

2021 Regular Session

HOUSE BILL NO. 470

BY REPRESENTATIVE LYONS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

LAW ENFORCEMENT: Provides relative to body camera footage

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

AN ACT

To amend and reenact R.S. 44:3(A)(8) and 35(D), relative to public records disclosure; to provide for exemptions; to provide relative to the award of attorney fees; to provide for judicial determination; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 44:3(A)(8) and 35(D) are hereby amended and reenacted to read as follows:

§3. Records of prosecutive, investigative, and law enforcement agencies and communications districts

A. Nothing in this Chapter shall be construed to require disclosures of records, or the information contained therein, held by the offices of the attorney general, district attorneys, sheriffs, police departments, Department of Public Safety and Corrections, marshals, investigators, public health investigators, correctional agencies, communications districts, intelligence agencies, Council on Peace Officer Standards and Training, Louisiana Commission on Law Enforcement and Administration of Criminal Justice, or publicly owned water districts of the state, which records are:

* * *

1 (8) Video or audio recordings generated by law enforcement officer
2 body-worn cameras, vehicle mounted cameras, or other devices that are found by the
3 custodian to violate an individual's reasonable expectation of privacy.

4 ~~(a) A body-worn camera is a camera worn on an individual law enforcement~~
5 ~~officer's person that records and stores audio and video.~~

6 ~~(b)(a) Body-worn camera video~~ Video or audio recordings that are
7 determined by the custodian to violate an individual's reasonable expectation of
8 privacy shall be disclosed upon a determination and order from a court of competent
9 jurisdiction pursuant to R.S. 44:35.

10 ~~(c) All costs of production associated with a court-ordered disclosure shall~~
11 ~~be set by the court.~~

12 ~~(d)(b)~~ Notwithstanding any provision of this Chapter to the contrary, body-
13 worn camera video or audio recordings generated while the law enforcement officer
14 is not acting in the scope of his official duties shall not be subject to disclosure when
15 the disclosure would violate a reasonable expectation of privacy.

16 * * *

17 §35. Enforcement

18 * * *

19 D.(1) If a person ~~seeking~~ seeks the right to inspect, copy, or reproduce a
20 record or to receive or obtain a copy or reproduction of a public record, is denied by
21 the custodian based on an exception, and prevails in such suit, he shall be awarded
22 reasonable attorney fees and other costs of litigation if the judge determines there
23 was no reasonable basis for the denial by the custodian. If such person prevails in
24 part, the court may in its discretion award him reasonable attorney fees or an
25 appropriate portion thereof.

26 (2) If a public body or official brings a suit against a person based on the
27 person's request to inspect, copy, or reproduce a record or to receive or obtain a copy
28 or reproduction of a public record and the person prevails in the suit, the person shall
29 be awarded reasonable attorney fees and other costs of litigation if the judge

1 determines there was no reasonable basis for the denial by the custodian. If the
2 person prevails in part, the court may in its discretion award the person reasonable
3 attorney fees or an appropriate portion thereof.

4 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 470 Engrossed

2021 Regular Session

Lyons

Abstract: Provides relative to the availability of video and audio recordings generated by law enforcement and, provides, if there is a suit relative to the production of a public record, for the judge to determine if there was no reasonable basis for the denial of the record in order to award attorney fees and costs of litigation.

Present law (Public Records Law) establishes a framework for the ready availability of public records to requesting persons and specifically provides that it is the duty of the custodian of the public records of a public entity or agency to provide copies to persons so requesting. Provides for certain exceptions, exemptions, and limitations.

Present law provides that certain specified records of prosecutory, investigative, law enforcement agencies, and other specified agencies are not required to be disclosed. Present law further specifically provides that video or audio recordings generated by law enforcement officer body-worn cameras that are found by the custodian to violate an individual's reasonable expectation of privacy are exempt from disclosure.

Proposed law retains present law and adds an exemption for video or audio recordings generated by vehicle mounted cameras or other devices.

Present law provides a definition for a body-worn camera. Proposed law repeals present law.

Present law provides that body-worn camera video or audio recordings that are determined by the custodian to violate an individual's reasonable expectation of privacy shall be disclosed upon a determination and order from a court of competent jurisdiction. Proposed law removes the specific reference to body-worn cameras to make the provision applicable to all video or audio recordings.

Present law provides that body-worn camera video or audio recordings generated while the law enforcement officer is not acting in the scope of his official duties shall not be subject to disclosure when the disclosure would violate a reasonable expectation of privacy. Proposed law retains present law.

Present law provides that all costs of production associated with a court-ordered disclosure shall be set by the court. Proposed law repeals present law.

Present law provides that a person who has been denied the right to inspect or copy a public record may institute proceedings for the issuance of a writ of mandamus, injunctive, or declaratory relief, together with attorney fees, costs, and damages, in the district court for the parish in which the office of the custodian of the record is located.

Present law provides that a person who prevails in a suit seeking the right to inspect, copy, or reproduce a record or to receive or obtain a copy or reproduction of a public record shall be awarded reasonable attorney fees and other costs of litigation. Provides if the person prevails in part, the court may in its discretion award the prevailing person reasonable or appropriate attorney fees.

Proposed law retains present law and adds the prerequisite that the person's request be denied by the custodian based on an exception. Further provides that a person shall be awarded reasonable attorney fees and other costs of litigation if the judge determines the custodian had no reasonable basis for the denial.

Present law provides that a person who prevails in a suit brought by a public body or official based on the person's request to inspect, copy, or reproduce a record or to receive or obtain a copy or reproduction of a public record shall be awarded attorney fees and other costs of litigation. Provides that the court may use discretion in awarding the prevailing person reasonable or appropriate attorney fees.

Proposed law provides instead for the award of reasonable attorney fees and other costs of litigation in a suit brought by the public body or official if the judge determines the custodian had no reasonable basis for the denial.

(Amends R.S. 44:3(A)(8) and 35(D))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the original bill:

1. Provide for the mandatory award of attorney fees and costs of litigation if the judge determines there was no reasonable basis for the denial by the custodian.
2. Remove "potentially violate" from the exception allowing a custodian not to disclose video or audio recordings generated by law enforcement that violate an individual's reasonable expectation of privacy.