

1 HB6
2 207634-1
3 By Representatives Givan and Daniels
4 RFD: Judiciary
5 First Read: 02-FEB-21
6 PFD: 07/17/2020

8 SYNOPSIS: This bill would establish a procedure to
9 determine whether, to whom, and what portions of a
10 recording made by law enforcement may be disclosed
11 or a copy released.

12 This bill would establish the procedure for
13 contesting a refusal to disclose a recording or to
14 obtain a copy of a recording.

15 This bill would also direct state or local
16 law enforcement agencies to provide, upon request,
17 access to view and analyze recordings.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 Relating to law enforcement; to establish a
24 procedure to determine whether, to whom, and what portions of
25 a recording made by law enforcement may be disclosed or a copy
26 released; to establish the procedure for contesting a refusal
27 to disclose a recording or to obtain a copy of a recording; to

1 direct state or local law enforcement agencies; to provide
2 access to view and analyze recordings under certain
3 conditions.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

5 Section 1. As used in this act, the following terms
6 shall have the following meanings:

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

14 (2) CUSTODIAL LAW ENFORCEMENT AGENCY. A state or
15 local law enforcement agency that owns, leases, or whose
16 personnel operates the equipment that created a recording at
17 the time the recording was made.

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

23 (4) DISCLOSE or DISCLOSURE. To make a recording
24 available for viewing or listening to by the person requesting
25 disclosure, at a time and location chosen by the custodial law
26 enforcement agency. This term does not include the release of
27 a recording.

1 (5) PERSONAL REPRESENTATIVE. A parent,
2 court-appointed guardian, spouse, or attorney of a person
3 whose image or voice is in the recording. If a person whose
4 image or voice is in the recording is deceased, the term also
5 means the personal representative of the estate of the
6 deceased person; the surviving spouse, parent, or adult child
7 of the deceased person; the attorney of the deceased person;
8 or the parent or guardian of a surviving minor child of the
9 deceased person.

10 (6) RECORDING. A visual, audio, or visual and audio
11 recording captured by a body-worn camera, a dashboard camera,
12 or any other video or audio recording device operated by or on
13 behalf of a law enforcement agency or law enforcement agency
14 personnel when carrying out law enforcement responsibilities.
15 This term does not include any video or audio recordings of
16 interviews regarding agency internal investigations or
17 interviews or interrogations of suspects or witnesses.

18 (7) RELEASE. To provide a copy of a recording.

19 Section 2. Recordings are not personnel records of
20 any person employed as a law enforcement officer by a
21 municipality, sheriff's department, or any agency of the
22 state.

23 Section 3. (a) A recording in the custody of a law
24 enforcement agency shall be disclosed only as provided by this
25 act. A person requesting disclosure of a recording shall make
26 a written request to the head of the custodial law enforcement
27 agency that states the date and approximate time of the

1 activity captured in the recording or otherwise identifies the
2 activity with reasonable particularity sufficient to identify
3 the recording to which the request refers. Nothing in this act
4 limits or restricts the application of the Alabama Rules of
5 Civil Procedure as they may be applied to the custodial law
6 enforcement agency, including, but not limited to, Rule 45,
7 nor Chapter 21 of Title 12, Code of Alabama 1975.

8 (b) The custodial law enforcement agency may only
9 disclose a recording to the following:

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

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

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

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

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

22 (c) When disclosing the recording, the custodial law
23 enforcement agency shall disclose only those portions of the
24 recording that are relevant to the request of the person. A
25 person who receives disclosure pursuant to this act may not
26 record or copy the recording.

1 Section 4. (a) Upon receipt of the written request
2 for disclosure, as promptly as possible, the custodial law
3 enforcement agency shall either disclose the portion of the
4 recording relevant to the request of the person or notify the
5 requestor of the decision of the custodial law enforcement
6 agency not to disclose the recording to the requestor.

7 (b) The custodial law enforcement agency may
8 consider any of the following factors in determining whether a
9 recording should be disclosed:

10 (1) If the person requesting disclosure of the
11 recording is authorized to receive disclosure pursuant to
12 Section 3.

13 (2) If the recording contains information that is
14 otherwise confidential or exempt from disclosure or release
15 under state or federal law.

16 (3) If disclosure would reveal information that is
17 of a highly sensitive nature to a person.

18 (4) If disclosure may harm the reputation or
19 jeopardize the safety of a person.

20 (5) If disclosure would create a serious threat to
21 the fair, impartial, and orderly administration of justice.

22 (6) If confidentiality is necessary to protect
23 either an active or inactive internal or criminal
24 investigation or potential internal or criminal investigation.

25 Section 5. (a) If a law enforcement agency denies
26 disclosure pursuant to Section 4, or has failed to provide
27 disclosure more than three business days after the request for

1 disclosure, a person authorized to receive disclosure or the
2 custodial law enforcement agency may petition the circuit
3 court in a county where a portion of the recording was made
4 for an order releasing the recording to a person authorized to
5 receive disclosure. There shall be no fee for filing the
6 petition which shall be filed on a form approved by the
7 Administrative Office of Courts and shall state the date and
8 approximate time of the activity captured in the recording, or
9 otherwise identify the activity with reasonable particularity
10 sufficient to identify the recording.

11 (b) If a petitioner is a person authorized to
12 receive disclosure, notice and an opportunity to be heard
13 shall be given to the head of the custodial law enforcement
14 agency. Petitions filed pursuant to this section shall be set
15 for a hearing as soon as practicable and shall be accorded
16 priority by the court.

17 (c) The court shall first determine if the person to
18 whom release of the recording is requested is a person
19 authorized to receive disclosure pursuant to this act. In
20 making this determination, the court may conduct an in-camera
21 review of the recording and may allow the petitioner to be
22 present to assist in identifying the image or voice in the
23 recording that authorizes disclosure to the person to whom
24 release is requested. If the court determines that the person
25 is not authorized to receive disclosure pursuant to this act,
26 there shall be no right of appeal, and the petitioner may not
27 file an action for release pursuant to Section 6.

1 (d) If the court determines that the person to whom
2 release of the recording is requested is a person authorized
3 to receive disclosure pursuant to this section, the court
4 shall consider the standards set out in Section 6 and any
5 other standards the court deems relevant in determining
6 whether to order the release of all or a portion of the
7 recording.

8 (e) The court may conduct an in-camera review of the
9 recording. The court shall release only those portions of the
10 recording that are relevant to the person's request and may
11 place any conditions or restrictions on the release of the
12 recording that the court, in its discretion, deems
13 appropriate.

14 Section 6. (a) Any custodial law enforcement agency
15 or any person requesting the release of a recording may file
16 an action in the circuit court in any county where any portion
17 of the recording was made for an order releasing the
18 recording. The request for release shall state the date and
19 approximate time of the activity captured in the recording, or
20 otherwise identify the activity with reasonable particularity
21 sufficient to identify the recording to which the action
22 refers. The court may conduct an in-camera review of the
23 recording. In determining whether to order the release of all
24 or a portion of the recording, in addition to any other
25 standards the court deems relevant, the court shall consider
26 the applicability of all of the following standards:

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

3 (2) The recording contains information that is
4 otherwise confidential or exempt from disclosure or release
5 under state or federal law.

6 (3) The person requesting release is seeking to
7 obtain evidence to determine legal issues in a current or
8 potential court proceeding.

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

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

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

15 (7) Confidentiality is necessary to protect either
16 an active or inactive internal or criminal investigation or
17 potential internal or criminal investigation.

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

20 (b) The court shall release only those portions of
21 the recording that are relevant to the request of the person
22 and may place any conditions or restrictions on the release of
23 the recording that the court, in its discretion, deems
24 appropriate. In any proceeding pursuant to this section, the
25 following persons shall be notified, and those persons, or
26 their designated representative, shall be given an opportunity
27 to be heard at any proceeding:

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

3 (2) Any law enforcement agency personnel whose image
4 or voice is in the recording and the head of the employing law
5 enforcement agency of the person.

6 (3) The district attorney.

7 (c) All actions brought pursuant to this section
8 shall be set for a hearing as soon as practicable, and
9 subsequent proceedings in the actions shall be accorded
10 priority by the trial and appellate courts.

11 Section 7. (a) Notwithstanding the requirements of
12 Sections 3, 5, and 6, a custodial law enforcement agency shall
13 disclose or release a recording to a district attorney for any
14 of the following:

15 (1) Review of potential criminal charges.

16 (2) To comply with discovery requirements in a
17 criminal prosecution.

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

19 (4) Other law enforcement purposes.

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

22 (1) For law enforcement training purposes.

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

25 (3) To another law enforcement agency for law
26 enforcement purposes.

1 Section 8. Any recording subject to this act shall
2 be retained for at least the period of time required by the
3 applicable records retention and disposition schedule
4 developed by the Alabama State Law Enforcement Agency.

5 Section 9. Each law enforcement agency that uses
6 body-worn cameras or dashboard cameras shall adopt a policy
7 applicable to the use of those cameras.

8 Section 10. No civil liability shall arise from
9 compliance with this act if the acts or omissions are made in
10 good faith and do not constitute gross negligence, willful or
11 wanton misconduct, or intentional wrongdoing.

12 Section 11. The court may not award attorneys' fees
13 to any party in any action brought pursuant to this act.

14 Section 12. This act shall become effective on the
15 first day of the third month following its passage and
16 approval by the Governor, or its otherwise becoming law.