

1 AN ACT relating to open records.

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

3 ➔SECTION 1. A NEW SECTION OF KRS 61.870 TO 61.884 IS CREATED TO
4 READ AS FOLLOWS:

- 5 *(1) All calls made to 911 that pertain to law enforcement, along with all dispatch*
6 *communications, shall be considered open records, and shall be governed by KRS*
7 *61.870 to 61.884 unless otherwise provided in this section.*
- 8 *(2) If any public agency, including any law enforcement agency, county attorney, or*
9 *Commonwealth's attorney has obtained or created records that pertain to any 911*
10 *communication relating to law enforcement in an ongoing investigation that may*
11 *result in a prospective law enforcement action or administrative adjudication,*
12 *pursuant to KRS 61.878(1)(h), then the agency or attorney shall release all*
13 *relevant information pertaining to the 911 communication on its Web site,*
14 *pursuant to subsections (3) to (5) of this section.*
- 15 *(3) The content made available via the public agency's Web site pursuant to*
16 *subsection (2) of this section shall include body camera footage, 911 audio,*
17 *dispatch communications, or any other recording, video, or transcript related to*
18 *the 911 communication.*
- 19 *(4) All records related to 911 communication shall be made available on the Web site*
20 *within three (3) days of the communication, unless the information contains body*
21 *camera footage, in which the public agency shall have fourteen (14) days to*
22 *release the body camera footage onto the Web site.*
- 23 *(5) If the public agency cannot make the 911 communication available on its Web*
24 *site within three (3) days, or if it cannot release the body camera footage within*
25 *fourteen (14) days, then on its Web site, it shall specifically state the reasons the*
26 *information cannot be made available and shall provide a date to which the*
27 *information will be made available. This subsection shall not preclude a person*

1 from appealing any claim or seeking enforcement pursuant to KRS 61.880 or
2 KRS 61.882.

3 ➔Section 2. KRS 17.150 is amended to read as follows:

4 (1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer,
5 parole officer; warden or superintendent of a prison, reformatory, correctional
6 school, mental hospital, or institution for the intellectually disabled; Department of
7 Kentucky State Police; state fire marshal; Board of Alcoholic Beverage Control;
8 Cabinet for Health and Family Services; Transportation Cabinet; Department of
9 Corrections; Department of Juvenile Justice; and every other person or criminal
10 justice agency, except the Court of Justice and the Department of Public Advocacy,
11 public or private, dealing with crimes or criminals or with delinquency or
12 delinquents, when requested by the cabinet, shall:

- 13 (a) Install and maintain records needed for reporting data required by the cabinet;
14 (b) Report to the cabinet as and when the cabinet requests all data demanded by it,
15 except that the reports concerning a juvenile delinquent shall not reveal the
16 juvenile's or the juvenile's parents' identity;
17 (c) Give the cabinet or its accredited agent access for purpose of inspection; and
18 (d) Cooperate with the cabinet to the end that its duties may be properly
19 performed.

20 (2) Intelligence and investigative reports maintained by criminal justice agencies are
21 subject to public inspection if prosecution is completed or a determination not to
22 prosecute has been made. However, portions of the records may be withheld from
23 inspection if the inspection would disclose:

- 24 (a) The name or identity of any confidential informant or information which may
25 lead to the identity of any confidential informant;
26 (b) Information of a personal nature, the disclosure of which will not tend to
27 advance a wholesome public interest or a legitimate private interest;

1 (c) Information which may endanger the life or physical safety of law
2 enforcement personnel; or

3 (d) Information contained in the records to be used in a prospective law
4 enforcement action.

5 (3) Any record or portion of a record withheld pursuant to paragraph (2)(d) of this
6 section shall not apply to 911 communications pertaining to law enforcement. If
7 the record relates to a 911 communication pertaining to law enforcement, the
8 record shall not be withheld and the law enforcement agency or agencies
9 involved shall release all relevant recordings and information pursuant to Section
10 1 of this Act.

11 (4) When a demand for the inspection of the records is refused by the custodian of the
12 record, the burden shall be upon the custodian to justify the refusal of inspection
13 with specificity. Exemptions provided by this section shall not be used by the
14 custodian of the records to delay or impede the exercise of rights granted by this
15 section.

16 (5)~~(4)~~ Centralized criminal history records are not subject to public inspection.
17 Centralized history records mean information on individuals collected and compiled
18 by the Justice and Public Safety Cabinet from criminal justice agencies and
19 maintained in a central location consisting of identifiable descriptions and notations
20 of arrests, detentions, indictments, information, or other formal criminal charges
21 and any disposition arising therefrom, including sentencing, correctional
22 supervision, and release. The information shall be restricted to that recorded as the
23 result of the initiation of criminal proceedings or any proceeding related thereto.
24 Nothing in this subsection shall apply to documents maintained by criminal justice
25 agencies which are the source of information collected by the Justice and Public
26 Safety Cabinet. Criminal justice agencies shall retain the documents and no official
27 thereof shall willfully conceal or destroy any record with intent to violate the

1 provisions of this section.

2 ~~(6)~~⁽⁵⁾ The provisions of KRS Chapter 61 dealing with administrative and judicial
3 remedies for inspection of public records and penalties for violations thereof shall
4 be applicable to this section.

5 ~~(7)~~⁽⁶⁾ The secretary of justice and public safety shall adopt the administrative
6 regulations necessary to carry out the provisions of the criminal history record
7 information system and to insure the accuracy of the information based upon
8 recommendations submitted by the commissioner, Department of Kentucky State
9 Police.

10 ~~(8)~~⁽⁷⁾ The Administrative Office of the Courts may, upon suitable agreement
11 between the Chief Justice and the secretary of justice and public safety, supply
12 criminal justice information and data to the cabinet. No information, other than that
13 required by KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit
14 clerk, justice or judge, court, or agency of the Court of Justice unless the solicitation
15 or request for information is made pursuant to an agreement which may have been
16 reached between the Chief Justice and the secretary of justice and public safety.

17 ➔Section 3. KRS 61.168 is repealed, reenacted, amended, and renumbered as
18 KRS 61.8747 to read as follows:

19 (1) As used in this section:

20 (a) "Body-worn camera" means a video or audio electronic recording device that
21 is carried by or worn on the body of a public safety officer. This definition
22 does not include a dashboard mounted camera or recording device used in the
23 course of clandestine investigations;

24 (b) "Body-worn camera recording" or "recording" means a video or audio
25 recording, or both, that is made by a body-worn camera during the course of a
26 public safety officer's official duties;

27 (c) "Personal representative" means a court-appointed guardian, attorney, or agent

1 possessing written authorization to act on behalf of a person that is involved in
2 an incident contained in a body-worn camera recording, a person holding a
3 power of attorney for a person that is involved in an incident contained in a
4 body-worn camera recording, or the parent or guardian of a minor child
5 depicted in a body-worn camera recording. If a person depicted in the
6 recording is deceased, the term also means the personal representative of the
7 estate of the deceased person, the deceased person's surviving spouse, parent,
8 or adult child, the deceased person's attorney, or the parent or guardian of a
9 surviving minor child of the deceased;

10 (d) ~~["Public agency" has the same meaning as in KRS 61.870(1);~~

11 ~~(e)—~~"Public safety officer" means any individual that is an employee of a public
12 agency who is certified as a first responder under KRS Chapter 311A or
13 whose employment duties include law enforcement or firefighting activities;
14 and

15 ~~(e)(f)~~ "Use of force" means any action by a public safety officer that results in
16 death, physical injury as defined in KRS 500.080(13), discharge of a personal
17 body weapon, chemical agent, impact weapon, extended range impact
18 weapon, sonic weapon, sensory weapon, conducted energy weapon, or a
19 firearm, or involves the intentional pointing of a public safety officer's firearm
20 at a member of the public.

21 (2) Except as provided in this section, the disclosure of body-worn camera recordings
22 shall be governed by the Kentucky Open Records Act, as set forth in KRS 61.870 to
23 61.884.

24 (3) The retention of body-worn camera video recordings shall be governed by KRS
25 171.410 to 171.740, and the administrative regulations promulgated by the
26 Kentucky Department of Libraries and Archives.

27 (4) Notwithstanding KRS 61.878(4), unless the request meets the criteria provided

- 1 under subsection (5) of this section, a public agency may ~~elect not to~~ redact ~~disclose~~ body-worn camera recordings containing video or audio footage that:
- 2
- 3 (a) Includes the interior of a place of a private residence where there is a
- 4 reasonable expectation of privacy, unless the legal owner or lessee with legal
- 5 possession of the residence requests in writing that the release be governed
- 6 solely under the provisions of KRS 61.870 to 61.884;
- 7 (b) Includes the areas inside of a medical facility, counseling, or therapeutic
- 8 program office where a patient is registered to receive treatment, receiving
- 9 treatment, waiting for treatment, or being transported in the course of
- 10 treatment;
- 11 (c) Would disclose health care information shared with patients, their families, or
- 12 with a patient's care team or that is considered protected health information
- 13 under the Health Insurance Portability and Accountability Act of 1996;
- 14 (d) Includes the areas inside of a correctional facility when disclosure would
- 15 reveal details of the facility that would jeopardize the safety, security, or well-
- 16 being of those in custody, the staff of the correctional facility, or law
- 17 enforcement officers;
- 18 (e) Is of a sexual nature or video footage that contains nude images of an
- 19 individual's genitals, pubic area, anus, or the female nipple;
- 20 (f) Is of a minor child, including but not limited to footage involving juvenile
- 21 custody matters;
- 22 (g) Includes the body of a deceased individual;
- 23 (h) Would reveal the identity of witnesses, confidential law enforcement
- 24 informants, or undercover law enforcement officers, or if the release could
- 25 jeopardize the safety, security, or well-being of a witness or confidential
- 26 informant;
- 27 (i) Would reveal the location information of a domestic violence program or

- 1 emergency shelter;
- 2 (j) Would reveal information related to schools, colleges, and universities that is
- 3 protected by the federal Family Educational Rights and Privacy Act;
- 4 (k) Would result in the disclosure of nonpublic or confidential data classified as
- 5 Criminal Justice Information Services data by the Federal Bureau of
- 6 Investigation;
- 7 (l) Includes a public safety officer carrying out duties directly related to the
- 8 hospitalization of persons considered mentally ill;
- 9 (m) Includes the depiction of the serious injury or death of a public safety officer;
- 10 or
- 11 (n) Includes footage made in conjunction with a law enforcement exercise that
- 12 includes special response team actions, hostage negotiations, or training
- 13 events, but only where the public release of tactics, operational protocol, or
- 14 methodology would disadvantage the capability of public safety officers to
- 15 successfully respond in emergency or other dangerous situations.
- 16 (5) If the recording contains video or audio footage that:
- 17 (a) Depicts an encounter between a public safety officer where there is a use of
- 18 force, the disclosure of the record shall be governed solely by the provisions
- 19 of KRS 61.870 to 61.884, including all of the exceptions contained therein;
- 20 (b) *Involves any 911 communication pertaining to law enforcement, the*
- 21 *disclosure of the record shall be governed by KRS 61.870 to 61.884 and*
- 22 *Section 1 of this Act;*
- 23 (c) Depicts an incident which leads to the detention or arrest of an individual or
- 24 individuals, the disclosure of the record shall be governed solely by the
- 25 provisions of KRS 61.870 to 61.884, including all of the exceptions contained
- 26 therein;
- 27 (d)~~(e)~~ Depicts an incident which is the subject of a formal complaint submitted

1 against a public safety officer under KRS 15.520, 67C.326, or 95.450, or
 2 depicts an incident which is the subject of a formal legal or administrative
 3 complaint against the agency employing the public safety officer, the release
 4 of the record shall be governed by the provisions of KRS 61.870 to 61.884,
 5 including all of the exceptions contained therein; or

6 ~~(e)~~~~(d)~~ Is requested by a person, ~~or other~~ entity, or the personal representative
 7 of a person or entity ~~that is~~ directly involved in the incident contained in the
 8 body-worn camera recording. ***The body-worn camera recording*** ~~, it~~ shall be
 9 made available by the public agency to the requesting party for viewing on the
 10 premises of the public agency, ***or upon request, a copy of the footage may be***
 11 ***obtained by the person, entity, or personal representative of the person or***
 12 ***entity*** ~~but the public agency shall not be required to make a copy of the~~
 13 ~~recording except as provided in KRS 61.169].~~ The requesting parties shall not
 14 be limited in the number of times they may view the recording under this
 15 paragraph.

16 (6) Nothing in this section or ***Section 4 of this Act*** ~~[KRS 61.169]~~ shall be interpreted to
 17 override any provision related to:

- 18 (a) Reports by law enforcement officers and criminal justice agencies under KRS
 19 17.150;
- 20 (b) The law and rules governing discovery or the submission and display of
 21 evidence in any court proceeding, whether criminal or civil, or any
 22 administrative proceeding; or
- 23 (c) The provisions of KRS 189A.100.

24 ➔Section 4. KRS 61.169 is repealed, reenacted, and renumbered as KRS 61.8748
 25 to read as follows:

- 26 (1) Subject to the provisions of KRS 61.870 to 61.884 and the following requirements,
 27 a copy of a recording that may be viewed under ***paragraph (5)(e) of Section 3 of***

1 this Act ~~[KRS 61.168(5)(d)]~~ shall, upon request, be made for and provided to an
2 attorney that:

- 3 (a) Is licensed to practice law in the Commonwealth of Kentucky;
- 4 (b) Represents the person or entity that is directly involved in the incident
5 contained in the body-worn camera recording;
- 6 (c) Has not been disqualified under subsection (3) of this section; and
- 7 (d) Executes an affidavit in support of limited release regarding the attorney's
8 responsibility for the care and custody of the copy of the recording that
9 specifically stipulates that he or she:
- 10 1. Will only use the recording for the sole purposes of evaluating or
11 preparing for an existing or potential court case or administrative
12 proceeding or in consulting with insurance companies on matters related
13 to insurance coverage of incidents that are depicted in the recording;
- 14 2. Will not distribute duplicate copies of the recording except for the sole
15 purpose of having an expert or other professional consultant provide
16 analysis to the attorney for the purposes of evaluating or preparing for an
17 existing or potential court case or administrative proceeding or with an
18 insurance company for the purposes of accessing claims coverage,
19 settlement, or other matters involving an insurance contract;
- 20 3. Will execute a contract with any expert, professional consultant, or
21 insurance company that is provided a duplicate copy of the recording
22 pursuant to this paragraph that requires the expert or professional
23 consultant to be bound by the same limitations and requirements as the
24 attorney for the care and custody of the recording as required by this
25 paragraph;
- 26 4. Will not allow individuals or others that are not under the attorney's
27 control or supervision the ability to view the contents of the recording in

- 1 any form except for the sole purpose of preparation for an existing or
2 potential court or administrative proceeding, communications regarding
3 matters related to insurance, or for the purposes of displaying the
4 recording as evidence in any court or administrative proceeding;
- 5 5. Will destroy any copy of the recording when the recording is no longer
6 used for the purposes of this section or the court or administrative
7 proceeding has been finally adjudicated to its conclusion; and
- 8 6. Acknowledges that as an officer of the court, he or she may be subject to
9 professional discipline or other legal liability for a breach of an affidavit
10 executed under this section.
- 11 (2) If an attorney violates an affidavit executed under subsection (1) of this section, the
12 public agency shall refer the matter to the Kentucky Bar Association for it to
13 consider any appropriate action under the Kentucky Rules of Professional Conduct.
14 The public agency may take any additional legal action against an attorney for such
15 a violation.
- 16 (3) Any attorney who has been disciplined under the Rules of Professional Conduct or
17 has otherwise been found by a court of law to have violated an affidavit executed
18 under subsection (1) of this section shall be disqualified from making any
19 subsequent requests for copies of recordings under the provisions of this section.
- 20 (4) A public agency that produces a copy of a recording pursuant to this section may
21 treat the request for the recording as a commercial request and charge a reasonable
22 fee for the costs of production as authorized under KRS 61.874(4)(c).