) All recordings made by a law enforcement officer while acting in the officer's
240 official capacity as a law enforcement officer are the property of the agency and may not be
241 considered the personal or private property of the officer, regardless of whether recordings
242 were made with agency-issued or personally owned devices.

243 (2) All uploads or transfers of recordings to an agency retention system shall be
244 performed in a manner that prevents tampering with recordings.

245 (3) Agencies shall have a written retention policy governing the method and schedule
246 for retention of recordings, as required under Section 63G-2-604.

247 (4) Recordings of evidence or recordings of interest that relate to a criminal case shall
248 be marked with the related case number and the existence of the recording shall be noted in the
249 related case report.

250 (5) A law enforcement officer shall promptly notify a supervisor of the existence of a
251 recording and log the relevant file reference in agency records if the officer reasonably believes
252 the recording of evidence or recording of interest may relate to:

253 (a) a complaint against an officer or agency; or

254 (b) a law enforcement encounter that includes the use of force by the officer.

255 (6) General recordings shall be retained for at least 30 days but no longer than 180
256 days.

257 (7) A subject of a recording, or the authorized agent of the subject, upon filing a
258 complaint against the agency, may request at any time during the retention of a general
259 recording to reclassify a general recording as a recording of interest.

260 (8) Recordings of evidence and recordings of interest shall be retained in accordance
261 with agency retention schedules and at a minimum shall be retained for:

262 (a) not less than 90 days in all cases;

263 (b) not less than the time allowed for filing and investigating complaints in the case of
264 a potential complaint against a law enforcement agency or its officers;

265 (c) not less than the time allowed for the investigation and any appeals in the case of an
266 investigation of misconduct by a law enforcement officer; or

267 (d) not less than the statute of limitations for any criminal charge that may arise from
268 evidence obtained from the recordings in a case of criminal conduct.

269 (9) A recording of evidence or a recording of interest that is used as evidence in a court
270 or administrative proceeding shall be kept in accordance with the Utah State Court Records
271 Retention Schedule.

272 Section 8. Section 77-7a-107 is enacted to read:

273 **77-7a-107. Use of, disclosure, and access to recordings.**

274 (1) A law enforcement agency using body-worn cameras shall, by written policy,
275 specify the personnel within the agency who are authorized to have access to recordings stored

276 within the agency retention system.

277 (2) With the approval of the agency executive and under the supervision of senior staff,
278 a recording may be used for internal training purposes in addition to any other use permitted in
279 accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

280 (3) A request for disclosure of a recording to a subject of the recording, or to the
281 authorized representative of the subject, shall be granted.

282 Section 9. Section **77-7a-108** is enacted to read:

283 **77-7a-108. Use of recordings as evidence.**

284 If a law enforcement officer alters, deletes, or destroys a recording, or fails to record a
285 law enforcement encounter in violation of this chapter, there is a rebuttable presumption in any
286 related criminal proceeding that a recording favorable to the defendant existed or was not
287 captured.

288 Section 10. Section **77-7a-109** is enacted to read:

289 **77-7a-109. Technological requirements.**

290 A law enforcement agency retention system shall maintain the confidentiality, integrity,
291 and accountability of the system and its files and shall include:

292 (1) the ability to provide an accurate audit of the chain of custody for access, viewing,
293 and management of recordings;

294 (2) the ability to report each instance of access to recordings in the system;

295 (3) tamper-proof security settings that prevent the unauthorized deletion or alteration of
296 recordings and the creation of unauthorized copies; and

297 (4) settings that facilitate the deletion of recordings in compliance with retention
298 schedules.

299 Section 11. Section **77-7a-110** is enacted to read:

300 **77-7a-110. Fees.**

301 A law enforcement agency may charge a reasonable fee for the costs of providing a
302 copy of any recording, as authorized in Subsection [77-7a-107\(3\)](#), if the request for a copy of a
303 recording is not part of a judicial proceeding.

Legislative Review Note
as of 2-21-15 7:57 AM

Office of Legislative Research and General Counsel