

As Introduced

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H. B. No. 367

Representative Jarrells

Cosponsors: Representatives Miranda, Boyd, Howse, West, Leland, Russo, Galonski, Brent, Brown, Denson, Boggs, Weinstein, Miller, A., Smith, M., Smith, K., Upchurch, Blackshear, Sheehy, Crossman, Robinson, Skindell, Liston, Sobecki, Lightbody, Lepore-Hagan, Hicks-Hudson, Sweeney, Kelly

A BILL

To enact sections 149.437, 2935.40, 2935.41, 1
2935.42, and 2935.43 of the Revised Code 2
regarding the use of body-worn cameras and 3
dashboard cameras by peace officers, the use of 4
excessive force by peace officers, and the 5
public release of body-worn camera or dashboard 6
camera recordings when there is an allegation of 7
peace officer misconduct. 8

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 149.437, 2935.40, 2935.41, 9
2935.42, and 2935.43 of the Revised Code be enacted to read as 10
follows: 11

Sec. 149.437. (A) As used in this section: 12

(1) "Body-worn camera," "dashboard camera," and 13
"restricted portions of a body-worn camera or dashboard camera 14
recording" have the same meanings as in section 149.43 of the 15
Revised Code. 16

(2) "Enforcement action" and "law enforcement agency" have 17
the same meanings as in section 2935.40 of the Revised Code. 18

(B) Every law enforcement agency in the state shall 19
establish and follow a retention schedule for body-worn camera 20
recordings and dashboard camera recordings, if applicable, in 21
compliance with section 149.33, 149.39, or 149.42 of the Revised 22
Code, as applicable. 23

(C) Subject to divisions (D), (E), and (F) of this section 24
and except as otherwise provided in division (G) of this 25
section, if a law enforcement agency receives a complaint 26
alleging misconduct by a peace officer while conducting an 27
enforcement action, regarding a peace officer employed by the 28
agency, from another peace officer, a nonprofit organization, or 29
a member of the public, that employing agency shall release to 30
the public all unedited video and audio recordings of the 31
enforcement action, including those from a body-worn camera, 32
dashboard camera, or otherwise collected during an 33
investigation, within twenty-one days after the law enforcement 34
agency receives notice of the complaint. 35

(D) (1) A law enforcement agency shall provide, upon 36
request, any audio or video recording under division (C) of this 37
section that includes the death of a person to any of the 38
following: 39

(a) The person's spouse; 40

(b) The person's parent; 41

(c) The person's legal guardian; 42

(d) The person's child; 43

(e) The person's sibling; 44

<u>(f) The person's grandparent;</u>	45
<u>(g) The person's grandchild;</u>	46
<u>(h) The person's significant other;</u>	47
<u>(i) The person's legal representative.</u>	48
<u>(2) The law enforcement agency shall notify the person</u>	49
<u>described in division (D) (1) of this section who requests the</u>	50
<u>audio or video recording of the person's right to receive and</u>	51
<u>review the audio or video recording at least seventy-two hours</u>	52
<u>prior to the release of the audio or video recording to the</u>	53
<u>public under division (C) of this section.</u>	54
<u>(E) (1) If any audio or video recording that is to be</u>	55
<u>released to the public under division (C) of this section</u>	56
<u>includes a restricted portion of a body-worn camera or dashboard</u>	57
<u>camera recording, the law enforcement agency shall redact or</u>	58
<u>obscure that recording before releasing the recording to the</u>	59
<u>public. No law enforcement agency shall release any unredacted</u>	60
<u>or unobscured recording without obtaining the written</u>	61
<u>authorization of the person in the recording, or, if the person</u>	62
<u>is deceased, incapacitated, or a child, the written</u>	63
<u>authorization of the person's next of kin.</u>	64
<u>(2) (a) A person who is the subject of an audio or video</u>	65
<u>recording described in division (E) (1) of this section may</u>	66
<u>waive, in writing, the person's privacy interest that is</u>	67
<u>implicated in the audio or video recording. The law enforcement</u>	68
<u>agency shall notify that person, if the person's contact</u>	69
<u>information is available, within twenty days after a complaint</u>	70
<u>of peace officer misconduct, that the person has a right to</u>	71
<u>waive the person's privacy interest that is implicated in the</u>	72
<u>audio or video recording.</u>	73

(b) If a law enforcement agency receives a written waiver 74
from that person, the law enforcement agency shall not redact, 75
obscure, or withhold the release of the audio or video recording 76
to the public. 77

(F) If redacting or obscuring an audio or video recording 78
pursuant to division (E) of this section is insufficient to 79
protect the identity or privacy interests of the person in the 80
audio or video recording, the law enforcement agency shall, upon 81
request, release the audio or video recording to the person or, 82
if the person is deceased, incapacitated, or a child, to the 83
person's spouse, parent, legal guardian, child, sibling, 84
grandparent, grandchild, significant other, or legal 85
representative within twenty days after the law enforcement 86
agency receives the complaint of peace officer misconduct. 87

(G) If an audio or video recording would substantially 88
interfere with or jeopardize an active or ongoing investigation, 89
the law enforcement agency may withhold the audio or video 90
recording from being released to the public for not more than 91
forty-five days from the date of the allegation of peace officer 92
misconduct. The prosecuting attorney, village solicitor, city 93
director of law, or similar chief legal officer, as applicable, 94
shall prepare a written explanation of reasons why release of 95
the audio or video recording to the public would substantially 96
interfere with or jeopardize the active or ongoing 97
investigation. Upon release of the audio or video recording to 98
the public, the prosecuting attorney, village solicitor, city 99
director of law, or similar chief legal officer shall release 100
that written explanation to the public. 101

(H) If criminal charges have been filed against any person 102
involved in the enforcement action, that person has the right to 103

object to the public release of any body-worn camera or 104
dashboard camera recording. The person shall file the objection 105
with the court within twenty-one days of the appointment of 106
counsel, the filing of an entry of appearance by counsel, or the 107
person's election to proceed pro se, whichever is later. If the 108
person elects to proceed pro se, the court shall advise the 109
person of the deadline to file an objection to the public 110
release of any body-worn camera or dashboard camera recording. 111
The court shall hold a hearing on any objection to the public 112
release of any body-worn camera or dashboard camera recording 113
not later than seven days after the filing of the objection with 114
the court and the court shall issue a ruling not later than 115
three days after the hearing. 116

Sec. 2935.40. (A) As used in this section: 117

(1) "Body-worn camera" and "dashboard camera" have the 118
same meanings as in section 149.43 of the Revised Code. 119

(2) "Enforcement action" means any of the following: 120

(a) A call for service or a self-initiated service 121
activity; 122

(b) An investigatory stop; 123

(c) A traffic or pedestrian stop; 124

(d) A pursuit by foot, vehicle, bicycle, or any other 125
available means of transportation; 126

(e) A use of force; 127

(f) An arrest; 128

(g) A forced entry into a structure, vehicle, or other 129
premises. 130

(3) "Law enforcement agency" has the same meaning as in 131
section 2925.61 of the Revised Code. 132

(B) On or before July 1, 2023, every law enforcement 133
agency in the state shall provide body-worn cameras for each 134
peace officer of the law enforcement agency who interacts with 135
the public or who is a correctional officer in a jail. 136

(C) Except as otherwise provided in division (D), (E), or 137
(F) of this section, a peace officer shall wear and activate a 138
body-worn camera or, if the peace officer's vehicle is equipped 139
with a dashboard camera, activate a dashboard camera when 140
engaging in an enforcement action or, if the peace officer is a 141
correctional officer in a jail, when performing a task that 142
requires an anticipated use of force, including removing an 143
inmate from the inmate's cell or placing an inmate in a 144
restraint chair. 145

(D) A peace officer may deactivate a body-worn camera or 146
dashboard camera under the following circumstances: 147

(1) To avoid recording personal information that is not 148
related to a specific case; 149

(2) When working on an assignment that is not related to a 150
specific case; 151

(3) When there is an extended period of inactivity in the 152
enforcement activity or there is contact between the peace 153
officer and an individual that is not related to the enforcement 154
activity; 155

(4) When the peace officer is involved in administrative, 156
tactical, or management discussions. 157

(E) Division (C) of this section does not apply to any of 158

<u>the following:</u>	159
<u>(1) A peace officer who is undercover;</u>	160
<u>(2) A peace officer who is a correctional officer in a jail if the jail is equipped with video cameras;</u>	161 162
<u>(3) A peace officer who is assigned to a courtroom.</u>	163
<u>(F) A law enforcement agency may apply to the attorney general for funds to purchase body-worn cameras for the agency.</u>	164 165
<u>(G) Notwithstanding any provisions of section 4117.10 of the Revised Code to the contrary, this section and section 2935.41 of the Revised Code prevail over any conflicting provision of a collective bargaining agreement entered into under Chapter 4117. of the Revised Code on or after the effective date of this section.</u>	166 167 168 169 170 171
<u>Sec. 2935.41. (A) If a peace officer fails to activate a body-worn camera or dashboard camera as required under section 2935.40 of the Revised Code, or tampers with the operation of or any portion of a body-worn camera or dashboard camera recording when required to activate the body-worn camera or dashboard camera, there is a permissive inference in any internal investigation or administrative or civil proceeding that the missing recording would have demonstrated misconduct by the peace officer.</u>	172 173 174 175 176 177 178 179 180
<u>(B) If a peace officer fails to activate or reactivate the peace officer's body-worn camera or dashboard camera, as required under section 2935.40 of the Revised Code, or tampers with the operation of or any portion of a body-worn camera or dashboard camera recording when required to activate the body-worn camera or dashboard camera, there is a rebuttable presumption of inadmissibility in either of the following</u>	181 182 183 184 185 186 187

circumstances: 188

(1) A statement by the peace officer is sought to be 189
introduced that was not recorded due to the peace officer's 190
failure to activate or reactivate the body-worn camera or 191
dashboard camera. 192

(2) A statement by the peace officer is sought to be 193
introduced that was not recorded by other means. 194

(C) Division (B) of this section does not apply if the 195
peace officer did not activate the body-worn camera or dashboard 196
camera because of a malfunction of the body-worn camera or 197
dashboard camera and the peace officer was not aware of that 198
malfunction or was unable to rectify it prior to the incident, 199
provided that the law enforcement agency that employs the peace 200
officer has documentation that demonstrates that the peace 201
officer checked the functionality of the body-worn camera or 202
dashboard camera at the beginning of the peace officer's shift. 203

(D) In addition to any criminal penalty, if a court or 204
internal investigation finds that a peace officer intentionally 205
failed to activate a body-worn camera or dashboard camera or 206
tampered with any body-worn camera or dashboard camera, the law 207
enforcement agency that employs the peace officer shall 208
discipline the peace officer to the extent permitted by any 209
applicable existing collective bargaining agreement. 210

Sec. 2935.42. (A) A peace officer may only use force if 211
the force is reasonably necessary to achieve a lawful objective, 212
including to effect a lawful arrest, prevent the escape of an 213
offender, defend the peace officer from physical harm, or defend 214
another person from physical harm. 215

(B) A peace officer may only use deadly force if the peace 216

officer has an objectively reasonable belief that deadly force 217
is necessary to defend the peace officer from serious physical 218
harm or death or defend another person from serious physical 219
harm or death. 220

Sec. 2935.43. (A) As used in this section: 221

(1) "Excessive force" means force used by a peace officer 222
that exceeds the minimum amount of force necessary to diffuse an 223
incident or protect the peace officer or others from serious 224
physical harm. The use of excessive force is presumed when a 225
peace officer continues to use force in excess of the force 226
permitted pursuant to section 2935.42 of the Revised Code to a 227
person who has been rendered incapable to resist arrest. 228

(2) "Unconstitutional conduct" means, under color of law, 229
statute, ordinance, regulation, or custom, willfully subjecting 230
a person to the deprivation of any rights, privileges, or 231
immunities secured or protected by the United States 232
Constitution or the Ohio Constitution. 233

(B) No peace officer shall recklessly fail to intervene to 234
prevent or stop another peace officer from using excessive force 235
while placing a person under arrest or in detention, taking a 236
person into custody, booking a person, or while controlling or 237
managing a crowd. 238

(C) A peace officer who intervenes in another peace 239
officer's use of excessive force shall report that intervention 240
to the peace officer's immediate supervisor. The peace officer 241
shall, at a minimum, include all of the following in that 242
report: 243

(1) The date, time, and location of the occurrence; 244

(2) The identity, if known, and a description of the 245

<u>participants involved in the occurrence;</u>	246
<u>(3) A description of the intervention actions taken by the</u>	247
<u>peace officer.</u>	248
<u>(D) Whoever violates division (B) of this section is</u>	249
<u>guilty of failure to intervene in excessive use of force, a</u>	250
<u>misdemeanor of the first degree.</u>	251
<u>(E) If an internal investigation by a law enforcement</u>	252
<u>agency finds that a peace officer employed by that law</u>	253
<u>enforcement agency violated division (B) of this section, the</u>	254
<u>chief law enforcement officer of the law enforcement agency</u>	255
<u>shall inform the prosecuting attorney of this finding to allow</u>	256
<u>the prosecuting attorney to determine whether the prosecuting</u>	257
<u>attorney should file charges against the peace officer. Nothing</u>	258
<u>in this division prohibits a prosecuting attorney from filing</u>	259
<u>charges against a peace officer for a violation of division (B)</u>	260
<u>of this section before the conclusion of any internal</u>	261
<u>investigation.</u>	262
<u>(F) In addition to any criminal penalty that is imposed</u>	263
<u>for a violation of division (B) of this section, if an internal</u>	264
<u>investigation by the law enforcement agency finds that the</u>	265
<u>incident in which the peace officer that is employed by the law</u>	266
<u>enforcement agency failed to intervene resulted in death or</u>	267
<u>serious physical harm to any person, the law enforcement agency</u>	268
<u>shall discipline the peace officer to the extent permitted by</u>	269
<u>any applicable existing collective bargaining agreement.</u>	270
<u>(G) (1) If the prosecuting attorney charges a peace officer</u>	271
<u>with any offense related to and based on the use of excessive</u>	272
<u>force, including a violation of division (B) of this section,</u>	273
<u>but does not file charges against any other peace officer who</u>	274

was present during the other peace officer's use of excessive 275
force, the prosecuting attorney shall prepare a written report 276
explaining the prosecuting attorney's basis for the decision to 277
not charge any other peace officer who was present during the 278
use of excessive force with any offense related to and based on 279
the use of excessive force. 280

(2) The prosecuting attorney shall release the written 281
report to the public, and shall post the report on the web site 282
of the prosecuting attorney's office, if applicable, within 283
twenty-one days of the filing of charges against the peace 284
officer. If public disclosure of the report would substantially 285
interfere with or jeopardize an ongoing criminal investigation, 286
the prosecuting attorney may delay the public disclosure of the 287
report for not more than forty-five days from the date charges 288
are filed against the peace officer for any offense related to 289
or based on the use of excessive force. 290

(H) No employer who employs a peace officer shall 291
discharge without just cause or otherwise discriminate against a 292
peace officer with respect to tenure, terms, conditions, or 293
privileges of employment, or any matter directly or indirectly 294
related to employment, if the peace officer, while performing 295
the officer's duties, intervenes in another peace officer's use 296
of excessive force, reports unconstitutional conduct to the 297
employer, or fails to comply with an order that the peace 298
officer reasonably believes is unconstitutional. 299

(I) No employer shall discriminate in any manner against a 300
peace officer or any other person because that peace officer or 301
other person has reported another peace officer's use of 302
excessive force, or testified, assisted, or participated in any 303
manner in any investigation, proceeding, or hearing relating to 304

that use of excessive force.

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