

1 HB5
2 214070-1
3 By Representatives Givan, Daniels, Hollis, Drummond, England,
4 Warren, Forte, Boyd, Jackson, Howard, Coleman, Rogers, Hall,
5 Morris, Chestnut, Gray, Jones (S), Grimsley, Moore (M),
6 McCampbell, Clarke and Rafferty
7 RFD: Public Safety and Homeland Security
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8 SYNOPSIS: This bill would provide for the use of
9 physical force by law enforcement officers under
10 certain circumstances.

11 This bill would prohibit the use of
12 chokeholds by law enforcement officers.

13 This bill would require the Alabama Peace
14 Officers' Standards and Training Commission to
15 establish policies relating to the reporting of use
16 of force incidents and would require the commission
17 to establish and maintain a complaint system for
18 use of force incidents.

19 This bill would provide for the type of
20 information that is required to be reported and
21 would require that the public have access to the
22 system.

23 This bill would require an audit, by the
24 Attorney General, concerning the use of force
25 incident reporting system.

26 This bill would establish a procedure to
27 determine whether, to whom, and what portions of a

1 recording made by law enforcement may be disclosed
2 or a copy released.

3 This bill would establish the procedure for
4 contesting a refusal to disclose a recording or to
5 obtain a copy of a recording.

6 This bill would also direct state or local
7 law enforcement agencies to provide, upon request,
8 access to view and analyze recordings.

9
10 A BILL
11 TO BE ENTITLED
12 AN ACT

13
14 Relating to law enforcement; to provide for the use
15 of physical force by law enforcement officers under certain
16 circumstances; to direct state or local law enforcement
17 agencies to adopt use of force policies; to prohibit the use
18 of deadly force in certain circumstances; to establish
19 reporting requirements for law enforcement officers and
20 civilians; to provide for a system of uniform use of force
21 policies; to establish a procedure to determine whether, to
22 whom, and what portions of a recording made by law enforcement
23 may be disclosed or a copy released; to establish the
24 procedure for contesting a refusal to disclose a recording or
25 to obtain a copy of a recording; and to provide access to view
26 and analyze recordings under certain conditions.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. This act shall be known and may be cited
2 as the George Floyd Memorial Act.

3 Section 2. For the purposes of this act, the
4 following terms have the following meanings:

5 (1) BODY-WORN CAMERA. An operational video or
6 digital camera or other electronic device, including a
7 microphone or other mechanism, for allowing audio and video
8 capture affixed to the uniform or person of law enforcement
9 agency personnel and positioned in a way that allows the
10 camera or device to capture interactions between the law
11 enforcement agency personnel and other persons.

12 (2) CHOKEHOLD. The application of any pressure to
13 the throat or windpipe, the use of maneuvers that restrict
14 blood or oxygen flow to the brain, or carotid artery
15 restraints that prevent or hinder breathing or reduce intake
16 of air of an individual.

17 (3) CUSTODIAL LAW ENFORCEMENT AGENCY. A state or
18 local law enforcement agency that owns, leases, or whose
19 personnel operates the equipment that created a recording at
20 the time the recording was made.

21 (4) DASHBOARD CAMERA. A device or system installed
22 or used in a law enforcement agency vehicle that
23 electronically records images or audio depicting interaction
24 with others by law enforcement agency personnel. This term
25 does not include body-worn cameras.

26 (5) DISCLOSE or DISCLOSURE. To make a recording
27 available for viewing or listening to by the person requesting

1 disclosure at a time and location chosen by the custodial law
2 enforcement agency. This term does not include the release of
3 a recording.

4 (6) LAW ENFORCEMENT AGENCY. A state department,
5 county sheriff's department, municipal police department, or
6 any other public agency or entity employing law enforcement
7 officers located within the state.

8 (7) LAW ENFORCEMENT OFFICER. An officer employed by
9 the state or a county or municipality who is certified by the
10 Alabama Peace Officers' Standards and Training Commission and
11 who has the power of arrest.

12 (8) MEDIA OUTLET. A company or other similar entity
13 that transmits news, features stories, entertainment, or other
14 information to the public through various distribution
15 channels, including, but not limited to, news papers,
16 magazines, radio, broadcast, cable and satellite television,
17 and electronic media.

18 (9) PERSONAL REPRESENTATIVE. A parent,
19 court-appointed guardian, spouse, or attorney of a person
20 whose image or voice is in the recording. If a person whose
21 image or voice is in the recording is deceased, the term also
22 means the personal representative of the estate of the
23 deceased person; the surviving spouse, parent, or adult child
24 of the deceased person; the attorney of the deceased person;
25 or the parent or guardian of a surviving minor child of the
26 deceased person.

1 (10) RECORDING. A visual, audio, or visual and audio
2 recording captured by a body-worn camera, a dashboard camera,
3 or any other video or audio recording device operated by or on
4 behalf of a law enforcement agency or law enforcement agency
5 personnel when carrying out law enforcement responsibilities.
6 This term does not include any video or audio recordings of
7 interviews regarding agency internal investigations or
8 interviews or interrogations of suspects or witnesses.

9 (11) RELEASE. To provide a copy of a recording.

10 (12) USE OF FORCE. Using force or effort by a law
11 enforcement officer in order to compel compliance by an
12 unwilling subject.

13 Section 3. (a) A law enforcement officer shall apply
14 nonviolent means, when possible, before resorting to the use
15 of physical force in carrying out his or her duties.

16 (b) A law enforcement officer may use physical force
17 only if nonviolent means would be ineffective in effecting an
18 arrest, preventing an escape, or preventing an imminent threat
19 of serious bodily injury or death to the law enforcement
20 officer or another person.

21 (c) In effecting an arrest or in preventing an
22 escape from custody, a law enforcement officer is justified in
23 using deadly force only when the officer reasonably believes
24 that the use of deadly force is immediately necessary to
25 effect the arrest or prevent an escape from custody and also
26 reasonably believes that the person to be arrested:

1 (1) Has committed or attempted to commit a felony
2 offense involving the infliction or threatened infliction of
3 serious physical injury.

4 (2) Is attempting to escape by use of a deadly
5 weapon or dangerous instrument.

6 (3) May otherwise endanger life or inflict serious
7 physical injury to the officer or others unless arrested
8 without delay.

9 (d) A law enforcement agency may not authorize the
10 use of chokeholds by law enforcement officers.

11 Section 4. (a) Beginning in the first fiscal year
12 after the effective date of this act, the Alabama Peace
13 Officers' Standards and Training Commission shall do all of
14 the following:

15 (1) Ensure a model use of force policy for law
16 enforcement officers, including a choke hold prohibition, is
17 publicly available.

18 (2) Require use of force training for law
19 enforcement agencies and personnel, including training on
20 de-escalation, implicit bias, crisis intervention techniques,
21 and adolescent development.

22 (3) Establish and maintain a system that allows for
23 use of force complaints to be filed. This system shall do all
24 of the following:

25 a. Be available for use by members of the public to
26 report incidents of use of force to a law enforcement agency.

1 b. Make all information collected publicly
2 searchable and available.

3 c. Provide information on the status of an
4 investigation related to a use of force complaint.

5 d. Have public awareness campaigns designed to gain
6 information from the public on use of force by or against law
7 enforcement officers, including shootings, which may include
8 tip lines, hotlines, and public service announcements.

9 (b) The system referenced in subdivision (a) (3)
10 shall contain information, including, but not limited to, all
11 of the following:

12 (1) The national origin, sex, race, ethnicity, age,
13 disability, English language proficiency, and housing status
14 of each civilian against whom a law enforcement officer used
15 force.

16 (2) The date, time, and location, including whether
17 it was on school grounds and the zip code of the incident.

18 (3) Whether the civilian was armed, and, if so, the
19 type of weapon the civilian had.

20 (4) The type of force used against the law
21 enforcement officer, the civilian, or both, including the
22 types of weapons used.

23 (5) The reason force was used.

24 (6) A description of any injuries sustained as a
25 result of the incident.

26 (7) The number of law enforcement officers involved
27 in the incident.

1 (8) The number of civilians involved in the
2 incident.

3 (9) A brief description regarding the circumstances
4 surrounding the incident which shall provide information on
5 the following:

6 a. The type of force used by all involved persons.

7 b. The legitimate police objective necessitating the
8 use of force.

9 c. The resistance encountered by each law
10 enforcement officer involved in the incident.

11 d. The efforts by law enforcement officers to do any
12 of the following:

13 1. De-escalate the situation in order to avoid the
14 use of force.

15 2. Minimize the level of force used.

16 3. If applicable, the reason efforts described in
17 this paragraph were not attempted.

18 Section 5. Not later than one year after the
19 effective date of this act, and each year thereafter, the
20 Alabama Peace Officers' Standards and Training Commission
21 shall do all of the following:

22 (1) Conduct an audit of the use of force incident
23 reporting system required under this act.

24 (2) Submit a report to the Attorney General on the
25 audit conducted under subdivision (1).

26 (3) Prior to submitting a report, the commission
27 shall compare the information compiled to be reported pursuant

1 to Section 4 to publicly available sources and shall revise
2 the report to include any incident determined to be missing
3 from the report based on the comparison. Failure to comply
4 with the procedures described in this subdivision shall be
5 considered a failure to comply with the requirements of this
6 section.

7 Section 6. Recordings are not personnel records of
8 any person employed as a law enforcement officer by a
9 municipality, sheriff's department, or any agency of the
10 state.

11 Section 7. (a) A recording in the custody of a law
12 enforcement agency shall be disclosed only as provided by this
13 act.

14 (b) A person requesting disclosure of a recording
15 shall make a written request to the head of the custodial law
16 enforcement agency that states the date and approximate time
17 of the activity captured in the recording or otherwise
18 identifies the activity with reasonable particularity
19 sufficient to identify the recording to which the request
20 refers. Nothing in this act limits or restricts the
21 application of the Alabama Rules of Civil Procedure as they
22 may be applied to the custodial law enforcement agency,
23 including, but not limited to, Rule 45, nor Chapter 21 of
24 Title 12, Code of Alabama 1975.

25 (c) The custodial law enforcement agency may
26 disclose a recording to the following:

1 (1) A person whose image or voice is in the
2 recording.

3 (2) A personal representative of an adult person
4 whose image or voice is in the recording if the adult person
5 has consented to the disclosure.

6 (3) A personal representative of a minor or of an
7 adult person under lawful guardianship whose image or voice is
8 in the recording.

9 (4) A personal representative of a deceased person
10 whose image or voice is in the recording.

11 (5) A personal representative of an adult person who
12 is incapacitated and unable to provide consent to disclosure.

13 (d) When disclosing the recording, the custodial law
14 enforcement agency shall disclose only those portions of the
15 recording that are relevant to the request of the person. A
16 person who receives disclosure pursuant to this section may
17 not record or copy the recording.

18 Section 8. (a) A media outlet must submit a written
19 request for any recording disclosure.

20 (b) Upon receipt of the written request for
21 disclosure by a media outlet, as promptly as possible, the
22 custodial law enforcement agency shall either disclose the
23 portion of the recording relevant to the request of the person
24 or notify the requestor of the decision of the custodial law
25 enforcement agency not to disclose the recording to the
26 requestor.

1 (c) The custodial law enforcement agency may
2 consider any of the following factors in determining whether a
3 recording should be disclosed:

4 (1) If the recording contains information that is
5 otherwise confidential or exempt from disclosure or release
6 under state or federal law.

7 (2) If disclosure would reveal information that is
8 of a highly sensitive nature to a person.

9 (3) If disclosure may jeopardize the safety of a
10 person.

11 (4) If disclosure would create a serious threat to
12 the fair, impartial, and orderly administration of justice.

13 (5) If confidentiality is necessary to protect
14 either an active or inactive internal or criminal
15 investigation or potential internal or criminal investigation.

16 Section 9. (a) If a law enforcement agency denies
17 disclosure pursuant to Sections 7 and 8, or has failed to
18 provide disclosure more than three business days after the
19 request for disclosure, a person authorized to receive
20 disclosure or the custodial law enforcement agency may
21 petition the circuit court in a county where a portion of the
22 recording was made for an order releasing the recording to a
23 person authorized to receive disclosure. There shall be no fee
24 for filing the petition which shall be filed on a form
25 approved by the Administrative Office of Courts and shall
26 state the date and approximate time of the activity captured

1 in the recording, or otherwise identify the activity with
2 reasonable particularity sufficient to identify the recording.

3 (b) If a petitioner is a person authorized to
4 receive disclosure, notice and an opportunity to be heard
5 shall be given to the head of the custodial law enforcement
6 agency. Petitions filed pursuant to this section shall be set
7 for a hearing as soon as practicable and shall be accorded
8 priority by the court.

9 (c) The court shall first determine if the person to
10 whom release of the recording is requested is a person
11 authorized to receive disclosure pursuant to this act. In
12 making this determination, the court may conduct an in-camera
13 review of the recording and may allow the petitioner to be
14 present to assist in identifying the image or voice in the
15 recording that authorizes disclosure to the person to whom
16 release is requested. If the court determines that the person
17 is not authorized to receive disclosure pursuant to this act,
18 there shall be no right of appeal, and the petitioner may not
19 file an action for release pursuant to this Section.

20 (d) If the court determines that the person to whom
21 release of the recording is requested is a person authorized
22 to receive disclosure pursuant to this section, the court
23 shall consider the standards set out in Section 7, 8, and 10
24 and any other standards the court deems relevant in
25 determining whether to order the release of all or a portion
26 of the recording.

1 (e) The court may conduct an in-camera review of the
2 recording. The court shall release only those portions of the
3 recording that are relevant to the person's request and may
4 place any conditions or restrictions on the release of the
5 recording that the court, in its discretion, deems
6 appropriate.

7 Section 10. (a) Any custodial law enforcement agency
8 or any person requesting the release of a recording may file
9 an action in the circuit court in any county where any portion
10 of the recording was made for an order releasing the
11 recording. The request for release shall state the date and
12 approximate time of the activity captured in the recording, or
13 otherwise identify the activity with reasonable particularity
14 sufficient to identify the recording to which the action
15 refers. The court may conduct an in-camera review of the
16 recording. In determining whether to order the release of all
17 or a portion of the recording, in addition to any other
18 standards the court deems relevant, the court shall consider
19 the applicability of all of the following standards:

20 (1) The release is necessary to advance a compelling
21 public interest.

22 (2) The recording contains information that is
23 otherwise confidential or exempt from disclosure or release
24 under state or federal law.

25 (3) The person requesting release is seeking to
26 obtain evidence to determine legal issues in a current or
27 potential court proceeding.

1 (4) The release would reveal information that is of
2 a highly sensitive nature to a person.

3 (5) The release may harm the reputation or
4 jeopardize the safety of a person.

5 (6) The release would create a serious threat to the
6 fair, impartial, and orderly administration of justice.

7 (7) Confidentiality is necessary to protect either
8 an active or inactive internal or criminal investigation or
9 potential internal or criminal investigation.

10 (8) There is good cause shown to release all
11 portions of the recording.

12 (b) The court shall release only those portions of
13 the recording that are relevant to the request of the person
14 and may place any conditions or restrictions on the release of
15 the recording that the court, in its discretion, deems
16 appropriate. In any proceeding pursuant to this section, the
17 following persons shall be notified, and those persons, or
18 their designated representative, shall be given an opportunity
19 to be heard at any proceeding:

20 (1) The head of the custodial law enforcement
21 agency.

22 (2) Any law enforcement agency personnel whose image
23 or voice is in the recording and the head of the employing law
24 enforcement agency of the person.

25 (3) The district attorney.

26 (c) All actions brought pursuant to this section
27 shall be set for a hearing as soon as practicable, and

1 subsequent proceedings in the actions shall be accorded
2 priority by the trial and appellate courts.

3 Section 11. (a) Notwithstanding the requirements of
4 Sections 3, 5, and 6, a custodial law enforcement agency shall
5 disclose or release a recording to a district attorney for any
6 of the following:

7 (1) Review of potential criminal charges.

8 (2) To comply with discovery requirements in a
9 criminal prosecution.

10 (3) For use in criminal proceedings in any court.

11 (4) Other law enforcement purposes.

12 (b) A custodial law enforcement agency may disclose
13 or release a recording for any of the following purposes:

14 (1) For law enforcement training purposes.

15 (2) Within the custodial law enforcement agency for
16 any administrative, training, or law enforcement purpose.

17 (3) To another law enforcement agency for law
18 enforcement purposes.

19 Section 12. Any recording subject to this act shall
20 be retained for at least the period of time required by the
21 applicable records retention and disposition schedule
22 developed by the Alabama State Law Enforcement Agency.

23 Section 13. Each law enforcement agency that uses
24 body-worn cameras or dashboard cameras shall adopt a policy
25 applicable to the use of those cameras.

26 Section 14. No civil liability shall arise from
27 compliance with this act if the acts or omissions are made in

1 good faith and do not constitute gross negligence, willful or
2 wanton misconduct, or intentional wrongdoing.

3 Section 15. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.