HB36
196529-1
By Representatives Givan, Rogers, Hall and Bracy
RFD: Public Safety and Homeland Security
First Read: 05-MAR-19
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SYNOPSIS: This bill would provide that recordings made by law enforcement agencies are not public records.

This bill would establish a procedure to determine whether, to whom, and what portions of a recording may be disclosed or a copy released.

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

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

A BILL TO BE ENTITLED AN ACT

Relating to law enforcement; to provide that recordings made by law enforcement agencies are not public records; to establish a procedure to determine whether, to whom, and what portions of a recording may be disclosed or a
copy released; to establish the procedure for contesting a refusal to disclose a recording or to obtain a copy of a recording; to direct state or local law enforcement agencies; to provide access to view and analyze recordings under certain conditions.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

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

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

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

Section 2. Recordings are not public records as
defined by Section 41-13-1 of the Code of Alabama 1975.
Recordings are not personnel records of any person employed as
a law enforcement officer by a municipality, sheriff's
department, or any agency of the state.

Section 3. (a) A recording in the custody of a law
enforcement agency shall be disclosed only as provided by this
act. A person requesting disclosure of a recording shall make a written request to the head of the custodial law enforcement agency that states the date and approximate time of the activity captured in the recording or otherwise identifies the activity with reasonable particularity sufficient to identify the recording to which the request refers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. (a) If a law enforcement agency denies disclosure pursuant to Section 4, or has failed to provide disclosure more than three business days after the request for disclosure, a person authorized to receive disclosure or the custodial law enforcement agency may petition the circuit
court in a county where a portion of the recording was made
for an order releasing the recording to a person authorized to
receive disclosure. There shall be no fee for filing the
petition which shall be filed on a form approved by the
Administrative Office of Courts and shall state the date and
approximate time of the activity captured in the recording, or
otherwise identify the activity with reasonable particularity
sufficient to identify the recording.

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

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

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

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

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

(1) The release is necessary to advance a compelling public interest.
(2) The recording contains information that is otherwise confidential or exempt from disclosure or release under state or federal law.

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

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

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

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

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

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

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

(1) The head of the custodial law enforcement agency.
(2) Any law enforcement agency personnel whose image or voice is in the recording and the head of the employing law enforcement agency of the person.

(3) The district attorney.

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

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

(1) Review of potential criminal charges.

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

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

(4) Other law enforcement purposes.

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

(1) For law enforcement training purposes.

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

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

Section 8. Any recording subject to this act shall be retained for at least the period of time required by the
applicable records retention and disposition schedule
developed by the Alabama Criminal Justice Information Center.

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

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

Section 11. A law enforcement agency may charge a
fee to offset the cost incurred by it to make a copy of a
recording for release. The fee may not exceed the actual cost
of making the copy.

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

Section 13. This act shall become effective on the
first day of the third month following its passage and
approval by the Governor, or its otherwise becoming law.