

By the Committees on Rules; Governmental Oversight and Accountability; and Criminal Justice; and Senators Smith and Thompson

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S.; defining the terms "body camera," "law
4 enforcement officer," and "personal representative";
5 providing that a body camera recording is confidential
6 and exempt from public records requirements under
7 certain circumstances; providing exceptions; requiring
8 a law enforcement agency to retain body camera
9 recordings for at least a specified period; providing
10 for retroactive application; providing for future
11 legislative review and repeal of the exemption;
12 providing a statement of public necessity; providing
13 an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

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17 Section 1. Paragraph (1) is added to subsection (2) of
18 section 119.071, Florida Statutes, to read:

19 119.071 General exemptions from inspection or copying of
20 public records.—

21 (2) AGENCY INVESTIGATIONS.—

22 (1)1. As used in this paragraph, the term:

23 a. "Body camera" means a portable electronic recording
24 device that is worn on a law enforcement officer's body and that
25 records audio and video data in the course of the officer
26 performing his or her official duties and responsibilities.

27 b. "Law enforcement officer" has the same meaning as
28 provided in s. 943.10.

29 c. "Personal representative" means a parent , a court-

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30 appointed guardian, an attorney, or an agent of, or a person
31 holding a power of attorney for, a person recorded by a body
32 camera. If a person depicted in the recording is deceased, the
33 term also means the personal representative of the estate of the
34 deceased person; the deceased person's surviving spouse, parent,
35 or adult child; the deceased person's attorney or agent; or the
36 parent or guardian of a surviving minor child of the deceased.
37 An agent must possess written authorization of the recorded
38 person to act on his or her behalf.

39 2. A body camera recording, or a portion thereof, is
40 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
41 of the State Constitution if the recording:

42 a. Is taken within the interior of a private residence;

43 b. Is taken within the interior of a facility that offers
44 health care, mental health care, or social services;

45 c. Is taken at the scene of a medical emergency involving a
46 death or involving an injury that requires transport to a
47 medical facility; or

48 d. Is taken in a place that a reasonable person would
49 expect to be private.

50 3. Notwithstanding subparagraph 2., a body camera recording
51 may be disclosed by a law enforcement agency:

52 a. In furtherance of its official duties and
53 responsibilities; or

54 b. To another governmental agency in the furtherance of its
55 official duties and responsibilities.

56 4. A body camera recording, or a portion thereof, shall be
57 disclosed by a law enforcement agency:

58 a. To a person recorded by a body camera; however, a law

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59 enforcement agency may disclose only those portions that are
60 relevant to the person's presence in the recording;

61 b. To the personal representative of a person recorded by a
62 body camera; however, a law enforcement agency may disclose only
63 those portions that are relevant to the represented person's
64 presence in the recording;

65 c. To a person not depicted in a body camera recording if
66 the recording depicts a place in which the person lawfully
67 resided, dwelled, or lodged at the time of the recording;
68 however, a law enforcement agency may disclose only those
69 portions that record the interior of such a place.

70 d. Pursuant to a court order.

71 (I) In addition to any other grounds the court may consider
72 in determining whether to order that a body camera recording be
73 disclosed, the court shall consider whether:

74 (A) Disclosure is necessary to advance a compelling
75 interest;

76 (B) The recording contains information that is otherwise
77 exempt or confidential and exempt under the law;

78 (C) The person requesting disclosure is seeking to obtain
79 evidence to determine legal issues in a case in which the person
80 is a party;

81 (D) Disclosure would reveal information regarding a person
82 that is of a highly sensitive personal nature;

83 (E) Disclosure may harm the reputation or jeopardize the
84 safety of a person depicted in the recording;

85 (F) Confidentiality is necessary to prevent a serious and
86 imminent threat to the fair, impartial, and orderly
87 administration of justice;

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88 (G) The recording could be redacted to protect privacy
89 interests; and

90 (H) There is good cause to disclose all or portions of a
91 recording.

92 (II) In any proceeding regarding the disclosure of a body
93 camera recording, the law enforcement agency that made the
94 recording shall be given reasonable notice of hearings and shall
95 be given an opportunity to participate.

96 5. A law enforcement agency must retain a body camera
97 recording for at least 90 days.

98 6. The exemption provided in subparagraph 2. applies
99 retroactively.

100 7. This exemption does not supersede any other public
101 records exemption that existed before or is created after the
102 effective date of this exemption. Those portions of a recording
103 which are protected from disclosure by another public records
104 exemption shall continue to be exempt or confidential and
105 exempt.

106 8. This paragraph is subject to the Open Government Sunset
107 Review Act in accordance with s. 119.15 and shall stand repealed
108 on October 2, 2020, unless reviewed and saved from repeal
109 through reenactment by the Legislature.

110 Section 2. (1) The Legislature finds that it is a public
111 necessity that the following types of body camera recordings are
112 made confidential and exempt from s. 119.07(1), Florida
113 Statutes, and s. 24(a), Article I of the State Constitution:
114 recordings taken within the interior of a private residence;
115 recordings taken within the interior of a facility that offers
116 health care, mental health care, or social services; recordings

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117 taken at the scene of a medical emergency involving a death or
118 involving an injury that requires transport to a medical
119 facility; and recordings taken in a place that a reasonable
120 person would expect to be private.

121 (2) The Legislature recognizes the increased prevalence of
122 body cameras being used by law enforcement officers. Body
123 cameras preserve information in an objective manner that
124 enhances the ability of both law enforcement officers and the
125 public to review the circumstances surrounding an event in which
126 law enforcement intervention occurs. The availability of readily
127 observable and candid recordings increases transparency and
128 public confidence in law enforcement officers.

129 (3) However, the Legislature also finds that, in certain
130 instances, audio and video recorded by body cameras is
131 significantly more likely to capture highly sensitive personal
132 information than other types of law enforcement recordings or
133 documents. The Legislature finds that public disclosure of these
134 recordings could have an undesirable chilling effect. People who
135 know they are being recorded by a body camera may be unwilling
136 to cooperate fully with law enforcement officers if they know
137 that a body camera recording can be made publicly available to
138 anyone else. People may also be less likely to call a law
139 enforcement agency for services if their sensitive personal
140 information or the circumstances that necessitate a law
141 enforcement agency's involvement are subject to public
142 dissemination as a body camera recording. The Legislature also
143 finds that body camera recordings could be used for criminal
144 purposes if they were available upon request. This exemption
145 from public records requirements allows law enforcement officers

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146 to more effectively and efficiently administer their duties,
147 which would otherwise be significantly impaired. The Legislature
148 finds that these concerns regarding the impact of the public
149 records requirements for body camera recordings not only
150 necessitate the exemption of the recordings from public records
151 requirements, but also outweigh any public benefit that may be
152 derived from their disclosure.

153 Section 3. This act shall take effect July 1, 2015.