

BODY-WORN CAMERAS FOR LAW ENFORCEMENT

OFFICERS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Code of Criminal Procedure to address the use of body-worn cameras by law enforcement officers.

Highlighted Provisions:

This bill provides:

- ▶ that a law enforcement agency that uses body-worn cameras worn 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 the activation or use of body-worn cameras; and
- ▶ the prohibited uses of body-worn cameras by law enforcement officers.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-2-201, as last amended by Laws of Utah 2013, Chapter 445

63G-2-302, as last amended by Laws of Utah 2015, Chapters 43 and 130

ENACTS:



- 28 [77-7a-101](#), Utah Code Annotated 1953
 - 29 [77-7a-102](#), Utah Code Annotated 1953
 - 30 [77-7a-103](#), Utah Code Annotated 1953
 - 31 [77-7a-104](#), Utah Code Annotated 1953
 - 32 [77-7a-105](#), Utah Code Annotated 1953
 - 33 [77-7a-106](#), Utah Code Annotated 1953
 - 34 [77-7a-107](#), Utah Code Annotated 1953
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36 *Be it enacted by the Legislature of the state of Utah:*

37 Section 1. Section **63G-2-201** is amended to read:

38 **63G-2-201. Right to inspect records and receive copies of records.**

39 (1) Every person has the right to inspect a public record free of charge, and the right to
40 take a copy of a public record during normal working hours, subject to Sections [63G-2-203](#) and
41 [63G-2-204](#).

42 (2) A record is public unless otherwise expressly provided by statute.

43 (3) The following records are not public:

44 (a) a record that is private, controlled, or protected under Sections [63G-2-302](#),
45 [63G-2-303](#), [63G-2-304](#), and [63G-2-305](#); and

46 (b) a record to which access is restricted pursuant to court rule, another state statute,
47 federal statute, or federal regulation, including records for which access is governed or
48 restricted as a condition of participation in a state or federal program or for receiving state or
49 federal funds.

50 (4) Only a record specified in Section [63G-2-302](#), [63G-2-303](#), [63G-2-304](#), or
51 [63G-2-305](#) may be classified private, controlled, or protected.

52 (5) (a) A governmental entity may not disclose a record that is private, controlled, or
53 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section
54 [63G-2-202](#), [63G-2-206](#), or [63G-2-303](#).

55 (b) A governmental entity may disclose a record that is private under Subsection
56 [63G-2-302](#)(2) or protected under Section [63G-2-305](#) to persons other than those specified in
57 Section [63G-2-202](#) or [63G-2-206](#) if the head of a governmental entity, or a designee,
58 determines that:

59 (i) there is no interest in restricting access to the record; or
60 (ii) the interests favoring access are greater than or equal to the interest favoring
61 restriction of access.

62 (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may
63 disclose a record that is protected under Subsection 63G-2-305(51) if:

64 (i) the head of the governmental entity, or a designee, determines that the disclosure:

65 (A) is mutually beneficial to:

66 (I) the subject of the record;

67 (II) the governmental entity; and

68 (III) the public; and

69 (B) serves a public purpose related to:

70 (I) public safety; or

71 (II) consumer protection; and

72 (ii) the person who receives the record from the governmental entity agrees not to use
73 or allow the use of the record for advertising or solicitation purposes.

74 (6) (a) The disclosure of a record to which access is governed or limited pursuant to
75 court rule, another state statute, federal statute, or federal regulation, including a record for
76 which access is governed or limited as a condition of participation in a state or federal program
77 or for receiving state or federal funds, is governed by the specific provisions of that statute,
78 rule, or regulation.

79 (b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter
80 is not inconsistent with the statute, rule, or regulation.

81 (7) A governmental entity shall provide a person with a certified copy of a record if:

82 (a) the person requesting the record has a right to inspect it;

83 (b) the person identifies the record with reasonable specificity; and

84 (c) the person pays the lawful fees.

85 (8) (a) In response to a request, a governmental entity is not required to:

86 (i) create a record;

87 (ii) compile, format, manipulate, package, summarize, or tailor information;

88 (iii) provide a record in a particular format, medium, or program not currently
89 maintained by the governmental entity;

90 (iv) fulfill a person's records request if the request unreasonably duplicates prior
91 records requests from that person; or

92 (v) fill a person's records request if:

93 (A) the record requested is accessible in the identical physical form and content in a
94 public publication or product produced by the governmental entity receiving the request;

95 (B) the governmental entity provides the person requesting the record with the public
96 publication or product; and

97 (C) the governmental entity specifies where the record can be found in the public
98 publication or product.

99 (b) Upon request, a governmental entity may provide a record in a particular form
100 under Subsection (8)(a)(ii) or (iii) if:

101 (i) the governmental entity determines it is able to do so without unreasonably
102 interfering with the governmental entity's duties and responsibilities; and

103 (ii) the requester agrees to pay the governmental entity for providing the record in the
104 requested form in accordance with Section [63G-2-203](#).

105 (9) (a) A governmental entity may allow a person requesting more than 50 pages of
106 records to copy the records if:

107 (i) the records are contained in files that do not contain records that are exempt from
108 disclosure, or the records may be segregated to remove private, protected, or controlled
109 information from disclosure; and

110 (ii) the governmental entity provides reasonable safeguards to protect the public from
111 the potential for loss of a public record.

112 (b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

113 (i) provide the requester with the facilities for copying the requested records and
114 require that the requester make the copies; or

115 (ii) allow the requester to provide the requester's own copying facilities and personnel
116 to make the copies at the governmental entity's offices and waive the fees for copying the
117 records.

118 (10) (a) A governmental entity that owns an intellectual property right and that offers
119 the intellectual property right for sale or license may control by ordinance or policy the
120 duplication and distribution of the material based on terms the governmental entity considers to

121 be in the public interest.

122 (b) Nothing in this chapter shall be construed to limit or impair the rights or protections
123 granted to the governmental entity under federal copyright or patent law as a result of its
124 ownership of the intellectual property right.

125 (11) A governmental entity may not use the physical form, electronic or otherwise, in
126 which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and
127 receive a copy of a record under this chapter.

128 (12) Subject to the requirements of Subsection (8), a governmental entity shall provide
129 access to an electronic copy of a record in lieu of providing access to its paper equivalent if:

130 (a) the person making the request requests or states a preference for an electronic copy;

131 (b) the governmental entity currently maintains the record in an electronic format that
132 is reproducible and may be provided without reformatting or conversion; and

133 (c) the electronic copy of the record:

134 (i) does not disclose other records that are exempt from disclosure; or

135 (ii) may be segregated to protect private, protected, or controlled information from
136 disclosure without the undue expenditure of public resources or funds.

137 (13) In determining whether a record is properly classified as private under Subsection

138 63G-2-302(2)(d), the governmental entity, State Records Committee, ~~it~~ → **local appeals board**, ← ~~it~~

138a or court shall consider

139 and weigh:

140 (a) any personal privacy interests, including those in images, that would be affected by
141 disclosure of the records in question; and

142 (b) any public interests served by disclosure.

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

144 **63G-2-302. Private records.**

145 (1) The following records are private:

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

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

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

- 152 (d) records received by or generated by or for:
- 153 (i) the Independent Legislative Ethics Commission, except for:
- 154 (A) the commission's summary data report that is required under legislative rule; and
- 155 (B) any other document that is classified as public under legislative rule; or
- 156 (ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,
- 157 unless the record is classified as public under legislative rule;
- 158 (e) records received by, or generated by or for, the Independent Executive Branch
- 159 Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review
- 160 of Executive Branch Ethics Complaints;
- 161 (f) records received or generated for a Senate confirmation committee concerning
- 162 character, professional competence, or physical or mental health of an individual:
- 163 (i) if, prior to the meeting, the chair of the committee determines release of the records:
- 164 (A) reasonably could be expected to interfere with the investigation undertaken by the
- 165 committee; or
- 166 (B) would create a danger of depriving a person of a right to a fair proceeding or
- 167 impartial hearing; and
- 168 (ii) after the meeting, if the meeting was closed to the public;
- 169 (g) employment records concerning a current or former employee of, or applicant for
- 170 employment with, a governmental entity that would disclose that individual's home address,
- 171 home telephone number, social security number, insurance coverage, marital status, or payroll
- 172 deductions;
- 173 (h) records or parts of records under Section [63G-2-303](#) that a current or former
- 174 employee identifies as private according to the requirements of that section;
- 175 (i) that part of a record indicating a person's social security number or federal employer
- 176 identification number if provided under Section [31A-23a-104](#), [31A-25-202](#), [31A-26-202](#),
- 177 [58-1-301](#), [58-55-302](#), [61-1-4](#), or [61-2f-203](#);
- 178 (j) that part of a voter registration record identifying a voter's:
- 179 (i) driver license or identification card number;
- 180 (ii) Social Security number, or last four digits of the Social Security number;
- 181 (iii) email address; or
- 182 (iv) date of birth;

- 183 (k) a voter registration record that is classified as a private record by the lieutenant
- 184 governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);
- 185 (l) a record that:
- 186 (i) contains information about an individual;
- 187 (ii) is voluntarily provided by the individual; and
- 188 (iii) goes into an electronic database that:
- 189 (A) is designated by and administered under the authority of the Chief Information
- 190 Officer; and
- 191 (B) acts as a repository of information about the individual that can be electronically
- 192 retrieved and used to facilitate the individual's online interaction with a state agency;
- 193 (m) information provided to the Commissioner of Insurance under:
- 194 (i) Subsection 31A-23a-115(2)(a);
- 195 (ii) Subsection 31A-23a-302(3); or
- 196 (iii) Subsection 31A-26-210(3);
- 197 (n) information obtained through a criminal background check under Title 11, Chapter
- 198 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;
- 199 (o) information provided by an offender that is:
- 200 (i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap
- 201 Offender Registry; and
- 202 (ii) not required to be made available to the public under Subsection 77-41-110(4);
- 203 (p) a statement and any supporting documentation filed with the attorney general in
- 204 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
- 205 homeland security;
- 206 (q) electronic toll collection customer account information received or collected under
- 207 Section 72-6-118 and customer information described in Section 17B-2a-815 received or
- 208 collected by a public transit district, including contact and payment information and customer
- 209 travel data;
- 210 (r) an email address provided by a military or overseas voter under Section
- 211 20A-16-501;
- 212 (s) a completed military-overseas ballot that is electronically transmitted under Title
- 213 20A, Chapter 16, Uniform Military and Overseas Voters Act;

214 (t) records received by or generated by or for the Political Subdivisions Ethics Review
215 Commission established in Section 11-49-201, except for:

216 (i) the commission's summary data report that is required in Section 11-49-202; and
217 (ii) any other document that is classified as public in accordance with Title 11, Chapter
218 49, Political Subdivisions Ethics Review Commission;

219 (u) a record described in Subsection 53A-11a-203(3) that verifies that a parent was
220 notified of an incident or threat; and

221 (v) a criminal background check or credit history report conducted in accordance with
222 Section 63A-3-201.

223 (2) The following records are private if properly classified by a governmental entity:

224 (a) records concerning a current or former employee of, or applicant for employment
225 with a governmental entity, including performance evaluations and personal status information
226 such as race, religion, or disabilities, but not including records that are public under Subsection
227 63G-2-301(2)(b) or 63G-2-301(3)(o) or private under Subsection (1)(b);

228 (b) records describing an individual's finances, except that the following are public:

229 (i) records described in Subsection 63G-2-301(2);
230 (ii) information provided to the governmental entity for the purpose of complying with
231 a financial assurance requirement; or

232 (iii) records that must be disclosed in accordance with another statute;

233 (c) records of independent state agencies if the disclosure of those records would
234 conflict with the fiduciary obligations of the agency;

235 (d) other records containing data on individuals the disclosure of which constitutes a
236 clearly unwarranted invasion of personal privacy;

237 (e) records provided by the United States or by a government entity outside the state
238 that are given with the requirement that the records be managed as private records, if the
239 providing entity states in writing that the record would not be subject to public disclosure if
240 retained by it; ~~and~~

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

244 (g) those parts of audio and video recordings created by a body-worn camera, as

245 defined in Section 77-7a-103, that:

246 (i) are made inside a home or residence; ~~and~~ or

247 (ii) contain images of minors or nudity.

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

250 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
251 doctors, or affiliated entities are not private records or controlled records under Section
252 63G-2-304 when the records are sought:

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

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

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

260 Section 3. Section 77-7a-101 is enacted to read:

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

262 **77-7a-101. Title.**

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

264 Section 4. Section 77-7a-102 is enacted to read:

265 **77-7a-102. Body-worn cameras -- Written policies and procedures.**

266 (1) Any law enforcement agency that uses body-worn cameras shall have a written
267 policy governing the use of body-worn cameras that is consistent with the provisions of this
268 chapter.

269 (2) (a) Any written policy regarding the use of body-worn cameras by a law
270 enforcement agency shall, at a minimum, comply with and include the requirements in this
271 chapter.

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

274 (3) This chapter does not require an officer to jeopardize the safety of the public, other
275 law enforcement officers, or himself or herself in order to activate or deactivate a body-worn

276 camera.

277 Section 5. Section **77-7a-103** is enacted to read:

278 **77-7a-103. Definitions.**

279 (1) (a) "Body-worn camera" means a video recording device that is carried by, or worn
280 on the body of, a law enforcement officer and that is capable of recording the operations of the
281 officer.

282 (b) "Body-worn camera" does not include a dashboard mounted camera or a camera
283 intended to record clandestine investigation activities.

284 (2) "Law enforcement agency" means any public agency having general police power
285 and charged with making arrests in connection with enforcement of the criminal statutes and
286 ordinances of this state or any political subdivision.

287 (3) "Law enforcement encounter" means:

288 (a) an enforcement stop;

289 (b) a dispatched call;

290 (c) a field interrogation or interview;

291 (d) use of force;

292 (e) execution of a warrant;

293 (f) a traffic stop, including:

294 (i) a traffic violation;

295 (ii) stranded motorist assistance; and

296 (iii) any crime interdiction stop; or

297 (g) any other contact that becomes adversarial after the initial contact in a situation that
298 would not otherwise require recording.

299 Section 6. Section **77-7a-104** is enacted to read:

300 **77-7a-104. Activation and use of body-worn cameras.**

301 (1) An officer using a body-worn camera shall verify that the equipment is properly
302 functioning as is reasonably within the officer's ability.

303 (2) An officer shall report any malfunctioning equipment to the officer's supervisor if:

304 (a) the body-worn camera issued to the officer is not functioning properly upon initial
305 inspection; or

306 (b) an officer determines that the officer's body-worn camera is not functioning

307 properly at any time while the officer is on duty.

308 (3) An officer shall wear the body-worn camera so that it is clearly visible to the person
 309 being recorded.

310 (4) An officer shall activate the body-worn camera prior to any law enforcement
 311 encounter, or as soon as reasonably possible.

312 (5) An officer shall record in an uninterrupted manner until after the conclusion of a
 313 law enforcement encounter, except as an interruption of a recording is allowed under this
 314 section.

315 (6) When going on duty and off duty, an officer who is issued a body-worn camera
 316 shall record the officer's name, identification number, and the current time and date, unless the
 317 information is already available due to the functionality of the body-worn camera.

318 (7) If a body-worn camera was present during a law enforcement encounter, the officer
 319 shall document the presence of the body-worn camera in any report or other official record of a
 320 contact.

321 (8) When a body-worn camera has been activated, the officer may not deactivate the
 322 body-worn camera until the officer's direct participation in the law enforcement encounter is
 323 complete, except as provided in Subsection (9).

324 (9) An officer may deactivate a body-worn camera:

325 (a) to consult with a supervisor or another officer;

326 (b) during a significant period of inactivity; and

327 (c) during a conversation with a sensitive victim of crime, a witness of a crime, or an
 328 individual who wishes to report or discuss criminal activity if:

329 (i) the individual who is the subject of the recording requests that the officer deactivate
 330 the officer's body-worn camera; and

331 (ii) the officer believes that the value of the information outweighs the value of the
 332 potential recording and records the request by the individual to deactivate the body-worn
 333 camera.

334 (10) If an officer deactivates a body-worn camera, the officer shall ~~not~~ [:

335 ~~— (a) vocalize the purpose for which the body-worn camera is being deactivated so that~~
 336 ~~the reason for deactivation is captured on the recording; and~~

337 ~~— (b) ~~not~~ document the reason for deactivating a body-worn camera in a written report.~~

338 Section 7. Section **77-7a-105** is enacted to read:

339 **77-7a-105. Notice and privacy.**

340 (1) When an officer with a body-worn camera enters a private residence, the officer
341 shall give notice, when reasonable under the circumstances, to the occupants of the residence
342 that a body-worn camera is in use.

343 (2) An agency shall make the agency's policies regarding the use of body-worn cameras
344 available to the public, and shall place the policies on the agency's public website when
345 possible.

346 Section 8. Section **77-7a-106** is enacted to read:

347 **77-7a-106. Prohibited Activities.**

348 An officer is prohibited from:

349 (1) using a body-worn camera for personal use;

350 (2) making a personal copy of a recording created while on duty or acting in an official
351 capacity as a law enforcement officer;

352 (3) retaining a recording of any activity or information obtained while on duty or acting
353 in an official capacity as a law enforcement officer;

354 (4) duplicating or distributing a recording except as authorized by the employing law
355 enforcement agency; and

356 (5) altering or deleting a recording in violation of this chapter.

357 Section 9. Section **77-7a-107** is enacted to read:

358 **77-7a-107. Retention and release of recordings.**

359 Any recording made by an officer while on duty or acting in the officer's official
360 capacity as a law enforcement officer shall be retained in accordance with applicable federal,
361 state, and local laws.