

1 HB373
2 205032-1
3 By Representative Stringer
4 RFD: Judiciary
5 First Read: 03-MAR-20

SYNOPSIS: This bill would provide for the circumstances and procedures to release recordings made by body-worn cameras or dashboard cameras utilized by law enforcement agencies.

A BILL
TO BE ENTITLED
AN ACT

Relating to law enforcement agency recordings; to provide for circumstances and procedures to release recordings made by body-worn cameras or dashboard cameras utilized by law enforcement agencies.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. For the purposes of this section, the following terms shall have the following meanings:

(1) BODY-WORN CAMERA. An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency

1 personnel and positioned in a way that allows the camera or
2 device to capture interactions the law enforcement agency
3 personnel has with others.

4 (2) CUSTODIAL LAW ENFORCEMENT AGENCY. The law
5 enforcement agency that owns or leases or whose personnel
6 operates the equipment that created the recording at the time
7 the recording was made.

8 (3) DASHBOARD CAMERA. A device or system installed
9 or used in a law enforcement agency vehicle that
10 electronically records images or audio depicting interaction
11 with others by law enforcement agency personnel. This term
12 does not include body-worn cameras.

13 (4) DISCLOSE or DISCLOSURE. To make a recording
14 available for viewing or listening to by the person requesting
15 disclosure, at a time and location chosen by the custodial law
16 enforcement agency. This term does not include the release of
17 a recording.

18 (5) PERSONAL REPRESENTATIVE. A parent,
19 court-appointed guardian, spouse, or attorney of a person
20 whose image or voice is in the recording. If a person whose
21 image or voice is in the recording is deceased, the term also
22 means the personal representative of the estate of the
23 deceased person; the deceased person's surviving spouse,
24 parent, or adult child; the deceased person's attorney; or the
25 parent or guardian of a surviving minor child of the deceased.

26 (6) RECORDING. A visual, audio, or visual and audio
27 recording captured by a body-worn camera, a dashboard camera,

1 or any other video or audio recording device operated by or on
2 behalf of a law enforcement agency or law enforcement agency
3 personnel when carrying out law enforcement responsibilities.
4 This term does not include any video or audio recordings of
5 interviews regarding agency internal investigations or
6 interviews or interrogations of suspects or witnesses.

7 (7) RELEASE. To provide a copy of a recording.

8 Section 2. Recordings are not public records under
9 Section 36-12-40, Code of Alabama 1975, and shall not be
10 considered personnel records under state law.

11 Section 3. (a) Recordings in the custody of a law
12 enforcement agency shall be disclosed only as provided by this
13 section. A person requesting disclosure of a recording must
14 make a written request to the head of the custodial law
15 enforcement agency that states the date and approximate time
16 of the activity captured in the recording or otherwise
17 identifies the activity with reasonable particularity
18 sufficient to identify the recording to which the request
19 refers. The head of the custodial law enforcement agency may
20 only disclose a recording to the following:

21 (1) A person whose image or voice is in the
22 recording.

23 (2) A personal representative of an adult person
24 whose image or voice is in the recording, if the adult person
25 has consented to the disclosure.

1 (3) A personal representative of a minor or of an
2 adult person under lawful guardianship whose image or voice is
3 in the recording.

4 (4) A personal representative of a deceased person
5 whose image or voice is in the recording.

6 (5) A personal representative of an adult person who
7 is incapacitated and unable to provide consent to disclosure.

8 (b) When disclosing a recording under subsection
9 (a), the law enforcement agency shall disclose only those
10 portions of the recording that are relevant to the person's
11 request.

12 (c) A person who receives disclosure pursuant to
13 this section shall not record or copy the recording.

14 Section 4. (a) Upon receipt of the written request
15 for disclosure, as promptly as possible, the custodial law
16 enforcement agency must either disclose the portion of the
17 recording relevant to the person's request or notify the
18 requestor of the custodial law enforcement agency's decision
19 not to disclose the recording to the requestor.

20 (b) The custodial law enforcement agency may
21 consider any of the following factors in determining if a
22 recording is disclosed:

23 (1) If the person requesting disclosure of the
24 recording is a person authorized to receive disclosure
25 pursuant to Section 3.

1 (2) If the recording contains information that is
2 otherwise confidential or exempt from disclosure or release
3 under state or federal law.

4 (3) If disclosure would reveal information regarding
5 a person that is of a highly sensitive personal nature.

6 (4) If disclosure may harm the reputation or
7 jeopardize the safety of a person.

8 (5) If disclosure would create a serious threat to
9 the fair, impartial, and orderly administration of justice.

10 (6) If confidentiality is necessary to protect
11 either an active or inactive internal or criminal
12 investigation or potential internal or criminal investigation.

13 Section 5. (a) If a law enforcement agency denies
14 disclosure pursuant to this section, or has failed to provide
15 disclosure more than three business days after the request for
16 disclosure, the person seeking disclosure may apply to the
17 circuit court in any county where any portion of the recording
18 was made for a review of the denial of disclosure. The court
19 may conduct an in-camera review of the recording. The court
20 may order the disclosure of the recording only if the court
21 finds that the law enforcement agency abused its discretion in
22 denying the request for disclosure. The court may only order
23 disclosure of those portions of the recording that are
24 relevant to the person's request. A person who receives
25 disclosure pursuant to this section shall not record or copy
26 the recording. An order issued pursuant to this section may
27 not order the release of the recording.

1 (b) In any proceeding pursuant to this section, the
2 following persons shall be notified and those persons, or
3 their designated representative, shall be given an opportunity
4 to be heard at any proceeding:

5 (1) The head of the custodial law enforcement
6 agency.

7 (2) Any law enforcement agency personnel whose image
8 or voice is in the recording and the head of that person's
9 employing law enforcement agency.

10 (3) The district attorney of the jurisdiction where
11 the custodial law enforcement agency is located.

12 (c) Actions brought pursuant to this section shall
13 be set for hearing as soon as practicable, and subsequent
14 proceedings in such actions shall be accorded priority by the
15 trial and appellate courts.

16 Section 6. (a) Notwithstanding Section 8, a person
17 authorized to receive disclosure pursuant to Section 3, or the
18 custodial law enforcement agency, may petition the circuit
19 court in any county where any portion of the recording was
20 made for an order releasing the recording to a person
21 authorized to receive disclosure. There shall be no fee for
22 filing the petition, which shall be filed on a form approved
23 by the Administrative Office of Courts and shall state the
24 date and approximate time of the activity captured in the
25 recording, or otherwise identify the activity with reasonable
26 particularity sufficient to identify the recording. If the
27 petitioner is a person authorized to receive disclosure,

1 notice and an opportunity to be heard shall be given to the
2 head of the custodial law enforcement agency. Petitions filed
3 pursuant to this section shall be set for hearing as soon as
4 practicable and shall be accorded priority by the court.

5 (b) The court shall first determine if the person to
6 whom release of the recording is requested is a person
7 authorized to receive disclosure pursuant to Section 3. In
8 making this determination, the court may conduct an in-camera
9 review of the recording and may allow the petitioner to be
10 present to assist in identifying the image or voice in the
11 recording that authorizes disclosure to the person to whom
12 release is requested.

13 (c) If the court determines that the person is not
14 authorized to receive disclosure pursuant to Section 3, there
15 shall be no right of appeal, and the petitioner may file an
16 action for release pursuant to Section 7.

17 (d) If the court determines that the person to whom
18 release of the recording is requested is a person authorized
19 to receive disclosure pursuant to Section 3, the court shall
20 consider the standards set out in Section 8 and any other
21 standards the court deems relevant in determining whether to
22 order the release of all or a portion of the recording.

23 (e) The court may conduct an in-camera review of the
24 recording. The court shall release only those portions of the
25 recording that are relevant to the person's request and may
26 place any conditions or restrictions on the release of the
27 recording that the court deems appropriate.

1 Section 7. (a) Except as specifically provided
2 otherwise in this act, recordings in the custody of a law
3 enforcement agency shall only be released pursuant to court
4 order. Any custodial law enforcement agency or any person
5 requesting release of a recording may file an action in the
6 circuit court in any county where any portion of the recording
7 was made for an order releasing the recording. The request for
8 release must state the date and approximate time of the
9 activity captured in the recording, or otherwise identify the
10 activity with reasonable particularity sufficient to identify
11 the recording to which the action refers. The court may
12 conduct an in-camera review of the recording. In determining
13 whether to order the release of all or a portion of the
14 recording, in addition to any other standards the court deems
15 relevant, the court shall consider the applicability of all of
16 the following standards:

17 (1) Release is necessary to advance a compelling
18 public interest.

19 (2) The recording contains information that is
20 otherwise confidential or exempt from disclosure or release
21 under state or federal law.

22 (3) The person requesting release is seeking to
23 obtain evidence to determine legal issues in a current or
24 potential court proceeding.

25 (4) Release would reveal information regarding a
26 person that is of a highly sensitive personal nature.

1 (5) Release may harm the reputation or jeopardize
2 the safety of a person.

3 (6) Release would create a serious threat to the
4 fair, impartial, and orderly administration of justice.

5 (7) Confidentiality is necessary to protect either
6 an active or inactive internal or criminal investigation or
7 potential internal or criminal investigation.

8 (8) There is good cause shown to release all
9 portions of a recording.

10 (b) The court shall release only those portions of
11 the recording that are relevant to the person's request, and
12 may place any conditions or restrictions on the release of the
13 recording that the court deems appropriate. In any proceeding
14 pursuant to this section, the following persons shall be
15 notified and those persons, or their designated
16 representative, shall be given an opportunity to be heard at
17 any proceeding:

18 (1) The head of the custodial law enforcement
19 agency.

20 (2) Any law enforcement agency personnel whose image
21 or voice is in the recording and the head of that person's
22 employing law enforcement agency.

23 (3) The district attorney of the jurisdiction where
24 the custodial law enforcement agency is located.

25 (c) Actions brought pursuant to this section shall
26 be set for hearing as soon as practicable, and subsequent

1 proceedings in such actions shall be accorded priority by the
2 trial and appellate courts.

3 Section 8. (a) Notwithstanding the requirements of
4 Sections 3, 6, and 7, a custodial law enforcement agency shall
5 disclose or release a recording to a district attorney for any
6 of the following purposes:

7 (1) For review of potential criminal charges.

8 (2) In order to comply with discovery requirements
9 in a criminal prosecution.

10 (3) For use in criminal proceedings in district
11 court.

12 (4) Any other law enforcement purpose.

13 (b) A custodial law enforcement agency may disclose
14 or release a recording for any of the following purposes:

15 (1) For law enforcement training purposes.

16 (2) Within the custodial law enforcement agency for
17 any administrative, training, or law enforcement purpose.

18 (3) To another law enforcement agency for law
19 enforcement purposes.

20 Section 9. Any recording subject to this act shall
21 be retained for the period of time required by state law for
22 recordings.

23 Section 10. Each law enforcement agency that uses
24 body-worn cameras or dashboard cameras shall adopt a policy
25 applicable to the use of those cameras.

26 Section 11. No civil liability shall arise from
27 compliance with this act, provided that the acts or omissions

1 are made in good faith and do not constitute gross negligence,
2 willful or wanton misconduct, or intentional wrongdoing.

3 Section 12. A law enforcement agency may charge a
4 fee to offset the cost incurred to make a copy of a recording
5 for release. The fee shall not exceed the actual cost of
6 making the copy.

7 Section 13. The court may not award attorneys' fees
8 to any party in any action brought pursuant to this act.

9 Section 14. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.