LAW ENFORCEMENT BODY-WORN CAMERA PRIVACY ACT
Act 85 of 2017

AN ACT to exempt from disclosure certain audio and video recordings recorded by law enforcement officers with a body-worn camera in certain private places; to describe certain individuals who may request disclosure of those audio and video recordings; and to prescribe the powers and duties of certain local and state law enforcement agencies.

History: 2017, Act 85, Eff. Jan. 8, 2018.

The People of the State of Michigan enact:

780.311 Short title.

Sec. 1. This act shall be known and may be cited as the "law enforcement body-worn camera privacy act".

History: 2017, Act 85, Eff. Jan. 8, 2018.

780.312 Definitions.

Sec. 2. As used in this act:

(a) "Body-worn camera" means a device that is worn by a law enforcement officer that electronically records audio and video of his or her activities.

(b) "Evidentiary audio and video recording" means an audio and video recording of an incident or encounter recorded by a body-worn camera, including a crime, arrest, citation, search, use of force incident, or confrontational encounter with a citizen, that may be materially useful for investigative or prosecutorial purposes, including for a criminal and internal investigation.

(c) "Private place" means a place where an individual may reasonably expect to be safe from casual or hostile intrusion or surveillance but does not include a place to which the public or a substantial group of the public has access.

History: 2017, Act 85, Eff. Jan. 8, 2018.

780.313 Audio or video recording recorded by body-worn camera; disclosure; protections; exemption from freedom of information act.

Sec. 3. (1) The disclosure of any audio or video recording recorded by a body-worn camera is subject to the protections provided for crime victims in sections 8, 19, 19a, 21, 34, 38, 48, 62, 68, and 80 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.758, 780.769, 780.769a, 780.771, 780.784, 780.788, 780.798, 780.812, 780.818, and 780.830.

(2) Except as otherwise provided in section 4 and subject to section 5, a recording recorded by a law enforcement officer with a body-worn camera that is recorded in a private place is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 2017, Act 85, Eff. Jan. 8, 2018.

780.314 Audio and video recording recorded by law enforcement officer with body-worn camera; individuals requesting copy.

Sec. 4. Except for an audio and video recording exempted from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243, and section 3(1) or 5, any of the following individuals may request a copy of an audio and video recording recorded by a law enforcement officer with a body-worn camera in a private place:

(a) An individual who is the subject of the audio and video recording.

(b) An individual whose property has been seized or damaged in relation to a crime to which the audio and video recording is related.

(c) A parent of an individual who is less than 18 years of age described in subdivision (a) or (b).

(d) A legal guardian of an individual described in subdivision (a) or (b).

(e) An attorney who represents an individual described in subdivision (a) or (b).

History: 2017, Act 85, Eff. Jan. 8, 2018.

780.315 Audio or video recording from body-worn camera; retention by law enforcement agency; disclosure as public record; limitation.

Sec. 5. (1) An audio or video recording from a body-worn camera that is retained by a law enforcement agency in connection with an ongoing criminal investigation or an ongoing internal investigation is not a public record and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231

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to 15.246, but only to the extent that disclosure as a public record would do any of the following:

(a) Interfere with law enforcement proceedings.

(b) Deprive a person of the right to a fair trial or impartial adjudication.

(c) Constitute an unwarranted invasion of personal privacy.

(d) Disclose the identity of a confidential source or, if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.

(e) Disclose law enforcement investigative techniques or procedures.

(f) Endanger the life or physical safety of law enforcement personnel.

(g) Disclose information regarding a crime victim in violation of sections 8, 19, 19a, 21, 34, 38, 48, 62, 68, and 80 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.758, 780.769, 780.769a, 780.771, 780.784, 780.788, 780.798, 780.812, 780.818, and 780.830.

(2) An audio or video recording from a body-worn camera that is retained by a law enforcement agency relating to a civil action in which the requesting party and the public body are parties is not a public record and is exempt from disclosure under section 13(1)(v) of the freedom of information act, 1976 PA 442, MCL 15.243.

History: 2017, Act 85, Eff. Jan. 8, 2018.

780.316 Audio and video recording recorded by body-worn camera; retention by law enforcement agency; duration; presumption.

Sec. 6. (1) Except as provided in subsections (2) and (3), a law enforcement agency shall retain an evidentiary audio and video recording recorded by a body-worn camera for not less than 30 days from the date the recording is made.

(2) A law enforcement agency shall retain audio and video recordings that are the subject of an ongoing criminal or internal investigation, or an ongoing criminal prosecution or civil action, until the completion of the ongoing investigation or legal proceeding.

(3) A law enforcement agency shall retain audio and video recorded by a body-worn camera for not less than 3 years after the date the recording is made if the recording is relevant to a formal complaint against a law enforcement officer or agency.

(4) If a complaint against a law enforcement officer or law enforcement agency is made after the expiration of the retention period described in subsection (1), (2), or (3) or a law enforcement agency is unable to produce an audio and video recording related to the complaint in any criminal prosecution or civil action as a result of a technical failure or human error, this act does not create a presumption that the audio and video recording would corroborate either the prosecution's or the defendant's version of events in a criminal prosecution or the plaintiff's or the defendant's version in a civil action.

History: 2017, Act 85, Eff. Jan. 8, 2018.

780.317 Fee.

Sec. 7. A law enforcement agency may charge a fee for a copy of an audio and video recording recorded by a law enforcement officer with a body-worn camera. A fee charged under this section shall be calculated under and in compliance with section 4 of the freedom of information act, 1976 PA 442, MCL 15.234.

History: 2017, Act 85, Eff. Jan. 8, 2018.

780.318 Use, maintenance, and disclosure of audio and video recordings recorded by body-worn cameras; written policy.

Sec. 8. A law enforcement agency that utilizes body-worn cameras shall develop a written policy regarding the use of the body-worn cameras by its law enforcement officers and the maintenance and disclosure of audio and video recordings recorded by body-worn cameras that complies with the requirements of this act.

History: 2017, Act 85, Eff. Jan. 8, 2018.

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