



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1385

Introduced 2/13/2019, by Sen. Antonio Muñoz

SYNOPSIS AS INTRODUCED:

50 ILCS 706/10-20
50 ILCS 706/10-40 new

Amends the Law Enforcement Officer-Worn Body Camera Act. Provides that any recording disclosed under the Freedom of Information Act shall be redacted to remove identification of any person that appears on the recording and is not a subject of the encounter, directly involved in the encounter, and all law enforcement officer identifiers if the recordings are made available from any law enforcement or government agency to the media or public unless that law enforcement officer has been criminally charged relative to the recorded incident. Provides that if any law enforcement or government agency fails to follow the requirements of the Act, the agency is liable for a penalty of \$100 per day to the affected individual. Provides that the individual and that individual's labor organization has the right to file suit against that law enforcement agency to require the agency to comply with the terms of the Act.

LRB101 08916 SLF 54006 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Law Enforcement Officer-Worn Body Camera Act
5 is amended by changing Section 10-20 and by adding Section
6 10-40 as follows:

7 (50 ILCS 706/10-20)

8 Sec. 10-20. Requirements.

9 (a) The Board shall develop basic guidelines for the use of
10 officer-worn body cameras by law enforcement agencies. The
11 guidelines developed by the Board shall be the basis for the
12 written policy which must be adopted by each law enforcement
13 agency which employs the use of officer-worn body cameras. The
14 written policy adopted by the law enforcement agency must
15 include, at a minimum, all of the following:

16 (1) Cameras must be equipped with pre-event recording,
17 capable of recording at least the 30 seconds prior to
18 camera activation, unless the officer-worn body camera was
19 purchased and acquired by the law enforcement agency prior
20 to July 1, 2015.

21 (2) Cameras must be capable of recording for a period
22 of 10 hours or more, unless the officer-worn body camera
23 was purchased and acquired by the law enforcement agency

1 prior to July 1, 2015.

2 (3) Cameras must be turned on at all times when the
3 officer is in uniform and is responding to calls for
4 service or engaged in any law enforcement-related
5 encounter or activity, that occurs while the officer is on
6 duty.

7 (A) If exigent circumstances exist which prevent
8 the camera from being turned on, the camera must be
9 turned on as soon as practicable.

10 (B) Officer-worn body cameras may be turned off
11 when the officer is inside of a patrol car which is
12 equipped with a functioning in-car camera; however,
13 the officer must turn on the camera upon exiting the
14 patrol vehicle for law enforcement-related encounters.

15 (4) Cameras must be turned off when:

16 (A) the victim of a crime requests that the camera
17 be turned off, and unless impractical or impossible,
18 that request is made on the recording;

19 (B) a witness of a crime or a community member who
20 wishes to report a crime requests that the camera be
21 turned off, and unless impractical or impossible that
22 request is made on the recording; or

23 (C) the officer is interacting with a confidential
24 informant used by the law enforcement agency.

25 However, an officer may continue to record or resume
26 recording a victim or a witness, if exigent circumstances

1 exist, or if the officer has reasonable articulable
2 suspicion that a victim or witness, or confidential
3 informant has committed or is in the process of committing
4 a crime. Under these circumstances, and unless impractical
5 or impossible, the officer must indicate on the recording
6 the reason for continuing to record despite the request of
7 the victim or witness.

8 (4.5) Cameras may be turned off when the officer is
9 engaged in community caretaking functions. However, the
10 camera must be turned on when the officer has reason to
11 believe that the person on whose behalf the officer is
12 performing a community caretaking function has committed
13 or is in the process of committing a crime. If exigent
14 circumstances exist which prevent the camera from being
15 turned on, the camera must be turned on as soon as
16 practicable.

17 (5) The officer must provide notice of recording to any
18 person if the person has a reasonable expectation of
19 privacy and proof of notice must be evident in the
20 recording. If exigent circumstances exist which prevent
21 the officer from providing notice, notice must be provided
22 as soon as practicable.

23 (6) For the purposes of redaction, labeling, or
24 duplicating recordings, access to camera recordings shall
25 be restricted to only those personnel responsible for those
26 purposes. The recording officer and his or her supervisor

1 may access and review recordings prior to completing
2 incident reports or other documentation, provided that the
3 officer or his or her supervisor discloses that fact in the
4 report or documentation.

5 (7) Recordings made on officer-worn cameras must be
6 retained by the law enforcement agency or by the camera
7 vendor used by the agency, on a recording medium for a
8 period of 90 days.

9 (A) Under no circumstances shall any recording
10 made with an officer-worn body camera be altered,
11 erased, or destroyed prior to the expiration of the
12 90-day storage period.

13 (B) Following the 90-day storage period, any and
14 all recordings made with an officer-worn body camera
15 must be destroyed, unless any encounter captured on the
16 recording has been flagged. An encounter is deemed to
17 be flagged when:

18 (i) a formal or informal complaint has been
19 filed;

20 (ii) the officer discharged his or her firearm
21 or used force during the encounter;

22 (iii) death or great bodily harm occurred to
23 any person in the recording;

24 (iv) the encounter resulted in a detention or
25 an arrest, excluding traffic stops which resulted
26 in only a minor traffic offense or business

1 offense;

2 (v) the officer is the subject of an internal
3 investigation or otherwise being investigated for
4 possible misconduct;

5 (vi) the supervisor of the officer,
6 prosecutor, defendant, or court determines that
7 the encounter has evidentiary value in a criminal
8 prosecution; or

9 (vii) the recording officer requests that the
10 video be flagged for official purposes related to
11 his or her official duties.

12 (C) Under no circumstances shall any recording
13 made with an officer-worn body camera relating to a
14 flagged encounter be altered or destroyed prior to 2
15 years after the recording was flagged. If the flagged
16 recording was used in a criminal, civil, or
17 administrative proceeding, the recording shall not be
18 destroyed except upon a final disposition and order
19 from the court.

20 (8) Following the 90-day storage period, recordings
21 may be retained if a supervisor at the law enforcement
22 agency designates the recording for training purposes. If
23 the recording is designated for training purposes, the
24 recordings may be viewed by officers, in the presence of a
25 supervisor or training instructor, for the purposes of
26 instruction, training, or ensuring compliance with agency

1 policies.

2 (9) Recordings shall not be used to discipline law
3 enforcement officers unless:

4 (A) a formal or informal complaint of misconduct
5 has been made;

6 (B) a use of force incident has occurred;

7 (C) the encounter on the recording could result in
8 a formal investigation under the Uniform Peace
9 Officers' Disciplinary Act; or

10 (D) as corroboration of other evidence of
11 misconduct.

12 Nothing in this paragraph (9) shall be construed to
13 limit or prohibit a law enforcement officer from being
14 subject to an action that does not amount to discipline.

15 (10) The law enforcement agency shall ensure proper
16 care and maintenance of officer-worn body cameras. Upon
17 becoming aware, officers must as soon as practical document
18 and notify the appropriate supervisor of any technical
19 difficulties, failures, or problems with the officer-worn
20 body camera or associated equipment. Upon receiving
21 notice, the appropriate supervisor shall make every
22 reasonable effort to correct and repair any of the
23 officer-worn body camera equipment.

24 (11) No officer may hinder or prohibit any person, not
25 a law enforcement officer, from recording a law enforcement
26 officer in the performance of his or her duties in a public

1 place or when the officer has no reasonable expectation of
2 privacy. The law enforcement agency's written policy shall
3 indicate the potential criminal penalties, as well as any
4 departmental discipline, which may result from unlawful
5 confiscation or destruction of the recording medium of a
6 person who is not a law enforcement officer. However, an
7 officer may take reasonable action to maintain safety and
8 control, secure crime scenes and accident sites, protect
9 the integrity and confidentiality of investigations, and
10 protect the public safety and order.

11 (b) Recordings made with the use of an officer-worn body
12 camera are not subject to disclosure under the Freedom of
13 Information Act, except that:

14 (1) if the subject of the encounter has a reasonable
15 expectation of privacy, at the time of the recording, any
16 recording which is flagged, due to the filing of a
17 complaint, discharge of a firearm, use of force, arrest or
18 detention, or resulting death or bodily harm, shall be
19 disclosed in accordance with the Freedom of Information Act
20 if:

21 (A) the subject of the encounter captured on the
22 recording is a victim or witness; and

23 (B) the law enforcement agency obtains written
24 permission of the subject or the subject's legal
25 representative;

26 (2) except as provided in paragraph (1) of this

1 subsection (b), any recording which is flagged due to the
2 filing of a complaint, discharge of a firearm, use of
3 force, arrest or detention, or resulting death or bodily
4 harm shall be disclosed in accordance with the Freedom of
5 Information Act; and

6 (3) upon request, the law enforcement agency shall
7 disclose, in accordance with the Freedom of Information
8 Act, the recording to the subject of the encounter captured
9 on the recording or to the subject's attorney, or the
10 officer or his or her legal representative.

11 For the purposes of paragraph (1) of this subsection (b),
12 the subject of the encounter does not have a reasonable
13 expectation of privacy if the subject was arrested as a result
14 of the encounter. For purposes of subparagraph (A) of paragraph
15 (1) of this subsection (b), "witness" does not include a person
16 who is a victim or who was arrested as a result of the
17 encounter.

18 Only recordings or portions of recordings responsive to the
19 request shall be available for inspection or reproduction. Any
20 recording disclosed under the Freedom of Information Act shall
21 be redacted to remove identification of any person that appears
22 on the recording and is not ~~the officer,~~ a subject of the
23 encounter, ~~or~~ directly involved in the encounter, and all law
24 enforcement officer identifiers if the recordings are made
25 available from any law enforcement or government agency to the
26 media or public unless that law enforcement officer has been

1 criminally charged relative to the recorded incident. Nothing
2 in this subsection (b) shall require the disclosure of any
3 recording or portion of any recording which would be exempt
4 from disclosure under the Freedom of Information Act.

5 (c) Nothing in this Section shall limit access to a camera
6 recording for the purposes of complying with Supreme Court
7 rules or the rules of evidence.

8 (Source: P.A. 99-352, eff. 1-1-16; 99-642, eff. 7-28-16.)

9 (50 ILCS 706/10-40 new)

10 Sec. 10-40. Penalties. If any law enforcement or government
11 agency fails to follow the requirements of this Act, the agency
12 is liable for a penalty of \$100 per day to the affected
13 individual. The individual and that individual's labor
14 organization has the right to file suit against that law
15 enforcement agency to require the agency to comply with the
16 terms of this Act. The law enforcement or government agency
17 shall pay the attorney's fees of an individual or labor
18 organization who is successful in suing to enforce the terms of
19 this Act.