



KANSAS JUDICIAL COUNCIL

JUSTICE MARLA J. LUCKERT, CHAIR, TOPEKA
JUDGE STEPHEN D. HILL, PAOLA
JUDGE ROBERT J. FLEMING, PARSONS
JUDGE MARITZA SEGARRA, JUNCTION CITY
SEN. JEFFREY R. KING, INDEPENDENCE
REP. JOHN BARKER, ABILENE
J. NICK BADGEROW, OVERLAND PARK
JOSEPH W. JETER, HAYS
STEPHEN E. ROBISON, WICHITA
SARAH BOOTES SHATTUCK, ASHLAND

Kansas Judicial Center
301 S.W. Tenth Street, Suite 140
Topeka, Kansas 66612-1507

Telephone (785) 296-2498
Facsimile (785) 296-1035

judicial.council@ksjc.ks.gov
www.kansasjudicialcouncil.org

EXECUTIVE DIRECTOR
NANCY J. STROUSE

STAFF ATTORNEY
CHRISTY R. MOLZEN

TO: House Judiciary Committee

FROM: Kansas Judicial Council – Christy Molzen

DATE: February 4, 2016

RE: Judicial Council Testimony on Sub. for SB 18 – Written only

In May 2015, Representative Barker asked the Judicial Council to study Substitute for SB 18, a bill relating to law enforcement video and audio recordings. The Judicial Council referred the study to its Criminal Law Advisory Committee.

The Criminal Law Advisory Committee's report, which was approved by the Judicial Council on December 4, 2015, is attached.

REPORT OF THE JUDICIAL COUNCIL
CRIMINAL LAW ADVISORY COMMITTEE
SUB. FOR S.B. 18

DECEMBER 4, 2015

On May 26, 2015, Representative John Barker asked the Judicial Council to study Sub. for S.B. 18, which related to police body cameras. The Judicial Council referred the study to the Criminal Law Committee on June 5, 2015.

COMMITTEE MEMBERSHIP

The members of the Judicial Council Criminal Law Advisory Committee are:

Stephen E. Robison, Chair, Member of Fleeson, Gooing, Coulson, & Kitch, LLC and Member of the Kansas Judicial Council; Wichita

Sen. Terry Bruce, Kansas State Senator and Practicing Attorney; Hutchinson

Sal Intagliata, Criminal Defense Attorney; Wichita

Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association, and Kansas Peace Officers Association; Tecumseh

Patrick M. Lewis, Criminal Defense Attorney; Olathe

Prof. Joel Meinecke, Retired Attorney; Topeka

Steven L. Opat, Geary County Attorney; Junction City

Hon. Cheryl A. Rios, District Court Judge in the Third Judicial District; Topeka

Nicole Romine, Assistant Attorney General; Goodland

Rep. John Rubin, Kansas State Representative, Attorney, and Retired Federal Administrative Law Judge; Shawnee

John Settle, Pawnee County Attorney; Larned

Ann Swegle, Sedgwick County Deputy District Attorney; Wichita

Kirk Thompson, Director of Kansas Bureau of Investigation; Topeka

Ron Wurtz, Retired Public Defender (Federal and Kansas); Topeka

BACKGROUND

Senate Bill 18 was introduced in Senate Judiciary on January 13, 2015 and was referred to the Senate Corrections and Juvenile Justice Committee. This bill would have mandated that law enforcement officers be equipped with body cameras. The bill would have also exempted the recordings captured on the body cameras from the Kansas Open Records Act (KORA). Proponents and opponents testified during hearings regarding the bill in January and February. On February 26, 2015, the Senate Committee of the Whole passed a substitute bill. See Attachment I. The substitute bill included an exception from the open records act, which triggered the KORA sunset provision under K.S.A. 45-229(b). As a result, the substitute bill was drafted to expire in 2020. While there were small differences between the bills, the largest divergence from the original bill was that the substitute bill no longer mandated the use of body cameras.

The bill passed the Senate unanimously and was referred to House Judiciary. On May 26, 2015, Representative John Barker asked the Judicial Council to study Sub. for S.B. 18, and his request was multifaceted. See Attachment II. First, he highlighted concerns regarding the cost of maintaining recordings and how long recordings should be retained. Second, he suggested the Committee consider the KORA expiration provision and any unintended consequences associated with an expiration date. Third, Representative Barker inquired about policies or criteria to control what recordings are released and how they are released in the event that recordings are dispersed after the expiration date. The Judicial Council assigned the study to the Criminal Law Advisory Committee on June 5, 2015.

METHOD OF STUDY

In preparation for studying Sub. for S.B. 18, the Committee reviewed the original study request and associated materials such as the substitute bill, the supplemental note, and related testimony. The Committee also reviewed the fiscal note for S.B. 18, a Department of Justice news release, and articles on the cost of body cameras. Finally, the Committee considered the ACLU Model Act for Regulating the Use of Wearable Body Cameras by Law Enforcement and proposed legislation from numerous states. In addition to written materials, the Committee listened to a brief presentation from Eric Smith, an attorney for the League of Kansas Municipalities.

COMMITTEE DISCUSSION

The Committee convened on July 31, 2015 to begin work on the study request. First, the Committee evaluated the costs of maintaining police body camera recordings and how long agencies should retain the recordings. Second, the Committee determined what recordings should be shared with the public and how they should be released. Finally, the Committee

examined the expiration date and discussed the consequences associated with the date dictated by the KORA sunset policy set forth in K.S.A. 45-229(b).

Costs of Maintaining Recordings

The Committee learned from Eric Smith, who represents the League of Kansas Municipalities, that there are multiple costs involved in maintaining recordings from police body cameras. For instance, while one of the largest costs associated with body cameras is data storage, it is difficult to separate that cost from the expense of cameras. Data storage and cameras are commonly sold together as packages. A national report recounted that New Orleans is purchasing a mere 350 body cameras, but is budgeting 1.2 million dollars over five years.¹ Additionally, the City of Wichita testified in response to S.B. 18 that it would cost \$972,200 to fully equip necessary personnel with body cameras, and that expenses would balloon to \$7,735,380 over a ten-year period. In addition to data storage and cameras, another major cost is personnel. Mr. Smith reported that more police are needed, because they must tag and organize video footage. Additionally, employees are required to manage the technology and to respond to open records requests. In response to S.B. 18, the City of Shawnee reported that ten new cameras would require a new full-time employee to support IT and retention.

The Committee studied ways to reduce the costs associated with implementing body camera programs. For instance, the Justice Department expects to provide fifty grant awards to law enforcement agencies for the purchase of body-worn cameras nationwide.² If Kansas agencies received this grant funding, costs would still be a challenge. Award recipients of Justice Department grants are expected to provide a fifty-fifty match and cover the long-term costs associated with data storage.³ Managing and storing data is the most expensive part of implementing body cameras, which means law enforcement agencies would be left to cover the majority of the cost.⁴ There is also the theory that cameras will decrease expenses by resolving police misconduct cases and reducing litigation. However, longitudinal studies validating this theory are not available because body camera program legislation is only now being proposed in the majority of states.⁵

¹ Jake Grovum, *States Struggle to Pay for Police Body Cameras*, THE PEW CHARITABLE TRUSTS, May 1, 2015, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/5/01/states-struggle-to-pay-for-police-body-cameras>.

² Department of Justice, <http://www.justice.gov/opa/pr/justice-department-announces-20-million-funding-support-body-worn-camera-pilot-program> (May 1, 2015).

³ *Id.*

⁴ Department of Justice, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, Office of Community Oriented Policing Services, <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf> (September 4, 2015).

⁵ Law Enforcement Overview, National Conference of State Legislatures, <http://www.ncsl.org/research/civil-and-criminal-justice/law-enforcement.aspx> (May 29, 2015).

Retaining Recordings

The Committee weighed the costs facing law enforcement agencies against the probability of finding financial relief from outside sources. During this deliberation, the League of Kansas Municipalities representative reminded the Committee that cities would fight hard for local control over the decision of how long recordings should be maintained because of the costs associated with body cameras. The Committee concluded that due to current budgetary constraints and the expenses involved, cities should determine the timeframe that recordings are retained.

Identifying Recordings to be Released

The Committee contemplated what recordings should be released and considered controls for releasing recordings. The Committee learned that local law enforcement officers need to keep their cameras on inside residences because homes are volatile environments. At the same time, the Committee recognized the national debate over the uniquely intrusive nature of police recordings made inside private homes.⁶ The Committee believed that such footage would not be consistently protected under current law. For instance, video recordings do not fall under the criminal investigation exception to KORA when there is no crime. The Committee wanted to prohibit inquisitive neighbors and others who were acting out of curiosity rather than the public interest from gaining access to body camera footage. (Unlike mere curiosity, public interest must involve a right or expectancy of a community at large).⁷ The Committee decided that, since its concern surrounding citizen privacy arose when no crime was charged, that all recordings from police body cameras should be treated as criminal investigation records. As a result, the Committee recommends revising Sub. for S.B. 18 to make it clear that law enforcement's audio and video recordings are considered criminal investigation records under KORA and are given the same protections. See Attachment III. The Committee also proposes a similar amendment to the criminal investigation exception in K.S.A. 45-217. See Attachment III.

Criteria for Releasing Recordings

Kansas would not be the first state to have disclosure exceptions for records involved in a law enforcement investigation.⁸ Classifying all police body camera footage as criminal investigation records means that the release of recordings is controlled by K.S.A. 45-221(a)(10). While criminal investigation records can be discretionarily closed, the decision to close the records is subject to judicial review under K.S.A. 45-221(a)(10). The judge weighs the public

⁶ Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, A Win for All*, ACLU, March 2015, <https://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all>.

⁷ *Harris Enterprises Inc. v. Moore*, 241 Kan. 59, 66 (Kan. 1987).

⁸ IND. CODE 5-14-3-4(b)(1)(2015); MASS. GEN. LAWS ch.4 7, cl. 26(f) (2015).

interest against the harm of disclosure. The safeguard of judicial review separates the Committee's proposal from Sub. for S.B. 18, which made body camera recordings exempt from KORA with only a few exceptions.

Expiration of Provision

The Committee explored the KORA sunset provision and studied any associated consequences. Because, Sub. for S.B. 18 would create an exception from the open records act, it would fall under KORA's standard sunset provision, K.S.A. 45-229(b). This provision requires a new exception or a substantial amendment to an existing exception to expire five years after the enactments, unless the legislature acts to continue the exception. Pursuant to K.S.A. 45-229(b), the bill stated the exception expired at the end of five years and would be reviewed by the legislature before the scheduled date.

Similarly, the Committee is also suggesting an expansion of an existing exception from the open records act. Under K.S.A. 45-229, an expansion of an existing exception will expire in five years unless the legislature acts to continue it. The Committee does not believe the 5-year expiration provision is problematic, because the Kansas Legislature would have the opportunity to extend the law to protect the public. The Committee does not anticipate any unintended consequences with the expiration date, because there is legislative oversight. The Committee agrees that the legislature is well-equipped to adjust public policy. If the Committee's proposed legislation is working well, the legislature can continue the law. If after five years, the Committee's new legislation needs additional work, then the legislature may amend the statute or send the matter back to the Kansas Judicial Council for additional study.

ORIGINAL S.B. 18

The Criminal Law Advisory Committee recognized that the original S.B. 18 was much larger in scope than the substitute bill. See Attachment IV. While the bills differed in a variety of ways, the largest distinction involved the body camera mandate in the original bill. S.B. 18 required state, county, and municipal law enforcement officers who were primarily assigned to patrol duties to be equipped with body cameras. The substitute bill did not require law enforcement officers to wear body cameras, which changed the debate immensely. No longer were the questions centered on when the cameras should be activated. Nor was the debate framed around concepts such as transparency, fairness, or trust.

The Criminal Law Committee did not study original S.B. 18. Thus, the Committee did not discuss many of the benefits of mandatory body cameras, like using footage for training or enhancing officer reports. By the same token, the Committee did not consider the drawbacks of body camera programs. As a result, subjects such as disciplinary action and overreliance on cameras were not debated. Instead, the Committee focused on the topics outlined in the study request from Representative John Barker. See Attachment II.

CONCLUSION

In light of the foregoing, the Committee recommends that Sub. for S.B. 18 not be passed in its original form. Instead, the Committee would amend Sub. for S.B. 18 and treat police body camera recordings as criminal investigation records. This language would be mirrored in K.S.A. 45-217, which outlines the criminal investigation exception to the Kansas Open Records Act. The Committee's proposed legislation is attached.

Session of 2015

Substitute for SENATE BILL No. 18

By Committee on Corrections and Juvenile Justice

2-23

1 AN ACT concerning law enforcement; relating to audio and video
2 recordings; confidential and exempt from open records act.
3

4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Every audio and video recording made and retained by
6 law enforcement using a body camera or vehicle camera shall be
7 confidential and exempt from the open records act in accordance with
8 K.S.A. 45-221, and amendments thereto. The provisions of this subsection
9 shall expire on July 1, 2020, unless the legislature reviews and reenacts
10 this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to
11 July 1, 2020.

12 (b) A person described in subsection (c) may request to listen to an
13 audio recording or to view a video recording made by a body camera or
14 vehicle camera. The law enforcement agency shall provide the person a
15 viewing of the requested recording and may charge a reasonable fee for the
16 viewing services provided by the law enforcement agency.

17 (c) Any of the following may make a request under subsection (b):

18 (1) A person who is a subject of the recording;

19 (2) a parent or legal guardian of a person under 18 years of age who
20 is a subject of the recording; and

21 (3) an attorney for a person described in subsection (c)(1) or (c)(2).

22 (d) As used in this section:

23 (1) "Body camera" means a device that is worn by a law enforcement
24 officer that electronically records audio and video of such officer's
25 activities.

26 (2) "Vehicle camera" means a device that is attached to a law
27 enforcement vehicle that electronically records audio and video of law
28 enforcement officers' activities.

29 Sec. 2. This act shall take effect and be in force from and after its
30 publication in the statute book.

Attachment II

State of Kansas
House of Representatives

STATE CAPITOL
TOPEKA, KANSAS 66612
(785) 296-7674
johnbarker@house.ks.gov

103 WASSINGER AVE.
ABILENE, KANSAS 67410
(785) 263-3400
johnbarker2012@yahoo.com



John E. Barker
Representative, 70th District

COMMITTEE ASSIGNMENTS
JUDICIARY, CHAIR
RULES AND JOURNALS, CHAIR
LEGISLATIVE POST AUDIT, CHAIR
APPROPRIATIONS
EDUCATION

May 26, 2015

Ms. Nancy J. Strouse
Executive Director
Kansas Judicial Council
301 S.W. 10th Street, Suite 140
Topeka, KS 66612

Dear Nancy,

Please ask the Kansas Judicial Council to review Sub SB 18, concerning law enforcement; relating to audio and video recordings; confidential and exempt from open records act. Two sections of the bill are of concern:

1. Section 1: Audio and visual recordings made pursuant to the law are confidential and exempt from the open records act until July 1, 2020 when the provisions of the subsection expire. There are concerns about the costs involved in maintaining the recordings, and how long said recordings should be retained. Additionally, there are concerns about the expiration of the provision in 2020 and the potential unintended consequences that could occur.
2. Section 1. If custody of the recordings is to be released after the expiration of Section 1(a), what policies or criteria should be utilized for what is released and how?

The law enforcement community is concerned that the proposed bill might have unintended consequences for parties and third parties involved in a dispute involving the recordings.

I would appreciate receiving a response following the next regular meeting of the Judicial Council.

Sincerely yours,

Representative John Barker

Session of 20152016

Substitute for SENATE BILL No. 18

1 AN ACT concerning law enforcement; relating to audio and video
 2 recordings; ~~confidential and exempt from open records act.~~

3
 4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Every audio and video recording made and retained by
 6 law enforcement using a body camera or vehicle camera shall be
 7 confidential and exempt from the open records act in accordance with
 8 K.S.A. 45-221, and amendments thereto. The provisions of this subsection
 9 shall expire on July 1, 2020, unless the legislature reviews and reenacts
 10 this provision pursuant to K.S.A. 45-229, and amendments thereto, prior to
 11 July 1, 2020.

12 (b) A person described in subsection (c) may request to listen to an
 13 audio recording or to view a video recording made by a body camera or
 14 vehicle camera. The law enforcement agency shall provide the person a
 15 viewing of the requested recording and may charge a reasonable fee for the
 16 viewing services provided by the law enforcement agency.

17 (c) Any of the following may make a request under subsection (b):

18 (1) A person who is a subject of the recording;

19 (2) a parent or legal guardian of a person under 18 years of age who
 20 is a subject of the recording; and

21 (3) an attorney for a person described in subsection (c)(1) or (c)(2).

22 (d) As used in this section:

23 (1) "Body camera" means a device that is worn by a law enforcement
 24 officer that electronically records audio and video of such officer's
 25 activities.

26 (2) "Vehicle camera" means a device that is attached to a law
 27 enforcement vehicle that electronically records audio and video of law
 28 enforcement officers' activities.

29 Sec. 2. This act shall take effect and be in force from and after its
 30 publication in the statute book.

considered a criminal investigation
 record as defined in K.S.A. 45-
 217(c) and amendments thereto.

July 1, 2021July 1, 2021

In addition to any disclosure
 authorized pursuant to K.S.A. 45-215
et seq., a

oror

45-217 Definitions

As used in the open records act, unless the context otherwise requires:

(a) "Business day" means any day other than a Saturday, Sunday or day designated as a holiday by the congress of the United States, by the legislature or governor of this state or by the respective political subdivision of this state.

(b) "Clearly unwarranted invasion of personal privacy" means revealing information that would be highly offensive to a reasonable person, including information that may pose a risk to a person or property and is not of legitimate concern to the public.

;(1)

(c) "Criminal investigation records" means records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-4701, and amendments thereto, compiled in the process of preventing, detecting or investigating violations of criminal law, but does not include police blotter entries, court records, rosters of inmates of jails or other correctional or detention facilities or records pertaining to violations of any traffic law other than vehicular homicide as defined by K.S.A. 21-3405, prior to its repeal, or K.S.A. 21-5406, and amendments thereto.

(d) "Custodian" means the official custodian or any person designated by the official custodian to carry out the duties of custodian of this act.

(e) "Official custodian" means any officer or employee of a public agency who is responsible for the maintenance of public records, regardless of whether such records are in the officer's or employee's actual personal custody and control.

(f)(1) "Public agency" means the state or any political or taxing subdivision of the state or any office, officer, agency or instrumentality thereof, or any other entity receiving or expending and supported in whole or in part by the public funds appropriated by the state or by public funds of any political or taxing subdivision of the state.

(2) "Public agency" shall not include:

(A) Any entity solely by reason of payment from public funds for property, goods or services of such entity; (B) any municipal judge, judge of the district court, judge of the court of appeals or

or (2) every audio and video recording made and retained by law enforcement using a body camera or vehicle camera as defined by new section one, and amendments thereto.

1 justice of the supreme court; or (C) any officer or employee of the state or political or taxing
2 subdivision of the state if the state or political or taxing subdivision does not provide the officer
3 or employee with an office which is open to the public at least 35 hours a week.
4

5 (g)(1) "Public record" means any recorded information, regardless of form or characteristics,
6 which is made, maintained or kept by or is in the possession of any public agency including, but
7 not limited to, an agreement in settlement of litigation involving the Kansas public employees
8 retirement system and the investment of moneys of the fund.
9

10 (2) "Public record" shall not include records which are owned by a private person or entity and
11 are not related to functions, activities, programs or operations funded by public funds or records
12 which are made, maintained or kept by an individual who is a member of the legislature or of the
13 governing body of any political or taxing subdivision of the state.
14

15 (3) "Public record" shall not include records of employers related to the employer's individually
16 identifiable contributions made on behalf of employees for workers compensation, social
17 security, unemployment insurance or retirement. The provisions of this subsection shall not
18 apply to records of employers of lump-sum payments for contributions as described in this
19 subsection paid for any group, division or section of an agency.
20

21 (h) "Undercover agent" means an employee of a public agency responsible for criminal law
22 enforcement who is engaged in the detection or investigation of violations of criminal law in a
23 capacity where such employee's identity or employment by the public agency is secret.

Session of 2015

SENATE BILL No. 18

By Committee on Judiciary

1-13

1 AN ACT enacting the police and citizen protection act; relating to use of
2 body cameras by law enforcement officers.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) Sections 1 through 6, and amendments thereto, shall be
6 known and may be cited as the police and citizen protection act.

7 (b) As used in this act:

8 (1) "Body camera" means a device that is worn by a law enforcement
9 officer that electronically records audio and video of such officer's
10 activities;

11 (2) "law enforcement officer" means a uniformed law enforcement
12 officer in this state who is required to use a body camera pursuant to
13 section 2, and amendments thereto; and

14 (3) "person" means an individual, public or private corporation,
15 government, partnership or unincorporated association.

16 Sec. 2. (a) Every state, county and municipal law enforcement officer
17 who is primarily assigned to patrol duties shall be equipped with a body
18 camera while performing such duties. The camera shall be used by the
19 officer to record activities that take place during motor vehicle stops or
20 other law enforcement actions taken during the course of such officer's
21 official duties.

22 (b) (1) Except as provided in subsections (b)(3) and (b)(4), a law
23 enforcement officer shall activate the recording function of the body
24 camera whenever such officer is on duty, continuously record with the
25 camera and make an effort to record interactions with others with the
26 camera.

27 (2) As practicable, a law enforcement officer shall notify another
28 person if the person is being recorded by the body camera.

29 (3) A law enforcement officer may temporarily stop recording with
30 the body camera when such officer is engaged in a personal matter, such as
31 a personal conversation or using the bathroom.

32 (4) When entering a residence under nonexigent circumstances, a law
33 enforcement officer shall ask the residents whether they want the officer to
34 stop recording with the body camera while in the residence. The officer
35 shall record the exchange to document the wishes of the residents.

36 (c) A law enforcement officer shall read, agree to and sign a written

1 waiver that consists of a consent to be filmed by a body camera and an
2 acknowledgment of the requirements of the police and citizen protection
3 act and the related policies of the law enforcement agency by which the
4 law enforcement officer is employed.

5 (d) The provisions of K.S.A. 22-2514 through 22-2519, and
6 amendments thereto, relating to the authorized interception of wire, oral or
7 electronic communications, shall not apply to recordings made by a body
8 camera as required by the police and citizen protection act.

9 Sec. 3. A law enforcement agency or law enforcement officer shall
10 not allow a computerized facial recognition program or application to be
11 used with a body camera or a recording made by a body camera unless the
12 use has been authorized by a warrant issued by a court.

13 Sec. 4. (a) Except as otherwise provided in this section, a law
14 enforcement agency shall retain video and audio recorded by a body
15 camera for two weeks.

16 (b) A law enforcement agency shall retain video and audio recorded
17 by a body camera for three years if any of the following apply:

18 (1) The recording is of an incident involving the use of force;

19 (2) the recording is of an incident that leads to detention or arrest of a
20 person;

21 (3) the recording is relevant to a formal or informal complaint against
22 a law enforcement officer or the law enforcement agency;

23 (4) a request regarding the recording has been made pursuant to
24 subsection (e); or

25 (5) a request for a copy of the recording has been made pursuant to
26 subsection (f).

27 (c) If evidence that may be useful in a criminal prosecution is
28 obtained from a recording made by a body camera, the law enforcement
29 agency shall retain the recording for any time in addition to the time period
30 in subsection (a) or (b) and in the same manner as is required by law for
31 other evidence that may be useful in a criminal prosecution.

32 (d) A law enforcement agency shall post on the law enforcement
33 agency's public website its policies relating to the retention of recordings
34 made by body cameras, requests for the retention of the recordings and
35 requests for copies of the recordings.

36 (e) A person described in subsection (h) may request that a recording
37 made by a body camera be retained for three years pursuant to subsection
38 (b). It is not necessary for the person to file a complaint or for there to be a
39 related open investigation for the person to make a request under this
40 subsection.

41 (f) A person described in subsection (h) may request a copy of a
42 recording made by a body camera. The law enforcement agency shall
43 provide the person with a copy of the requested recording.

1 (g) A person who is not the subject of a recording made by a body
2 camera may request a copy of the recording. If each person who is the
3 subject of the recording consents, the law enforcement agency shall
4 provide the requesting person with a copy of the requested recording.

5 (h) Any of the following may make a request under subsection (e) or
6 subsection (f):

7 (1) A person who is a subject of the recording;

8 (2) a person whose property has been seized or damaged in relation
9 to, or is otherwise involved with, a crime to which the recording is related;

10 (3) a parent or legal guardian of a person described in subsection (h)
11 (1) or (h)(2);

12 (4) an attorney for a person described in subsection (h)(1) or (h)(2);
13 or

14 (5) any other person that a person described in subsection (h)(1) or
15 (h)(2) has given written authority to make the request.

16 (i) Before deleting or otherwise disposing of a recording made by a
17 body camera, a person who has the responsibility on behalf of the law
18 enforcement agency of deleting or disposing of the recording shall review
19 all applicable and available records, files and databases to ascertain
20 whether there is any reason why the recording cannot be deleted or
21 disposed of under this section or the policies of the law enforcement
22 agency. The person shall not delete or dispose of the recording if such
23 person ascertains that there is any such reason.

24 (j) Every recording made by a body camera as required by the police
25 and citizen protection act shall be confidential and exempt from the
26 Kansas open records act in accordance with K.S.A. 45-221, and
27 amendments thereto. The provisions of this subsection shall expire on July
28 1, 2020, unless the legislature reviews and reenacts this provision pursuant
29 to K.S.A. 45-229, and amendments thereto, prior to July 1, 2020.

30 Sec. 5. If, in connection with a criminal prosecution or civil action, a
31 law enforcement agency is unable to produce a recording that is required
32 to be made and retained under the police and citizen protection act, there
33 shall be a presumption that the recording would corroborate the version of
34 the facts advanced by the defendant in a criminal action or the party
35 opposing the law enforcement officer or law enforcement agency in a civil
36 action.

37 Sec. 6. Law enforcement agencies shall seek and accept grants and
38 other financial assistance that the federal government and other public or
39 private sources make available to implement the provisions of the police
40 and citizen protection act.

41 Sec. 7. This act shall take effect and be in force from and after its
42 publication in the statute book.