

HB0300S01 compared with HB0300

~~{deleted text}~~ shows text that was in HB0300 but was deleted in HB0300S01.

inserted text shows text that was not in HB0300 but was inserted into HB0300S01.

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~~{BODY-WORN}~~ Representative Daniel McCay proposes the following substitute bill:

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.

HB0300S01 compared with HB0300

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:

77-7a-101, Utah Code Annotated 1953

77-7a-102, Utah Code Annotated 1953

77-7a-103, Utah Code Annotated 1953

77-7a-104, Utah Code Annotated 1953

77-7a-105, Utah Code Annotated 1953

77-7a-106, Utah Code Annotated 1953

77-7a-107, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

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

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

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

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

(3) The following records are not public:

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

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

HB0300S01 compared with HB0300

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

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

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

(i) there is no interest in restricting access to the record; or

(ii) the interests favoring access are greater than or equal to the interest favoring restriction of access.

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

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

(A) is mutually beneficial to:

(I) the subject of the record;

(II) the governmental entity; and

(III) the public; and

(B) serves a public purpose related to:

(I) public safety; or

(II) consumer protection; and

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

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

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

HB0300S01 compared with HB0300

- (7) A governmental entity shall provide a person with a certified copy of a record if:
- (a) the person requesting the record has a right to inspect it;
 - (b) the person identifies the record with reasonable specificity; and
 - (c) the person pays the lawful fees.
- (8) (a) In response to a request, a governmental entity is not required to:
- (i) create a record;
 - (ii) compile, format, manipulate, package, summarize, or tailor information;
 - (iii) provide a record in a particular format, medium, or program not currently maintained by the governmental entity;
 - (iv) fulfill a person's records request if the request unreasonably duplicates prior records requests from that person; or
 - (v) fill a person's records request if:
 - (A) the record requested is accessible in the identical physical form and content in a public publication or product produced by the governmental entity receiving the request;
 - (B) the governmental entity provides the person requesting the record with the public publication or product; and
 - (C) the governmental entity specifies where the record can be found in the public publication or product.
- (b) Upon request, a governmental entity may provide a record in a particular form under Subsection (8)(a)(ii) or (iii) if:
- (i) the governmental entity determines it is able to do so without unreasonably interfering with the governmental entity's duties and responsibilities; and
 - (ii) the requester agrees to pay the governmental entity for providing the record in the requested form in accordance with Section 63G-2-203.
- (9) (a) A governmental entity may allow a person requesting more than 50 pages of records to copy the records if:
- (i) the records are contained in files that do not contain records that are exempt from disclosure, or the records may be segregated to remove private, protected, or controlled information from disclosure; and
 - (ii) the governmental entity provides reasonable safeguards to protect the public from the potential for loss of a public record.

HB0300S01 compared with HB0300

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

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

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

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

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

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

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

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

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

(c) the electronic copy of the record:

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

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

(13) In determining whether a record is properly classified as private under Subsection 63G-2-302(2)(d), the governmental entity, State Records Committee, [local appeals board](#) or court shall consider and weigh:

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

(b) any public interests served by disclosure.

HB0300S01 compared with HB0300

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

63G-2-302. Private records.

(1) The following records are private:

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

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

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

(d) records received by or generated by or for:

(i) the Independent Legislative Ethics Commission, except for:

(A) the commission's summary data report that is required under legislative rule; and

(B) any other document that is classified as public under legislative rule; or

(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;

(e) records received by, or generated by or for, the Independent Executive Branch Ethics Commission, except as otherwise expressly provided in Title 63A, Chapter 14, Review of Executive Branch Ethics Complaints;

(f) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if, prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(g) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, social security number, insurance coverage, marital status, or payroll deductions;

(h) records or parts of records under Section 63G-2-303 that a current or former

HB0300S01 compared with HB0300

employee identifies as private according to the requirements of that section;

(i) that part of a record indicating a person's social security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

(j) that part of a voter registration record identifying a voter's:

(i) driver license or identification card number;

(ii) Social Security number, or last four digits of the Social Security number;

(iii) email address; or

(iv) date of birth;

(k) a voter registration record that is classified as a private record by the lieutenant governor or a county clerk under Subsection 20A-2-104(4)(f) or 20A-2-101.1(5)(a);

(l) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(m) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(2)(a);

(ii) Subsection 31A-23a-302(3); or

(iii) Subsection 31A-26-210(3);

(n) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(o) information provided by an offender that is:

(i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap Offender Registry; and

(ii) not required to be made available to the public under Subsection 77-41-110(4);

(p) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves

HB0300S01 compared with HB0300

homeland security;

(q) electronic toll collection customer account information received or collected under Section 72-6-118 and customer information described in Section 17B-2a-815 received or collected by a public transit district, including contact and payment information and customer travel data;

(r) an email address provided by a military or overseas voter under Section 20A-16-501;

(s) a completed military-overseas ballot that is electronically transmitted under Title 20A, Chapter 16, Uniform Military and Overseas Voters Act;

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

(i) the commission's summary data report that is required in Section 11-49-202; and

(ii) any other document that is classified as public in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission;

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

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

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

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

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

(i) records described in Subsection 63G-2-301(2);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

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

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

(d) other records containing data on individuals the disclosure of which constitutes a

HB0300S01 compared with HB0300

clearly unwarranted invasion of personal privacy;

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

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

~~(g) {those parts of} audio and video recordings created by a body-worn camera, as defined in Section 77-7a-103, that~~;~~~~

~~— (i) are made} record sound or images inside a home or residence~~}; and~~~~

~~— (ii) contain images of minors or nudity} except for recordings that:~~

~~(i) depict the commission of an alleged crime;~~

~~(ii) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;~~

~~(iii) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;~~

~~(iv) contain an officer involved critical incident as defined in Section 76-2-408(1)(d);~~

or

~~(v) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.~~

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

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

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

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

(c) Medical records are subject to production in a legal or administrative proceeding

HB0300S01 compared with HB0300

according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

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

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."

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

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^{f,t}:

(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) 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.

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

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.

HB0300S01 compared with HB0300

(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.

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

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.

HB0300S01 compared with HB0300

(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; and

(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.

(10) If an officer deactivates a body-worn camera, the officer shall ~~+~~

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

~~(b) ~~+~~ document the reason for deactivating a body-worn camera in a written report.~~

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

77-7a-105. Notice and privacy.

(1) When an officer with a body-worn camera enters a private residence, the officer shall give notice, when reasonable under the circumstances, to the occupants of the residence that a body-worn camera is in use ~~+~~ either by:

(a) wearing a body-worn camera in a clearly visible manner; or

(b) 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.

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

HB0300S01 compared with HB0300

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.

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

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

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.

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Legislative Review Note

~~Office of Legislative Research and General Counsel~~