

Senator Daniel McCay proposes the following substitute bill:

BODY CAMERA AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

House Sponsor: Lee B. Perry

LONG TITLE

General Description:

This bill modifies provisions related to law enforcement use of body-worn cameras.

Highlighted Provisions:

This bill:

- ▶ modifies the list of circumstances in which an officer may deactivate a body-worn camera;
- ▶ defines terms;
- ▶ requires a police officer to document reasons why the officer failed to comply with requirements related to body-worn cameras; and
- ▶ allows a presiding judge to provide an adverse inference instruction to a jury of a criminal trial if an officer failed to comply with requirements related to body-worn cameras, under specified circumstances.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 **77-7a-104**, as last amended by Laws of Utah 2018, Chapters 285 and 316

27 ENACTS:

28 **77-7a-104.1**, Utah Code Annotated 1953

29

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

31 Section 1. Section **77-7a-104** is amended to read:

32 **77-7a-104. Activation and use of body-worn cameras.**

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

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

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

38 (b) an officer determines that the officer's body-worn camera is not functioning
39 properly at any time while the officer is on duty.

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

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

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

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

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

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

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

- 57 (a) to consult with a supervisor or another officer;
- 58 (b) during a significant period of inactivity; [~~and~~]
- 59 (c) during a conversation with a sensitive victim of crime, a witness of a crime, or an
60 individual who wishes to report or discuss criminal activity if:
- 61 (i) the individual who is the subject of the recording requests that the officer deactivate
62 the officer's body-worn camera; and
- 63 (ii) the officer believes that the value of the information outweighs the value of the
64 potential recording and records the request by the individual to deactivate the body-worn
65 camera[-]; or
- 66 (d) during a conversation with a victim of a sexual offense, as described in Title 76,
67 Chapter 5, Part 4, Sexual Offenses, or domestic violence, as defined in Section 77-36-1, if:
- 68 (i) the officer is conducting an evidence-based lethality assessment;
- 69 (ii) the victim or the officer believes that deactivating the body-worn camera recording:
70 (A) will encourage complete and accurate information sharing by the victim; or
71 (B) is necessary to protect the safety or identity of the victim; and
- 72 (iii) the officer's body-worn camera is reactivated as soon as reasonably possible after
73 the evidence-based lethality assessment is complete.
- 74 (10) If an officer deactivates or fails to activate a body-worn camera in violation of this
75 section, the officer shall document the reason for deactivating or for failing to activate a
76 body-worn camera in a written report.
- 77 (11) (a) For purposes of this Subsection (11):
- 78 (i) "Health care facility" means the same as that term is defined in Section 78B-3-403.
- 79 (ii) "Health care provider" means the same as that term is defined in Section
80 78B-3-403.
- 81 (iii) "Hospital" means the same as that term is defined in Section 78B-3-403.
- 82 (iv) "Human service program" means the same as that term is defined in Section
83 62A-2-101.
- 84 (b) An officer may not activate a body-worn camera in a hospital, health care facility,
85 human service program, or the clinic of a health care provider, except during a law
86 enforcement encounter, and with notice under Section 77-7a-105.
- 87 (12) A violation of this section may not serve as the sole basis to dismiss a criminal

88 case or charge.

89 (13) Nothing in this section precludes a law enforcement agency from establishing
90 internal agency policies for an officer's failure to comply with the requirements of this section.

91 Section 2. Section **77-7a-104.1** is enacted to read:

92 **77-7a-104.1. Adverse inference jury instruction.**

93 (1) As used in this section, "adverse inference instruction" means an instruction that:

94 (a) is provided to a jury in accordance with Utah Rules of Criminal Procedure, Rule 19;

95 and

96 (b) directs the jury that an officer's failure to comply with a requirement of Section
97 77-7a-104 may give rise to an adverse inference against the officer.

98 (2) (a) A court presiding over a jury trial may provide an adverse inference instruction
99 if the defendant seeking the adverse inference instruction establishes by a preponderance of the
100 evidence that:

101 (i) an officer intentionally or, with reckless disregard of a requirement of Section
102 77-7a-104, failed to comply with a requirement of Section 77-7a-104; and

103 (ii) the officer's failure to comply with the requirement of Section 77-7a-104 is
104 reasonably likely to affect the outcome of the defendant's trial.

105 (b) In considering whether to include an adverse inference instruction under Subsection
106 (2)(a), the court shall consider:

107 (i) the degree of prejudice to the defendant as a result of the officer's failure to comply
108 with Section 77-7a-104;

109 (ii) the materiality and importance of the missing evidence in relation to the case as a
110 whole;

111 (iii) the strength of the remaining evidence;

112 (iv) the degree of fault on behalf of the officer described in Subsection (2)(a)(i) or the
113 law enforcement agency employing the officer, including whether evidence supports that the
114 officer or the law enforcement agency displays a pattern of intentional or reckless disregard of
115 the requirements of Section 77-7a-104; and

116 (v) other considerations the court determines are relevant to ensure just adjudication
117 and due process.

118 (c) If a court includes an adverse inference instruction, the prosecutor shall, after the

119 conclusion of the trial, send written notice of the instruction to the law enforcement agency that
120 employed the officer described in Subsection (2)(a)(i) at the time of the offense, including:

121 (i) the written order or a description of the order allowing for the instruction;

122 (ii) the language of the instruction; and

123 (iii) the outcome of the trial.