

1 AN ACT relating to the disclosure of body-worn camera recordings.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 61 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section:*

6 *(a) "Body-worn camera" means a video or audio electronic recording device*
7 *that is carried by or worn on the body of a public safety officer. This*
8 *definition does not include a dashboard mounted camera or recording*
9 *device used in the course of clandestine investigations;*

10 *(b) "Body-worn camera recording" or "recording" means a video or audio*
11 *recording, or both, that is made by a body-worn camera during the course*
12 *of a public safety officer's official duties;*

13 *(c) "Personal representative" means a court-appointed guardian, attorney, or*
14 *agent possessing written authorization to act on behalf of a person that is*
15 *involved in an incident contained in a body-worn camera recording, a*
16 *person holding a power of attorney for a person that is involved in an*
17 *incident contained in a body-worn camera recording, or the parent or*
18 *guardian of a minor child depicted in a body-worn camera recording. If a*
19 *person depicted in the recording is deceased, the term also means the*
20 *personal representative of the estate of the deceased person, the deceased*
21 *person's surviving spouse, parent, or adult child, the deceased person's*
22 *attorney, or the parent or guardian of a surviving minor child of the*
23 *deceased;*

24 *(d) "Public agency" has the same meaning as in KRS 61.870(1); and*

25 *(e) "Public safety officer" means any individual that is an employee of a public*
26 *agency who is certified as a first responder under KRS Chapter 311A or*
27 *whose employment duties include law enforcement or firefighting activities.*

- 1 (2) Notwithstanding any other provision of law and except as provided in subsection
2 (4) of this section, the disclosure of body-worn camera recordings shall be
3 governed by the Kentucky Open Records Act, as set forth in KRS 61.870 to
4 61.884.
- 5 (3) The retention of body-worn camera video recordings shall be governed by KRS
6 171.410 to 171.740, and the administrative regulations promulgated by the
7 Kentucky Department of Libraries and Archives.
- 8 (4) Notwithstanding KRS 61.878(4), unless requested for the purposes listed in
9 subsection (5) of this section or by the parties listed in subsection (5) of this
10 section, a public agency may elect not to disclose body-worn camera recordings
11 containing video or audio footage that:
- 12 (a) Includes the interior of a place or residence or a non-public portion of a
13 business or other entity where there is a reasonable expectation of privacy;
- 14 (b) Includes the areas inside of a medical facility, counseling, or therapeutic
15 program office where a patient is registered to receive treatment, receiving
16 treatment, waiting for treatment, or being transported in the course of
17 treatment;
- 18 (c) Would disclose health care information shared with patients, their families,
19 or with a patient's care team or that is considered protected health
20 information under the Health Insurance Portability and Accountability Act
21 of 1996;
- 22 (d) Includes the areas inside of a correctional facility when disclosure would
23 reveal details of the facility that would jeopardize the safety, security, or
24 well-being of those in custody, the staff of the correctional facility, or law
25 enforcement officers;
- 26 (e) Is of a sexual nature or video footage that contains nude images of an
27 individual's genitals, pubic area, anus, or the female nipple;

- 1 (f) Is of a minor child, including but not limited to footage involving juvenile
2 custody matters;
- 3 (g) Includes the body of a deceased individual;
- 4 (h) Would reveal the identity of witnesses, confidential law enforcement
5 informants, or undercover law enforcement officers, or if the release could
6 jeopardize the safety, security, or well-being of a witness or confidential
7 informant;
- 8 (i) Would reveal the location information of a domestic violence program or
9 emergency shelter;
- 10 (j) Would reveal information related to schools, colleges, and universities that
11 is protected by the federal Family Educational Rights and Privacy Act;
- 12 (k) Would result in the disclosure of non-public or confidential data classified
13 Criminal Justice Information Services data by the Federal Bureau of
14 Investigation;
- 15 (l) Includes a public safety officer carrying out duties directly related to the
16 hospitalization of persons considered mentally ill; or
- 17 (m) Includes the depiction of the serious injury or death of a public safety
18 officer.
- 19 (5) If the recording contains video or audio footage that:
- 20 (a) Depicts an encounter between a public safety officer and a person that
21 ultimately results in death or substantial bodily injury, or includes an
22 instance where a law enforcement officer discharges a weapon, the
23 disclosure of the record shall be governed solely by the provisions of KRS
24 61.870 to 61.884;
- 25 (b) Is requested by a criminal defendant or an attorney representing the
26 criminal defendant, it shall be disclosed to the defendant or his or her
27 attorney if the recording is relevant to the defendant's pending criminal

1 action; or

2 (c) Is requested by a person or other entity or the personal representative of a
3 person or entity that is directly involved in the incident contained in the
4 body-worn camera recording, it shall be disclosed only to the person or
5 entity or the personal representative making the request and solely in
6 accordance with the provisions of KRS 61.870 to 61.884.

7 (6) Any person, entity, or personal representative receiving disclosure of a recording
8 under subsection (5)(c) of this section shall not disclose, publicly display, or
9 create any duplicate of the recording without first providing direct third-party
10 notice to each non-law enforcement, business, entity, or individual, whose image
11 or sound is contained in the recording and affording each person whose image or
12 audio is contained in the recording no less than ten (10) days to notify any person,
13 entity, or personal representative receiving disclosure of a recording under
14 subsection (5)(c) of this section that they object to the disclosure, public display,
15 or duplication of the recording.

16 (7) Any third party who should have received notice pursuant to subsection (6) of
17 this section shall have a cause of action in District Circuit for injunctive relief or
18 other appropriate order against any person or agency that violates subsection (6)
19 of this section and may recover costs and reasonable attorney's fees.

20 (8) Nothing in this section shall be interpreted to override any provision related to:

21 (a) Reports by law enforcement officers and criminal justice agencies under
22 KRS 17.150; or

23 (b) The law and rules governing discovery in either criminal or civil litigation;
24 or in any administrative proceeding.