

**SUBSTITUTE FOR
HOUSE BILL NO. 4427**

A bill 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.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3 Sec. 2. As used in this act:

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

7 (b) "Evidentiary audio and video recording" means an audio and

1 video recording of an incident or encounter recorded by a body-worn
2 camera, including a crime, arrest, citation, search, use of force
3 incident, or confrontational encounter with a citizen, that may be
4 materially useful for investigative or prosecutorial purposes,
5 including for a criminal and internal investigation.

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

10 Sec. 3. (1) The disclosure of any audio or video recording
11 recorded by a body-worn camera is subject to the protections
12 provided for crime victims in sections 8, 19, 19a, 21, 34, 38, 48,
13 62, 68, and 80 of the William Van Regenmorter crime victim's rights
14 act, 1985 PA 87, MCL 780.758, 780.769, 780.769a, 780.771, 780.784,
15 780.788, 780.798, 780.812, 780.818, and 780.830.

16 (2) Except as otherwise provided in section 4 and subject to
17 section 5, a recording recorded by a law enforcement officer with a
18 body-worn camera that is recorded in a private place is exempt from
19 disclosure under the freedom of information act, 1976 PA 442, MCL
20 15.231 to 15.246.

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

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

1 recording.

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

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

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

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

11 Sec. 5. (1) An audio or video recording from a body-worn
12 camera that is retained by a law enforcement agency in connection
13 with an ongoing criminal investigation or an ongoing internal
14 investigation is not a public record and is exempt from disclosure
15 under the freedom of information act, 1976 PA 442, MCL 15.231 to
16 15.246, but only to the extent that disclosure as a public record
17 would do any of the following:

18 (a) Interfere with law enforcement proceedings.

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

21 (c) Constitute an unwarranted invasion of personal privacy.

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

26 (e) Disclose law enforcement investigative techniques or
27 procedures.

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

3 (g) Disclose information regarding a crime victim in violation
4 of sections 8, 19, 19a, 21, 34, 38, 48, 62, 68, and 80 of the
5 William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL
6 780.758, 780.769, 780.769a, 780.771, 780.784, 780.788, 780.798,
7 780.812, 780.818, and 780.830.

8 (2) An audio or video recording from a body-worn camera that
9 is retained by a law enforcement agency relating to a civil action
10 in which the requesting party and the public body are parties is
11 not a public record and is exempt from disclosure under section
12 13(1)(v) of the freedom of information act, 1976 PA 442, MCL
13 15.243.

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

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

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

27 (4) If a complaint against a law enforcement officer or law

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

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

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

21 Enacting section 1. This act takes effect 180 days after the
22 date it is enacted into law.