

SB20-217

SENATE FLOOR AMENDMENT

Second Reading

BY SENATOR Foote

- 1 Amend printed bill, page 3, strike lines 16 though 18 and substitute:
2 **"24-31-902. Incident recordings - release - tampering - fine.**
3 (1) (a) (I) By JULY 1, 2023, ALL LOCAL LAW ENFORCEMENT AGENCIES IN
4 THE STATE AND THE COLORADO STATE PATROL SHALL PROVIDE
5 BODY-WORN CAMERAS FOR EACH MEMBER OF THE LAW ENFORCEMENT
6 AGENCY WHO INTERACTS WITH MEMBERS OF THE PUBLIC. LAW
7 ENFORCEMENT AGENCIES MAY SEEK FUNDING PURSUANT TO SECTION
8 24-33.5-519.
- 9 (II) (A) EXCEPT AS PROVIDED IN SUBSECTION (1)(a)(II)(B) OR
10 (1)(a)(II)(C) OF THIS SECTION, A PEACE OFFICER SHALL WEAR AND
11 ACTIVATE A BODY-WORN CAMERA WHEN RESPONDING TO A CALL FOR
12 SERVICE OR DURING ANY INTERACTION WITH THE PUBLIC INITIATED BY THE
13 PEACE OFFICER, WHETHER CONSENSUAL OR NONCONSENSUAL, FOR THE
14 PURPOSE OF ENFORCING THE LAW OR INVESTIGATING POSSIBLE VIOLATIONS
15 OF THE LAW.
- 16 (B) A PEACE OFFICER MAY TURN OFF A BODY-WORN CAMERA TO
17 AVOID RECORDING PERSONAL INFORMATION THAT IS NOT CASE RELATED;
18 WHEN WORKING ON AN UNRELATED ASSIGNMENT; WHEN THERE IS A LONG
19 BREAK IN THE INCIDENT OR CONTACT THAT IS NOT RELATED TO THE
20 INITIAL INCIDENT; AND IN ADMINISTRATIVE, TACTICAL, AND MANAGEMENT
21 DISCUSSIONS.
- 22 (C) A PEACE OFFICER DOES NOT NEED TO WEAR OR ACTIVATE A
23 BODY-WORN CAMERA IF THE PEACE OFFICER IS WORKING UNDERCOVER.
- 24 (III) IF A PEACE OFFICER FAILS TO ACTIVATE A BODY-WORN
25 CAMERA AS REQUIRED BY THIS SECTION OR TAMPERS WITH BODY-WORN-
26 OR DASH-CAMERA FOOTAGE OR OPERATION WHEN REQUIRED TO ACTIVATE
27 THE CAMERA, THERE IS A PERMISSIVE INFERENCE IN ANY INVESTIGATION
28 OR LEGAL PROCEEDING, EXCLUDING CRIMINAL PROCEEDINGS AGAINST THE
29 PEACE OFFICER, THAT THE MISSING FOOTAGE WOULD HAVE REFLECTED
30 MISCONDUCT BY THE PEACE OFFICER. IF A PEACE OFFICER FAILS TO
31 ACTIVATE OR REACTIVATE HIS OR HER BODY-WORN CAMERA, ANY
32 STATEMENTS SOUGHT TO BE INTRODUCED IN A PROSECUTION THROUGH
33 THE PEACE OFFICER RELATED TO THE INCIDENT THAT WERE NOT RECORDED
34 DUE TO THE PEACE OFFICER'S FAILURE TO ACTIVATE OR REACTIVATE THE
35 BODY-WORN CAMERA AS REQUIRED BY THIS SECTION ARE PRESUMPTIVELY
36 INADMISSIBLE.
- 37 (IV) (A) IN ADDITION TO ANY CRIMINAL LIABILITY AND PENALTY
38 UNDER THE LAW, IF A COURT, ADMINISTRATIVE LAW JUDGE, OR THROUGH
39 A FINAL DECISION IN AN INTERNAL INVESTIGATION FINDS THAT A PEACE
40 OFFICER INTENTIONALLY FAILED TO ACTIVATE A BODY-WORN CAMERA OR
41 TAMPERS WITH ANY BODY-WORN OR DASH CAMERA, EXCEPT AS

1 PERMITTED IN THIS SECTION, THE PEACE OFFICER'S EMPLOYER SHALL
2 IMPOSE DISCIPLINE UP TO AND INCLUDING TERMINATION.

3 (B) IN ADDITION TO ANY CRIMINAL LIABILITY AND PENALTY UNDER
4 THE LAW, IF A COURT, ADMINISTRATIVE LAW JUDGE, OR THROUGH A FINAL
5 DECISION IN AN INTERNAL INVESTIGATION FINDS THAT A PEACE OFFICER
6 INTENTIONALLY FAILED TO ACTIVATE A BODY-WORN CAMERA OR
7 TAMPERED WITH ANY BODY-WORN OR DASH CAMERA, EXCEPT AS
8 PERMITTED IN THIS SECTION, WITH THE INTENT TO CONCEAL UNLAWFUL OR
9 INAPPROPRIATE ACTIONS OR OBSTRUCT JUSTICE, THE P.O.S.T. BOARD
10 SHALL SUSPEND THE PEACE OFFICER'S CERTIFICATION FOR A PERIOD OF NOT
11 LESS THAN ONE YEAR AND THE SUSPENSION MAY ONLY BE LIFTED WITHIN
12 THE PERIOD OF THE SUSPENSION IF THE PEACE OFFICER IS EXONERATED BY
13 A COURT.

14 (C) IN ADDITION TO ANY CRIMINAL LIABILITY AND PENALTY UNDER
15 THE LAW, IF A COURT, ADMINISTRATIVE LAW JUDGE, OR THROUGH A FINAL
16 DECISION IN AN INTERNAL INVESTIGATION FINDS THAT A PEACE OFFICER
17 INTENTIONALLY FAILED TO ACTIVATE A BODY-WORN CAMERA OR
18 TAMPERED WITH ANY BODY-WORN OR DASH CAMERA, EXCEPT AS
19 PERMITTED IN THIS SECTION, WITH THE INTENT TO CONCEAL UNLAWFUL OR
20 INAPPROPRIATE ACTIONS, OR OBSTRUCT JUSTICE, IN AN INCIDENT
21 RESULTING IN A CIVILIAN DEATH, THE P.O.S.T. BOARD SHALL
22 PERMANENTLY REVOKE THE PEACE OFFICER'S CERTIFICATION AND THE
23 REVOCATION MAY ONLY BE OVERTURNED IF THE PEACE OFFICER IS
24 EXONERATED BY A COURT.

25 (b) A LOCAL LAW ENFORCEMENT AGENCY AND THE COLORADO
26 STATE PATROL SHALL ESTABLISH AND FOLLOW A RETENTION SCHEDULE
27 FOR BODY-WORN CAMERA RECORDINGS IN COMPLIANCE WITH COLORADO
28 STATE ARCHIVES RULES AND DIRECTION.

29 (2) (a) FOR ALL INCIDENTS IN WHICH THERE IS A COMPLAINT OF
30 PEACE OFFICER MISCONDUCT BY ANOTHER PEACE OFFICER, A CIVILIAN, OR
31 NONPROFIT ORGANIZATION, THROUGH NOTICE TO THE LAW ENFORCEMENT
32 AGENCY INVOLVED IN THE ALLEGED MISCONDUCT, THE LOCAL LAW
33 ENFORCEMENT AGENCY OR THE COLORADO STATE PATROL SHALL RELEASE
34 ALL UNEDITED VIDEO AND AUDIO RECORDINGS OF THE INCIDENT,
35 INCLUDING THOSE FROM BODY-WORN CAMERAS, DASH CAMERAS, OR
36 OTHERWISE COLLECTED THROUGH INVESTIGATION, TO THE PUBLIC WITHIN
37 TWENTY-ONE DAYS AFTER THE LOCAL LAW ENFORCEMENT AGENCY OR THE
38 COLORADO STATE PATROL RECEIVED THE COMPLAINT OF MISCONDUCT.

39 (b) (I) ALL VIDEO AND AUDIO RECORDINGS DEPICTING A DEATH
40 MUST BE PROVIDED TO THE DECEDENT'S FAMILY AT LEAST TWENTY-FOUR
41 HOURS PRIOR TO PUBLIC DISCLOSURE.

42 (II) (A) NOTWITHSTANDING ANY OTHER PROVISION OF THIS
43 SECTION, ANY VIDEO THAT RAISES SUBSTANTIAL PRIVACY CONCERNS FOR

1 CRIMINAL DEFENDANTS, VICTIMS, WITNESSES, JUVENILES, OR INFORMANTS,
2 INCLUDING VIDEO DEPICTING NUDITY; A SEXUAL ASSAULT; A MEDICAL
3 EMERGENCY; A MENTAL HEALTH CRISIS; A VICTIM INTERVIEW; A MINOR,
4 INCLUDING ANY IMAGES OR INFORMATION THAT MIGHT UNDERMINE THE
5 REQUIREMENT TO KEEP CERTAIN JUVENILE RECORDS CONFIDENTIAL; ANY
6 PERSONAL INFORMATION OTHER THAN THE NAME OR LICENSE PLATE OF
7 ANY PERSON NOT ARRESTED, CITED, CHARGED, OR ISSUED A WRITTEN
8 WARNING, INCLUDING A GOVERNMENT-ISSUED IDENTIFICATION NUMBER,
9 DATE OF BIRTH, ADDRESS, OR FINANCIAL INFORMATION; SIGNIFICANTLY
10 EXPLICIT AND GRUESOME BODILY INJURY, UNLESS THE INJURY WAS
11 CAUSED BY A PEACE OFFICER; OR THE INTERIOR OF A HOME OR TREATMENT
12 FACILITY, SHALL BE REDACTED OR BLURRED TO PROTECT THE
13 SUBSTANTIAL PRIVACY INTEREST WHILE STILL ALLOWING PUBLIC RELEASE.

14 (B) IF REDACTION OR BLURRING IS INSUFFICIENT TO PROTECT THE
15 SUBSTANTIAL PRIVACY INTEREST, THE LOCAL LAW ENFORCEMENT AGENCY
16 OR THE COLORADO STATE PATROL SHALL RELEASE THE VIDEO TO THE
17 VICTIM OR, IF THE VICTIM IS DECEASED, TO THE VICTIM'S FAMILY WITHIN
18 TWENTY DAYS AFTER RECEIPT OF THE COMPLAINT OF MISCONDUCT.

19 (C) A WITNESS, VICTIM, OR CRIMINAL DEFENDANT MAY WAIVE IN
20 WRITING THE INDIVIDUAL PRIVACY INTEREST THAT MAY BE IMPLICATED BY
21 PUBLIC RELEASE. UPON RECEIPT OF A WRITTEN WAIVER OF THE
22 APPLICABLE PRIVACY INTEREST, ACCOMPANIED BY A REQUEST FOR
23 RELEASE, THE LAW ENFORCEMENT AGENCY MAY NOT REDACT OR
24 WITHHOLD RELEASE TO PROTECT THAT PRIVACY INTEREST.

25 (III) ANY VIDEO THAT WOULD SUBSTANTIALLY INTERFERE WITH OR
26 JEOPARDIZE AN ACTIVE OR ONGOING INVESTIGATION MAY BE WITHHELD
27 FROM THE PUBLIC; EXCEPT THAT THE VIDEO SHALL BE RELEASED NO LATER
28 THAN THIRTY DAYS FROM THE DATE OF THE ALLEGATION OF MISCONDUCT.
29 IN ALL CASES WHEN RELEASE OF A VIDEO IS DELAYED IN RELIANCE ON THIS
30 SUBSECTION(2)(b)(III), THE PROSECUTING ATTORNEY SHALL PREPARE A
31 WRITTEN EXPLANATION OF THE INTERFERENCE OR JEOPARDY THAT
32 JUSTIFIES THE DELAYED RELEASE, CONTEMPORANEOUS WITH THE REFUSAL
33 TO RELEASE THE VIDEO. UPON RELEASE OF THE VIDEO, THE PROSECUTING
34 ATTORNEY SHALL RELEASE THE WRITTEN EXPLANATION TO THE PUBLIC.

35 (c) IF CRIMINAL CHARGES HAVE BEEN FILED AGAINST ANY PARTY
36 TO THE INCIDENT, THAT PARTY MUST FILE ANY CONSTITUTIONAL
37 OBJECTION TO RELEASE OF THE RECORDING IN THE PENDING CRIMINAL
38 CASE BEFORE THE TWENTY-ONE-DAY PERIOD EXPIRES. THE COURT SHALL
39 HOLD A HEARING ON ANY OBJECTION NO LATER THAN SEVEN DAYS AFTER
40 IT IS FILED AND ISSUE A RULING NO LATER THAN THREE DAYS AFTER THE
41 HEARING."

42 Page 4, strike lines 1 through 21.

- 1 Amend the State, Veterans, & Military Affairs Committee Report, dated
- 2 June 4, 2020, page 1, strike lines 7 through 16.

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