

# HOUSE BILL No. 4427

March 28, 2017, Introduced by Reps. Runestad, Lucido, Chirkun, Chang, Howrylak, Barrett and Gay-Dagnogo and referred to the Committee on Judiciary.

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.

1 (b) "Evidentiary audio and video recording" means an audio and  
2 video recording of an incident or encounter recorded by a body-worn  
3 camera, including, but not limited to, a crime, arrest, citation,  
4 search, use of force incident, or confrontational encounter with a  
5 citizen, that is useful for investigative or prosecutorial  
6 purposes, including, but not limited to, criminal and internal  
7 investigations.

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

12 Sec. 3. (1) The disclosure of any audio or video recording  
13 recorded by a body-worn camera is subject to the protections  
14 provided for crime victims in sections 8, 19, 19a, 21, 34, 38, 48,  
15 62, 68, and 80 of the William Van Regenmorter crime victim's rights  
16 act, 1985 PA 87, MCL 780.758, 780.769, 780.769a, 780.771, 780.784,  
17 780.788, 780.798, 780.812, 780.818, and 780.830.

18 (2) Except as otherwise provided in section 4 and subject to  
19 section 5, a recording recorded by a law enforcement officer with a  
20 body-worn camera that is recorded in a private place is exempt from  
21 disclosure under the freedom of information act, 1976 PA 442, MCL  
22 15.231 to 15.246.

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

1 private place:

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

4 (b) An individual whose property has been seized or damaged in  
5 relation to, or is otherwise involved with, a crime to which the  
6 audio and video recording is related.

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

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

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

13 Sec. 5. (1) An audio or video recording from a body-worn  
14 camera that is retained by a law enforcement agency in connection  
15 with an ongoing criminal investigation or an ongoing internal  
16 investigation is not a public record and is exempt from disclosure  
17 under the freedom of information act, 1976 PA 442, MCL 15.231 to  
18 15.246, but only to the extent that disclosure as a public record  
19 would do any of the following:

20 (a) Interfere with law enforcement proceedings.

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

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

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

1 (e) Disclose law enforcement investigative techniques or  
2 procedures.

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

5 (g) Disclose information regarding a crime victim in violation  
6 of sections 8, 19, 19a, 21, 34, 38, 48, 62, 68, and 80 of the  
7 William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL  
8 780.758, 780.769, 780.769a, 780.771, 780.784, 780.788, 780.798,  
9 780.812, 780.818, and 780.830.

10 (2) An audio or video recording from a body-worn camera that  
11 is retained by a law enforcement agency relating to a civil action  
12 in which the requesting party and the public body are parties is  
13 not a public record and is exempt from disclosure under section  
14 13(1)(v) of the freedom of information act, 1976 PA 442, MCL  
15 15.243.

16 Sec. 6. (1) Except as provided in subsection (2), a law  
17 enforcement agency shall retain an evidentiary audio and video  
18 recording recorded by a body-worn camera for not less than 30 days  
19 from the date the recording is made. A law enforcement agency shall  
20 retain audio and video recordings that are the subject of an  
21 ongoing criminal or internal investigation, or an ongoing criminal  
22 prosecution or civil action, until the completion of the ongoing  
23 investigation or legal proceeding.

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

1 by the law enforcement agency.

2 (3) If a complaint against a law enforcement officer or law  
3 enforcement agency is made after the expiration of the retention  
4 period described in subsection (1) or (2) and a law enforcement  
5 agency is unable to produce a recording related to the complaint in  
6 any criminal prosecution or civil action, it must not be presumed  
7 that the recording would corroborate either the prosecution's or  
8 the 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.