



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5115

by Rep. Chad Hays

SYNOPSIS AS INTRODUCED:

50 ILCS 706/10-20

Amends the Law Enforcement Officer-Worn Body Camera Act. Provides that recordings made with the use of an officer-worn body camera are not subject to disclosure under the Freedom of Information Act, unless the State's Attorney has determined in writing, that the recording is not and shall not be used as evidence at trial, and (1) if the subject of the encounter has a reasonable expectation of privacy, at the time of the recording, any recording which is flagged, due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm, shall be disclosed in accordance with the Freedom of Information Act if: (i) the subject of the encounter captured on the recording is a victim or witness; and (ii) the law enforcement agency obtains written permission of the subject or the subject's legal representative; (2) any recording which is flagged due to the filing of a complaint, discharge of a firearm, use of force, arrest or detention, or resulting death or bodily harm shall be disclosed in accordance with the Freedom of Information Act; and (3) upon request, the law enforcement agency shall disclose, in accordance with the Freedom of Information Act, the recording to the subject of the encounter captured on the recording or to the subject's attorney, or the officer or his or her legal representative.

LRB100 20037 SLF 35319 b

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Law Enforcement Officer-Worn Body Camera Act
5 is amended by changing Section 10-20 as follows:

6 (50 ILCS 706/10-20)

7 Sec. 10-20. Requirements.

8 (a) The Board shall develop basic guidelines for the use of
9 officer-worn body cameras by law enforcement agencies. The
10 guidelines developed by the Board shall be the basis for the
11 written policy which must be adopted by each law enforcement
12 agency which employs the use of officer-worn body cameras. The
13 written policy adopted by the law enforcement agency must
14 include, at a minimum, all of the following:

15 (1) Cameras must be equipped with pre-event recording,
16 capable of recording at least the 30 seconds prior to
17 camera activation, unless the officer-worn body camera was
18 purchased and acquired by the law enforcement agency prior
19 to July 1, 2015.

20 (2) Cameras must be capable of recording for a period
21 of 10 hours or more, unless the officer-worn body camera
22 was purchased and acquired by the law enforcement agency
23 prior to July 1, 2015.

1 (3) Cameras must be turned on at all times when the
2 officer is in uniform and is responding to calls for
3 service or engaged in any law enforcement-related
4 encounter or activity, that occurs while the officer is on
5 duty.

6 (A) If exigent circumstances exist which prevent
7 the camera from being turned on, the camera must be
8 turned on as soon as practicable.

9 (B) Officer-worn body cameras may be turned off
10 when the officer is inside of a patrol car which is
11 equipped with a functioning in-car camera; however,
12 the officer must turn on the camera upon exiting the
13 patrol vehicle for law enforcement-related encounters.

14 (4) Cameras must be turned off when:

15 (A) the victim of a crime requests that the camera
16 be turned off, and unless impractical or impossible,
17 that request is made on the recording;

18 (B) a witness of a crime or a community member who
19 wishes to report a crime requests that the camera be
20 turned off, and unless impractical or impossible that
21 request is made on the recording; or

22 (C) the officer is interacting with a confidential
23 informant used by the law enforcement agency.

24 However, an officer may continue to record or resume
25 recording a victim or a witness, if exigent circumstances
26 exist, or if the officer has reasonable articulable

1 suspicion that a victim or witness, or confidential
2 informant has committed or is in the process of committing
3 a crime. Under these circumstances, and unless impractical
4 or impossible, the officer must indicate on the recording
5 the reason for continuing to record despite the request of
6 the victim or witness.

7 (4.5) Cameras may be turned off when the officer is
8 engaged in community caretaking functions. However, the
9 camera must be turned on when the officer has reason to
10 believe that the person on whose behalf the officer is
11 performing a community caretaking function has committed
12 or is in the process of committing a crime. If exigent
13 circumstances exist which prevent the camera from being
14 turned on, the camera must be turned on as soon as
15 practicable.

16 (5) The officer must provide notice of recording to any
17 person if the person has a reasonable expectation of
18 privacy and proof of notice must be evident in the
19 recording. If exigent circumstances exist which prevent
20 the officer from providing notice, notice must be provided
21 as soon as practicable.

22 (6) For the purposes of redaction, labeling, or
23 duplicating recordings, access to camera recordings shall
24 be restricted to only those personnel responsible for those
25 purposes. The recording officer and his or her supervisor
26 may access and review recordings prior to completing

1 incident reports or other documentation, provided that the
2 officer or his or her supervisor discloses that fact in the
3 report or documentation.

4 (7) Recordings made on officer-worn cameras must be
5 retained by the law enforcement agency or by the camera
6 vendor used by the agency, on a recording medium for a
7 period of 90 days.

8 (A) Under no circumstances shall any recording
9 made with an officer-worn body camera be altered,
10 erased, or destroyed prior to the expiration of the
11 90-day storage period.

12 (B) Following the 90-day storage period, any and
13 all recordings made with an officer-worn body camera
14 must be destroyed, unless any encounter captured on the
15 recording has been flagged. An encounter is deemed to
16 be flagged when:

17 (i) a formal or informal complaint has been
18 filed;

19 (ii) the officer discharged his or her firearm
20 or used force during the encounter;

21 (iii) death or great bodily harm occurred to
22 any person in the recording;

23 (iv) the encounter resulted in a detention or
24 an arrest, excluding traffic stops which resulted
25 in only a minor traffic offense or business
26 offense;

1 (v) the officer is the subject of an internal
2 investigation or otherwise being investigated for
3 possible misconduct;

4 (vi) the supervisor of the officer,
5 prosecutor, defendant, or court determines that
6 the encounter has evidentiary value in a criminal
7 prosecution; or

8 (vii) the recording officer requests that the
9 video be flagged for official purposes related to
10 his or her official duties.

11 (C) Under no circumstances shall any recording
12 made with an officer-worn body camera relating to a
13 flagged encounter be altered or destroyed prior to 2
14 years after the recording was flagged. If the flagged
15 recording was used in a criminal, civil, or
16 administrative proceeding, the recording shall not be
17 destroyed except upon a final disposition and order
18 from the court.

19 (8) Following the 90-day storage period, recordings
20 may be retained if a supervisor at the law enforcement
21 agency designates the recording for training purposes. If
22 the recording is designated for training purposes, the
23 recordings may be viewed by officers, in the presence of a
24 supervisor or training instructor, for the purposes of
25 instruction, training, or ensuring compliance with agency
26 policies.

1 (9) Recordings shall not be used to discipline law
2 enforcement officers unless:

3 (A) a formal or informal complaint of misconduct
4 has been made;

5 (B) a use of force incident has occurred;

6 (C) the encounter on the recording could result in
7 a formal investigation under the Uniform Peace
8 Officers' Disciplinary Act; or

9 (D) as corroboration of other evidence of
10 misconduct.

11 Nothing in this paragraph (9) shall be construed to
12 limit or prohibit a law enforcement officer from being
13 subject to an action that does not amount to discipline.

14 (10) The law enforcement agency shall ensure proper
15 care and maintenance of officer-worn body cameras. Upon
16 becoming aware, officers must as soon as practical document
17 and notify the appropriate supervisor of any technical
18 difficulties, failures, or problems with the officer-worn
19 body camera or associated equipment. Upon receiving
20 notice, the appropriate supervisor shall make every
21 reasonable effort to correct and repair any of the
22 officer-worn body camera equipment.

23 (11) No officer may hinder or prohibit any person, not
24 a law enforcement officer, from recording a law enforcement
25 officer in the performance of his or her duties in a public
26 place or when the officer has no reasonable expectation of

1 privacy. The law enforcement agency's written policy shall
2 indicate the potential criminal penalties, as well as any
3 departmental discipline, which may result from unlawful
4 confiscation or destruction of the recording medium of a
5 person who is not a law enforcement officer. However, an
6 officer may take reasonable action to maintain safety and
7 control, secure crime scenes and accident sites, protect
8 the integrity and confidentiality of investigations, and
9 protect the public safety and order.

10 (b) Recordings made with the use of an officer-worn body
11 camera are not subject to disclosure under the Freedom of
12 Information Act, unless the State's Attorney has determined in
13 writing, that the recording is not and shall not be used as
14 evidence at trial, and ~~except that:~~

15 (1) if the subject of the encounter has a reasonable
16 expectation of privacy, at the time of the recording, any
17 recording which is flagged, due to the filing of a
18 complaint, discharge of a firearm, use of force, arrest or
19 detention, or resulting death or bodily harm, shall be
20 disclosed in accordance with the Freedom of Information Act
21 if:

22 (A) the subject of the encounter captured on the
23 recording is a victim or witness; and

24 (B) the law enforcement agency obtains written
25 permission of the subject or the subject's legal
26 representative;

1 (2) except as provided in paragraph (1) of this
2 subsection (b), any recording which is flagged due to the
3 filing of a complaint, discharge of a firearm, use of
4 force, arrest or detention, or resulting death or bodily
5 harm shall be disclosed in accordance with the Freedom of
6 Information Act; and

7 (3) upon request, the law enforcement agency shall
8 disclose, in accordance with the Freedom of Information
9 Act, the recording to the subject of the encounter captured
10 on the recording or to the subject's attorney, or the
11 officer or his or her legal representative.

12 For the purposes of paragraph (1) of this subsection (b),
13 the subject of the encounter does not have a reasonable
14 expectation of privacy if the subject was arrested as a result
15 of the encounter. For purposes of subparagraph (A) of paragraph
16 (1) of this subsection (b), "witness" does not include a person
17 who is a victim or who was arrested as a result of the
18 encounter.

19 Only recordings or portions of recordings responsive to the
20 request shall be available for inspection or reproduction. Any
21 recording disclosed under the Freedom of Information Act shall
22 be redacted to remove identification of any person that appears
23 on the recording and is not the officer, a subject of the
24 encounter, or directly involved in the encounter. Nothing in
25 this subsection (b) shall require the disclosure of any
26 recording or portion of any recording which would be exempt

1 from disclosure under the Freedom of Information Act.

2 (c) Nothing in this Section shall limit access to a camera
3 recording for the purposes of complying with Supreme Court
4 rules or the rules of evidence.

5 (Source: P.A. 99-352, eff. 1-1-16; 99-642, eff. 7-28-16.)

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.