

Effective 5/10/2016

Chapter 7a
Law Enforcement Use of Body-worn Cameras

77-7a-101 Title.

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

Enacted by Chapter 410, 2016 General Session

77-7a-102 Body-worn cameras -- Written policies and procedures.

- (1) Any law enforcement agency that uses body-worn cameras shall have a written policy governing the use of body-worn cameras that is consistent with the provisions of this chapter.
- (2)
 - (a) Any written policy regarding the use of body-worn cameras by a law enforcement agency shall, at a minimum:
 - (i) comply with and include the requirements in this chapter; and
 - (ii) address the security, storage, and maintenance of data collected from body-worn cameras.
 - (b) Except as provided in Subsection 77-7a-104(11), this chapter does not prohibit a law enforcement agency from adopting body-worn camera policies that are more expansive than the minimum guidelines provided in this chapter.
- (3) This chapter does not require an officer to jeopardize the safety of the public, other law enforcement officers, or himself or herself in order to activate or deactivate a body-worn camera.

Amended by Chapter 415, 2017 General Session

77-7a-103 Definitions.

- (1)
 - (a) "Body-worn camera" means a video recording device that is carried by, or worn on the body of, a law enforcement officer and that is capable of recording the operations of the officer.
 - (b) "Body-worn camera" does not include a dashboard mounted camera or a camera intended to record clandestine investigation activities.
- (2) "Law enforcement agency" means any public agency having general police power and charged with making arrests in connection with enforcement of the criminal statutes and ordinances of this state or any political subdivision.
- (3) "Law enforcement encounter" means:
 - (a) an enforcement stop;
 - (b) a dispatched call;
 - (c) a field interrogation or interview;
 - (d) use of force;
 - (e) execution of a warrant;
 - (f) a traffic stop, including:
 - (i) a traffic violation;
 - (ii) stranded motorist assistance; and
 - (iii) any crime interdiction stop; or
 - (g) any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

Enacted by Chapter 410, 2016 General Session

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

- (1) An officer using a body-worn camera shall verify that the equipment is properly functioning as is reasonably within the officer's ability.
- (2) An officer shall report any malfunctioning equipment to the officer's supervisor if:
 - (a) the body-worn camera issued to the officer is not functioning properly upon initial inspection; or
 - (b) an officer determines that the officer's body-worn camera is not functioning properly at any time while the officer is on duty.
- (3) An officer shall wear the body-worn camera so that it is clearly visible to the person being recorded.
- (4) An officer shall activate the body-worn camera prior to any law enforcement encounter, or as soon as reasonably possible.
- (5) An officer shall record in an uninterrupted manner until after the conclusion of a law enforcement encounter, except as an interruption of a recording is allowed under this section.
- (6) When going on duty and off duty, an officer who is issued a body-worn camera shall record the officer's name, identification number, and the current time and date, unless the information is already available due to the functionality of the body-worn camera.
- (7) If a body-worn camera was present during a law enforcement encounter, the officer shall document the presence of the body-worn camera in any report or other official record of a contact.
- (8) When a body-worn camera has been activated, the officer may not deactivate the body-worn camera until the officer's direct participation in the law enforcement encounter is complete, except as provided in Subsection (9).
- (9) An officer may deactivate a body-worn camera:
 - (a) to consult with a supervisor or another officer;
 - (b) during a significant period of inactivity;
 - (c) during a conversation with a sensitive victim of crime, a witness of a crime, or an individual who wishes to report or discuss criminal activity if:
 - (i) the individual who is the subject of the recording requests that the officer deactivate the officer's body-worn camera; and
 - (ii) the officer believes that the value of the information outweighs the value of the potential recording and records the request by the individual to deactivate the body-worn camera; or
 - (d) during a conversation with a victim of a sexual offense, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, or domestic violence, as defined in Section 77-36-1, if:
 - (i) the officer is conducting an evidence-based lethality assessment;
 - (ii) the victim or the officer believes that deactivating the body-worn camera recording:
 - (A) will encourage complete and accurate information sharing by the victim; or
 - (B) is necessary to protect the safety or identity of the victim; and
 - (iii) the officer's body-worn camera is reactivated as soon as reasonably possible after the evidence-based lethality assessment is complete.
- (10) If an officer deactivates or fails to activate a body-worn camera in violation of this section, the officer shall document the reason for deactivating or for failing to activate a body-worn camera in a written report.
- (11)
 - (a) For purposes of this Subsection (11):

- (i) "Health care facility" means the same as that term is defined in Section 78B-3-403.
- (ii) "Health care provider" means the same as that term is defined in Section 78B-3-403.
- (iii) "Hospital" means the same as that term is defined in Section 78B-3-403.
- (iv) "Human service program" means the same as that term is defined in Section 26B-2-101.
- (b) An officer may not activate a body-worn camera in a hospital, health care facility, human service program, or the clinic of a health care provider, except during a law enforcement encounter, and with notice under Section 77-7a-105.
- (12) A violation of this section may not serve as the sole basis to dismiss a criminal case or charge.
- (13) Nothing in this section precludes a law enforcement agency from establishing internal agency policies for an officer's failure to comply with the requirements of this section.

Amended by Chapter 404, 2020 General Session

77-7a-104.1 Adverse inference jury instruction.

- (1) As used in this section, "adverse inference instruction" means an instruction that:
 - (a) is provided to a jury in accordance with Utah Rules of Criminal Procedure, Rule 19; and
 - (b) directs the jury that an officer's failure to comply with a requirement of Section 77-7a-104 may give rise to an adverse inference against the officer.
- (2)
 - (a) A court presiding over a jury trial may provide an adverse inference instruction if the defendant seeking the adverse inference instruction establishes by a preponderance of the evidence that:
 - (i) an officer intentionally or, with reckless disregard of a requirement of Section 77-7a-104, failed to comply with a requirement of Section 77-7a-104; and
 - (ii) the officer's failure to comply with the requirement of Section 77-7a-104 is reasonably likely to affect the outcome of the defendant's trial.
 - (b) In considering whether to include an adverse inference instruction under Subsection (2)(a), the court shall consider:
 - (i) the degree of prejudice to the defendant as a result of the officer's failure to comply with Section 77-7a-104;
 - (ii) the materiality and importance of the missing evidence in relation to the case as a whole;
 - (iii) the strength of the remaining evidence;
 - (iv) the degree of fault on behalf of the officer described in Subsection (2)(a)(i) or the law enforcement agency employing the officer, including whether evidence supports that the officer or the law enforcement agency displays a pattern of intentional or reckless disregard of the requirements of Section 77-7a-104; and
 - (v) other considerations the court determines are relevant to ensure just adjudication and due process.
 - (c) If a court includes an adverse inference instruction, the prosecutor shall, after the conclusion of the trial, send written notice of the instruction to the law enforcement agency that employed the officer described in Subsection (2)(a)(i) at the time of the offense, including:
 - (i) the written order or a description of the order allowing for the instruction;
 - (ii) the language of the instruction; and
 - (iii) the outcome of the trial.

Enacted by Chapter 404, 2020 General Session

77-7a-105 Notice and privacy.

- (1) An officer with a body-worn camera shall give notice, when reasonable under the circumstances:
 - (a) to:
 - (i) the occupants of a private residence in which the officer enters and in which a body-worn camera is in use; or
 - (ii) a health care provider present at a hospital, a health care facility, human service program, or a health care provider's clinic in which the officer enters and in which a body-worn camera is in use; and
 - (b) either by:
 - (i) wearing a body-worn camera in a clearly visible manner; or
 - (ii) giving an audible notice that the officer is using a body-worn camera.
- (2) An agency shall make the agency's policies regarding the use of body-worn cameras available to the public, and shall place the policies on the agency's public website when possible.

Amended by Chapter 415, 2017 General Session

77-7a-106 Prohibited Activities.

An officer is prohibited from:

- (1) using a body-worn camera for personal use;
- (2) making a personal copy of a recording created while on duty or acting in an official capacity as a law enforcement officer;
- (3) retaining a recording of any activity or information obtained while on duty or acting in an official capacity as a law enforcement officer;
- (4) duplicating or distributing a recording except as authorized by the employing law enforcement agency; and
- (5) altering or deleting a recording in violation of this chapter.

Enacted by Chapter 410, 2016 General Session

77-7a-107 Retention and release of recordings.

- (1)
 - (a) Any recording made by an officer while on duty or acting in the officer's official capacity as a law enforcement officer shall be retained in accordance with applicable federal, state, and local laws.
 - (b) Any recording made by an officer while on duty or acting in the officer's official capacity as a law enforcement officer may not be retained, electronically or otherwise, by a private entity if the private entity has any authority to:
 - (i) withhold the recording; or
 - (ii) prevent the political subdivision from accessing or disclosing the recording.
 - (c)
 - (i) Notwithstanding Subsection (1)(b), a political subdivision may continue to retain a recording in a manner prohibited under Subsection (1)(b) if the political subdivision is under contract with a private entity on May 7, 2018, and the contract includes terms prohibited by Subsection (1)(b).
 - (ii) A political subdivision may not renew a contract described in Subsection (1)(c)(i).
 - (d) This Subsection (1) does not prohibit a political subdivision from using a private entity's retention or redaction service if the private entity does not have authority to:
 - (i) withhold the recording; or

- (ii) prevent the political subdivision from accessing or disclosing the recording.
- (2)
- (a) Except as provided in Subsection (3)(e), a release of a recording made by an officer while on duty or acting in the officer's official capacity as a law enforcement officer is subject to Title 63G, Chapter 2, Government Records Access and Management Act.
 - (b) Notwithstanding any other provision in state or local law, a person who requests access to a recording may immediately appeal to a district court, as provided in Section 63G-2-404, any denial of access to a recording based solely on Subsection 63G-2-305(10)(b) or (c) due to a pending criminal action that has been filed in a court of competent jurisdiction.
- (3)
- (a) A person may request from a law enforcement agency the release of a recording of an incident between an officer and an individual that results in death or serious bodily injury, or during which an officer fires a weapon.
 - (b) A person shall make a request under Subsection (3)(a) to the law enforcement agency responsible for creating the recording described in Subsection (3)(a).
 - (c) The law enforcement agency described in Subsection (3)(b) shall direct a records custodian in possession of a recording described in Subsection (3)(a) to release the recording to the requesting party under Subsection (3)(a) within 10 days after the day on which one of the following occurs:
 - (i) the prosecuting agency declines to file a criminal action related to the incident;
 - (ii)
 - (A) the prosecuting agency files a criminal action related to the incident;
 - (B) the judge adjudicating the criminal action is notified by the prosecutor or the defendant of the request to release the recording; and
 - (C) the judge determines that the release of the recording would not have a substantial likelihood of prejudicing a finder of fact in the criminal action; or
 - (iii) if more than 10 days have passed since the day on which the events described in Subsection (3)(c)(i) or (3)(c)(ii) occurred, the day on which the law enforcement agency described in Subsection (3)(b) receives the request under Subsection (3)(a).
 - (d) Notwithstanding Subsection (3)(a) or (c), a law enforcement agency may not, in response to a request under Subsection (3)(a), direct a records custodian in possession of a recording to release the recording if the law enforcement agency is notified that one of the following individuals has requested that the recording not be publicly distributed:
 - (i) an individual injured in the incident described in Subsection (3)(a); or
 - (ii) an immediate family member of an individual injured or killed in the incident described in Subsection (3)(a).
 - (e) The provisions of Title 63G, Chapter 2, Government Records Access and Management Act, do not apply to this Subsection (3).

Amended by Chapter 150, 2022 General Session