HB373
205032-1
By Representative Stringer
RFD: Judiciary
First Read: 03-MAR-20
SYNOPSIS: This bill would provide for the circumstances and procedures to release recordings made by body-worn cameras or dashboard cameras utilized by law enforcement agencies.

A BILL
TO BE ENTITLED
AN ACT

Relating to law enforcement agency recordings; to provide for circumstances and procedures to release recordings made by body-worn cameras or dashboard cameras utilized by law enforcement agencies.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. For the purposes of this section, 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 the law enforcement agency
personnel has with others.

(2) CUSTODIAL LAW ENFORCEMENT AGENCY. The law
enforcement agency that owns or leases or whose personnel
operates the equipment that created the 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 deceased person's surviving spouse,
parent, or adult child; the deceased person's attorney; or the
parent or guardian of a surviving minor child of the deceased.

(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 under Section 36-12-40, Code of Alabama 1975, and shall not be considered personnel records under state law.

Section 3. (a) Recordings in the custody of a law enforcement agency shall be disclosed only as provided by this section. A person requesting disclosure of a recording must 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. The head of 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.

(b) When disclosing a recording under subsection (a), the law enforcement agency shall disclose only those portions of the recording that are relevant to the person's request.

(c) A person who receives disclosure pursuant to this section shall 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 must either disclose the portion of the recording relevant to the person's request or notify the requestor of the custodial law enforcement agency's decision 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 is disclosed:

(1) If the person requesting disclosure of the recording is a person 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 regarding a person that is of a highly sensitive personal nature.

(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 this section, or has failed to provide disclosure more than three business days after the request for disclosure, the person seeking disclosure may apply to the circuit court in any county where any portion of the recording was made for a review of the denial of disclosure. The court may conduct an in-camera review of the recording. The court may order the disclosure of the recording only if the court finds that the law enforcement agency abused its discretion in denying the request for disclosure. The court may only order disclosure of those portions of the recording that are relevant to the person's request. A person who receives disclosure pursuant to this section shall not record or copy the recording. An order issued pursuant to this section may not order the release of the recording.
(b) 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 that person's employing law enforcement agency.

   (3) The district attorney of the jurisdiction where the custodial law enforcement agency is located.

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

Section 6. (a) Notwithstanding Section 8, a person authorized to receive disclosure pursuant to Section 3, or the custodial law enforcement agency, may petition the circuit court in any county where any 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. If the 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.

(b) 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 Section 3. 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.

(c) If the court determines that the person is not
authorized to receive disclosure pursuant to Section 3, there
shall be no right of appeal, and the petitioner may file an
action for release pursuant to Section 7.

(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 3, the court shall
consider the standards set out in Section 8 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 deems appropriate.
Section 7. (a) Except as specifically provided otherwise in this act, recordings in the custody of a law enforcement agency shall only be released pursuant to court order. Any custodial law enforcement agency or any person requesting 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 must 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) 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) Release would reveal information regarding a person that is of a highly sensitive personal nature.
(5) Release may harm the reputation or jeopardize the safety of a person.

(6) 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 a recording.

(b) 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 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 that person's employing law enforcement agency.

(3) The district attorney of the jurisdiction where the custodial law enforcement agency is located.

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

Section 8. (a) Notwithstanding the requirements of Sections 3, 6, and 7, a custodial law enforcement agency shall disclose or release a recording to a district attorney for any of the following purposes:

(1) For review of potential criminal charges.
(2) In order to comply with discovery requirements in a criminal prosecution.
(3) For use in criminal proceedings in district court.
(4) Any other law enforcement purpose.

(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 9. Any recording subject to this act shall be retained for the period of time required by state law for recordings.

Section 10. Each law enforcement agency that uses body-worn cameras or dashboard cameras shall adopt a policy applicable to the use of those cameras.

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

Section 12. A law enforcement agency may charge a fee to offset the cost incurred to make a copy of a recording for release. The fee shall not exceed the actual cost of making the copy.

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

Section 14. 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.