

SENATE BILL No. 198

By Senator Haley

2-9

1 AN ACT concerning law enforcement; enacting the police and citizen
2 protection act; relating to use of body cameras by law enforcement
3 officers; disclosure of recordings under the open records act; amending
4 K.S.A. 2020 Supp. 45-254 and repealing the existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

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

9 (b) As used in this act:

10 (1) "Body camera" means the same as in K.S.A. 2020 Supp. 45-254,
11 and amendments thereto;

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

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

17 New Sec. 2. (a) (1) On and after July 1, 2023, every state, county and
18 municipal law enforcement officer who is primarily assigned to patrol
19 duties shall be equipped with a body camera while performing such duties.

20 (2) On and after July 1, 2021, if any state, county or municipal law
21 enforcement officer is equipped with a body camera, the camera shall be
22 used by the officer to record activities that take place during motor vehicle
23 stops or other law enforcement actions taken during the course of such
24 officer's official duties as provided in this section.

25 (b) (1) Except as provided in subsections (b)(3) and (b)(4), a law
26 enforcement officer shall activate the recording function of the body
27 camera whenever such officer responds to a call for service or initiates any
28 other law enforcement encounter and shall make an effort to record
29 interactions with others with the camera.

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

32 (3) A law enforcement officer may choose not to record conversations
33 with crime witnesses and members of the community who are reporting or
34 discussing criminal activity and may choose not to record when entering a
35 residence under nonexigent circumstances.

36 (4) A law enforcement officer shall not record the following:

1 (A) Conversations with confidential informants and undercover
2 officers;

3 (B) strip searches;

4 (C) conversations with other agency personnel that involve case
5 tactics or strategies; and

6 (D) interactions in places where a reasonable expectation of privacy
7 exists, including, but not limited to, bathrooms and locker rooms.

8 (c) A law enforcement officer shall read, agree to and sign a written
9 waiver that consists of a consent to be filmed by a body camera and an
10 acknowledgment of the requirements of the police and citizen protection
11 act and the related policies of the law enforcement agency by which the
12 law enforcement officer is employed.

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

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

21 New Sec. 4. (a) Except as otherwise provided in this section or when
22 a longer retention period is otherwise required by law, a law enforcement
23 agency shall retain video and audio recorded by a body camera for four
24 weeks.

25 (b) Except when a longer retention period is otherwise required by
26 law, a law enforcement agency shall retain video and audio recorded by a
27 body camera for three years if any of the following apply:

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

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

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

33 (4) a request regarding the recording has been made pursuant to the
34 Kansas open records act.

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

40 (d) A law enforcement agency shall post on the law enforcement
41 agency's public website its policies and procedures relating to the retention
42 of recordings made by body cameras, requests for the retention of the
43 recordings and requests for copies of the recordings.

1 (e) Before deleting or otherwise disposing of a recording made by a
2 body camera, a person who has the responsibility on behalf of the law
3 enforcement agency of deleting or disposing of the recording shall review
4 all applicable and available records, files and databases to ascertain
5 whether there is any reason why the recording cannot be deleted or
6 disposed of under this section or the policies of the law enforcement
7 agency. The person shall not delete or dispose of the recording if such
8 person ascertains that there is any such reason.

9 New Sec. 5. If, in connection with a criminal prosecution or civil
10 action, a law enforcement agency is unable to produce a recording that is
11 required to be made and retained under the police and citizen protection
12 act, there shall be a presumption that the recording would corroborate the
13 version of the facts advanced by the defendant in a criminal action or the
14 party opposing the law enforcement officer or law enforcement agency in
15 a civil action.

16 New Sec. 6. Law enforcement agencies shall seek and accept grants
17 and other financial assistance that the federal government and other public
18 or private sources make available to implement the provisions of the police
19 and citizen protection act.

20 Sec. 7. K.S.A. 2020 Supp. 45-254 is hereby amended to read as
21 follows: 45-254. (a) Every audio or video recording made and retained by
22 law enforcement using a body camera or a vehicle camera shall be
23 considered a criminal investigation record as defined in K.S.A. 45-217,
24 and amendments thereto. The provisions of this subsection shall expire on
25 July 1, 2021, unless the legislature reviews and reenacts this provision
26 pursuant to K.S.A. 45-229, and amendments thereto, prior to July 1, 2021.

27 (b) In addition to any disclosure authorized pursuant to the open
28 records act, K.S.A. 45-215 et seq., and amendments thereto, a person
29 described in subsection (c) may make a request in accordance with
30 procedures adopted under K.S.A. 45-220, and amendments thereto, to
31 listen to an audio recording or to view a video recording made by a body
32 camera or a vehicle camera. The law enforcement agency shall allow the
33 person to listen to the requested audio recording or to view the requested
34 video recording within ~~20 days~~ 24 hours after making the request, and may
35 charge a reasonable fee for such services provided by the law enforcement
36 agency.

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

- 38 (1) A person who is a subject of the recording;
39 (2) any parent or legal guardian of a person under 18 years of age
40 who is a subject of the recording;
41 (3) an heir at law, when a decedent is a subject of the recording; and
42 (4) an attorney for a person described in this subsection.
43 (d) *A law enforcement agency shall disclose any audio or video*

1 recording made and retained by the agency using a body camera or a
2 vehicle camera within five business days after a request is made by any
3 person, if the recording depicts or describes:

4 (1) The discharge of a firearm by a law enforcement officer in the
5 course of duty, other than the discharge of a firearm for training purposes,
6 or the killing of an animal that is sick, injured or dangerous; or

7 (2) the use of force by a law enforcement officer that results in great
8 bodily harm or death.

9 (e) (1) A law enforcement agency shall redact or obscure specific
10 portions of any audio or video recording before disclosure that:

11 (A) Depicts the death of a person, a dead body, or clearly visible acts
12 of severe violence or great bodily harm against a person, unless the death
13 or act was caused by a law enforcement officer;

14 (B) depicts nudity or sexual conduct as defined in K.S.A. 2020 Supp.
15 21-6402, and amendments thereto;

16 (C) reveals the identity of any confidential source or undercover
17 agent;

18 (D) reveals confidential investigative techniques or procedures not
19 known to the general public;

20 (E) endangers the life or physical safety of any person;

21 (F) reveals the name, address, phone number or any other
22 information that specifically and individually identifies the victim of any
23 sexual offense in article 35 of chapter 21 of the Kansas Statutes
24 Annotated, prior to their repeal, or article 55 of chapter 21 of the Kansas
25 Statutes Annotated, and amendments thereto;

26 (G) identifies a minor under the age of 16 or undermines the
27 confidentiality requirements for juvenile records as provided in chapter 38
28 of the Kansas Statutes Annotated, and amendments thereto;

29 (H) includes confidential medical information or personal
30 information as defined in K.S.A. 2020 Supp. 50-7a01, and amendments
31 thereto; or

32 (I) reveals the name or license plate number of a person not arrested,
33 cited, charged or issued a written warning.

34 (2) This subsection shall not apply to requests made by a person
35 described in subsection (c).

36 (f) (1) A law enforcement agency may redact or obscure specific
37 portions of any audio or video recording before disclosure that reveals the
38 identify of a law enforcement officer who is subject to an internal
39 investigation as a result of an event depicted in the recording, except as
40 provided in subsection (f)(2).

41 (2) (A) A law enforcement agency shall not redact the identity of a
42 law enforcement officer after the agency has concluded the investigation
43 or rendered a decision as to final disciplinary action, and the records

1 *previously withheld, redacted or obscured under this section shall be made*
2 *available for public inspection and copying upon request.*

3 *(B) If such investigation lasts for longer than 270 days, video and*
4 *audio recordings not disclosed, redacted or obscured under this section*
5 *shall be made available for public inspection and copying upon request.*

6 (g) As used in this section:

7 (1) "Body camera" means a device that is worn by a law enforcement
8 officer that electronically records audio or video of such officer's activities.

9 (2) "Heir at law" means:

10 (A) An executor or an administrator of the decedent;

11 (B) the spouse of the decedent, if living;

12 (C) if there is no living spouse of the decedent, an adult child of the
13 decedent, if living; or

14 (D) if there is no living spouse or adult child of the decedent, a parent
15 of the decedent, if living.

16 (3) "Vehicle camera" means a device that is attached to a law
17 enforcement vehicle that electronically records audio or video of law
18 enforcement officers' activities.

19 Sec. 8. K.S.A. 2020 Supp. 45-254 is hereby repealed.

20 Sec. 9. This act shall take effect and be in force from and after its
21 publication in the statute book.