

1 HB36
2 196529-1
3 By Representatives Givan, Rogers, Hall and Bracy
4 RFD: Public Safety and Homeland Security
5 First Read: 05-MAR-19
6 PFD: 02/14/2019

2
3
4
5
6
7
8 SYNOPSIS: This bill would provide that recordings made
9 by law enforcement agencies are not public records.

10 This bill would establish a procedure to
11 determine whether, to whom, and what portions of a
12 recording may be disclosed or a copy released.

13 This bill would establish the procedure for
14 contesting a refusal to disclose a recording or to
15 obtain a copy of a recording.

16 This bill would direct state or local law
17 enforcement agencies to provide, upon request,
18 access to view and analyze recordings.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 Relating to law enforcement; to provide that
25 recordings made by law enforcement agencies are not public
26 records; to establish a procedure to determine whether, to
27 whom, and what portions of a recording may be disclosed or a

1 copy released; to establish the procedure for contesting a
2 refusal to disclose a recording or to obtain a copy of a
3 recording; to direct state or local law enforcement agencies;
4 to provide access to view and analyze recordings under certain
5 conditions.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. As used in this act, the following terms
8 shall have the following meanings:

9 (1) BODY-WORN CAMERA. An operational video or
10 digital camera or other electronic device, including a
11 microphone or other mechanism, for allowing audio capture
12 affixed to the uniform or person of law enforcement agency
13 personnel and positioned in a way that allows the camera or
14 device to capture interactions between the law enforcement
15 agency personnel and other persons.

16 (2) CUSTODIAL LAW ENFORCEMENT AGENCY. A state or
17 local law enforcement agency that owns, leases, or whose
18 personnel operates the equipment that created a recording at
19 the time the recording was made.

20 (3) DASHBOARD CAMERA. A device or system installed
21 or used in a law enforcement agency vehicle that
22 electronically records images or audio depicting interaction
23 with others by law enforcement agency personnel. This term
24 does not include body-worn cameras.

25 (4) DISCLOSE or DISCLOSURE. To make a recording
26 available for viewing or listening to by the person requesting
27 disclosure, at a time and location chosen by the custodial law

1 enforcement agency. This term does not include the release of
2 a recording.

3 (5) PERSONAL REPRESENTATIVE. A parent,
4 court-appointed guardian, spouse, or attorney of a person
5 whose image or voice is in the recording. If a person whose
6 image or voice is in the recording is deceased, the term also
7 means the personal representative of the estate of the
8 deceased person; the surviving spouse, parent, or adult child
9 of the deceased person; the attorney of the deceased person;
10 or the parent or guardian of a surviving minor child of the
11 deceased person.

12 (6) RECORDING. A visual, audio, or visual and audio
13 recording captured by a body-worn camera, a dashboard camera,
14 or any other video or audio recording device operated by or on
15 behalf of a law enforcement agency or law enforcement agency
16 personnel when carrying out law enforcement responsibilities.
17 This term does not include any video or audio recordings of
18 interviews regarding agency internal investigations or
19 interviews or interrogations of suspects or witnesses.

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

21 Section 2. Recordings are not public records as
22 defined by Section 41-13-1 of the Code of Alabama 1975.
23 Recordings are not personnel records of any person employed as
24 a law enforcement officer by a municipality, sheriff's
25 department, or any agency of the state.

26 Section 3. (a) A recording in the custody of a law
27 enforcement agency shall be disclosed only as provided by this

1 act. A person requesting disclosure of a recording shall make
2 a written request to the head of the custodial law enforcement
3 agency that states the date and approximate time of the
4 activity captured in the recording or otherwise identifies the
5 activity with reasonable particularity sufficient to identify
6 the recording to which the request refers.

7 (b) The custodial law enforcement agency may only
8 disclose a recording to the following:

9 (1) A person whose image or voice is in the
10 recording.

11 (2) A personal representative of an adult person
12 whose image or voice is in the recording if the adult person
13 has consented to the disclosure.

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

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

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

21 (c) When disclosing the recording, the law
22 enforcement agency shall disclose only those portions of the
23 recording that are relevant to the request of the person. A
24 person who receives disclosure pursuant to this act may not
25 record or copy the recording.

26 Section 4. (a) Upon receipt of the written request
27 for disclosure, as promptly as possible, the custodial law

1 enforcement agency shall either disclose the portion of the
2 recording relevant to the request of the person or notify the
3 requestor of the decision of the custodial law enforcement
4 agency not to disclose the recording to the requestor.

5 (b) The custodial law enforcement agency may
6 consider any of the following factors in determining if a
7 recording should be disclosed:

8 (1) If the person requesting disclosure of the
9 recording is authorized to receive disclosure pursuant to
10 Section 3.

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

14 (3) If disclosure would reveal information that is
15 of a highly sensitive nature to a person.

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

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

20 (6) If confidentiality is necessary to protect
21 either an active or inactive internal or criminal
22 investigation or potential internal or criminal investigation.

23 Section 5. (a) If a law enforcement agency denies
24 disclosure pursuant to Section 4, or has failed to provide
25 disclosure more than three business days after the request for
26 disclosure, a person authorized to receive disclosure or the
27 custodial law enforcement agency may petition the circuit

1 court in a county where a portion of the recording was made
2 for an order releasing the recording to a person authorized to
3 receive disclosure. There shall be no fee for filing the
4 petition which shall be filed on a form approved by the
5 Administrative Office of Courts and shall state the date and
6 approximate time of the activity captured in the recording, or
7 otherwise identify the activity with reasonable particularity
8 sufficient to identify the recording.

9 (b) If a petitioner is a person authorized to
10 receive disclosure, notice and an opportunity to be heard
11 shall be given to the head of the custodial law enforcement
12 agency. Petitions filed pursuant to this section shall be set
13 for hearing as soon as practicable and shall be accorded
14 priority by the court.

15 (c) The court shall first determine if the person to
16 whom release of the recording is requested is a person
17 authorized to receive disclosure pursuant to this act. In
18 making this determination, the court may conduct an in-camera
19 review of the recording and may allow the petitioner to be
20 present to assist in identifying the image or voice in the
21 recording that authorizes disclosure to the person to whom
22 release is requested. If the court determines that the person
23 is not authorized to receive disclosure pursuant to this act,
24 there shall be no right of appeal, and the petitioner may not
25 file an action for release pursuant to Section 6.

26 (d) If the court determines that the person to whom
27 release of the recording is requested is a person authorized

1 to receive disclosure pursuant to Section 5, the court shall
2 consider the standards set out in Section 5 and any other
3 standards the court deems relevant in determining whether to
4 order the release of all or a portion of the recording.

5 (e) The court may conduct an in-camera review of the
6 recording. The court shall release only those portions of the
7 recording that are relevant to the person's request and may
8 place any conditions or restrictions on the release of the
9 recording that the court, in its discretion, deems
10 appropriate.

11 Section 6. (a) Any custodial law enforcement agency
12 or any person requesting the release of a recording may file
13 an action in the circuit court in any county where any portion
14 of the recording was made for an order releasing the
15 recording. The request for release shall state the date and
16 approximate time of the activity captured in the recording, or
17 otherwise identify the activity with reasonable particularity
18 sufficient to identify the recording to which the action
19 refers. The court may conduct an in-camera review of the
20 recording. In determining whether to order the release of all
21 or a portion of the recording, in addition to any other
22 standards the court deems relevant, the court shall consider
23 the applicability of all of the following standards:

24 (1) The release is necessary to advance a compelling
25 public interest.

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

4 (3) The person requesting release is seeking to
5 obtain evidence to determine legal issues in a current or
6 potential court proceeding.

7 (4) The release would reveal information that is of
8 a highly sensitive nature to a person.

9 (5) The release may harm the reputation or
10 jeopardize the safety of a person.

11 (6) The release would create a serious threat to the
12 fair, impartial, and orderly administration of justice.

13 (7) Confidentiality is necessary to protect either
14 an active or inactive internal or criminal investigation or
15 potential internal or criminal investigation.

16 (8) There is good cause shown to release all
17 portions of the recording.

18 (b) The court shall release only those portions of
19 the recording that are relevant to the request of the person
20 and may place any conditions or restrictions on the release of
21 the recording that the court, in its discretion, deems
22 appropriate. In any proceeding pursuant to this section, the
23 following persons shall be notified, and those persons, or
24 their designated representative, shall be given an opportunity
25 to be heard at any proceeding:

26 (1) The head of the custodial law enforcement
27 agency.

1 (2) Any law enforcement agency personnel whose image
2 or voice is in the recording and the head of the employing law
3 enforcement agency of the person.

4 (3) The district attorney.

5 (c) All actions brought pursuant to this section
6 shall be set for hearing as soon as practicable, and
7 subsequent proceedings in the actions shall be accorded
8 priority by the trial and appellate courts.

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

13 (1) Review of potential criminal charges.

14 (2) To comply with discovery requirements in a
15 criminal prosecution.

16 (3) For use in criminal proceedings in any court.

17 (4) Other law enforcement purposes.

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

20 (1) For law enforcement training purposes.

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

23 (3) To another law enforcement agency for law
24 enforcement purposes.

25 Section 8. Any recording subject to this act shall
26 be retained for at least the period of time required by the

1 applicable records retention and disposition schedule
2 developed by the Alabama Criminal Justice Information Center.

3 Section 9. Each law enforcement agency that uses
4 body-worn cameras or dashboard cameras shall adopt a policy
5 applicable to the use of those cameras.

6 Section 10. No civil liability shall arise from
7 compliance with this act if the acts or omissions are made in
8 good faith and do not constitute gross negligence, willful or
9 wanton misconduct, or intentional wrongdoing.

10 Section 11. A law enforcement agency may charge a
11 fee to offset the cost incurred by it to make a copy of a
12 recording for release. The fee may not exceed the actual cost
13 of making the copy.

14 Section 12. The court may not award attorneys' fees
15 to any party in any an action brought pursuant to this act.

16 Section 13. This act shall become effective on the
17 first day of the third month following its passage and
18 approval by the Governor, or its otherwise becoming law.