



2016 LOCAL OFFICIALS DAY COMMITTEE HEARING ROLE-PLAY

At the 2016 Local Officials Day, ULCT will host a mock state committee hearing for city youth councils at the State Capitol from 8:00 to 10:30 am on January 27. We expect the mock committee meetings to provide the youth councils with a perspective of a “day in the life” of a state legislator. The meetings will demonstrate part of the legislative process and empower the youth to debate a relevant topic. The mock state committee will debate *HB 7375: Law Enforcement and Their Use of Body Cameras*. We anticipate legislators or police chiefs will visit the hearings and interact with the youth councils.

We need your participation to make the role-play successful. The details of the legislation & procedures are below. If any members of your youth council would like to serve on the youth legislative committee or as potential witnesses, please let ULCT know **ASAP** at 801-328-1601 or kolson@ulct.org (Krysten Olson) or bsmith@ulct.org (Brandon Smith). The roles will be filled on a first come, first served basis. If your youth council does not volunteer in advance, please have them prepare comments to present during the “public input” section of the meetings.

MOCK STATE COMMITTEE HEARING PROCEDURE

We usually have 500+ youth council members that attend Local Officials Day. We are doing a 2 track system this year so as to involve more of your councils, decrease the number of kids in each room, and eliminate the need for a debate in the Hall of Governors (capitol 1st floor). The first group will debate for approximately 1 hour while the other group meets with their local leaders and legislators or to tour the Capitol (this will need to be set up by you and your group on your own). After the first hour the groups will then switch places, allowing the second group to mock debate and the first group to meet with local leaders, legislators, or tour the Capitol. The 2 groups will be divided into 2 sections of about 150 youth council members and assigned to a room for the mock committee hearing. Each mock hearing will focus on the same legislation. The youth committee will sit at the committee table while the rest of the youth will be in the audience. We need approximately 60 youth council volunteers (about 15 per hearing) to successfully execute the role-play. The following times are estimates. PLEASE VOLUNTEER!

- ULCT staff explains the process: 2 min
- Committee chairperson (youth council volunteer) calls meeting to order, explains procedure, sets 3 min time limits on speakers: 2 min
- Prepared testimony in support of bill & Amendment 1: 7 min (3 pre-arranged volunteers)
- Prepared testimony in opposition to bill & Amendment 1: 3 min (1 pre-arranged volunteer)
- Public comment & committee debate about Amendment 1: 8 min
- Committee members vote one-by-one on Amendment 1 & explain vote: 2 min
- Prepared testimony in support of and opposition to Amendment 2: 15 min (6 pre-arranged volunteers)
- Public comment & committee debate on Amendment 2 & the bill: 20 min
- Committee members vote one-by-one on Amendment 2 & explain vote: 3 min
- Committee members cast final votes on bill & explain vote: 3 min
- Committee chairperson announces whether or not bill passes and adjourns the meeting

HB 7375: Law Enforcement and Their Use of Body Cameras

PART I

77-7z-102z: Definitions

“Body-worn camera:” a portable video recording device worn by an officer that records the officer’s acts.

“Public record” is a record that is not classified as a private or protected record and can be disclosed

PART II

77-7z-103z: Policies and procedures

(1) Any law enforcement agency with body-worn cameras shall at a minimum use the following policy:

(a) Cameras shall be worn conspicuously by an officer whenever possible

(b) Cameras shall be activated during the following types of encounters between the public and the officer:

i. All enforcement and investigative contacts (including interviews, warrants, use of force)

ii. Traffic stops

iii. Any other contact that becomes adversarial

PART III

63G-2-201z: Government Records and Management Act

(1) All body-worn camera recordings are public and must be disclosed to the public upon request, except for the following body-worn camera data that would be private (a-g) or protected (h):

a) Audio, video, or other data captured by a body-worn camera that contains:

b) Personally identifiable images or information

c) Medical information

d) Data from the interior of a private residence

e) Data from school buildings or school property

f) Data from areas in public buildings or public places that are not accessible to the general public

g) Data that a reasonable person would expect to be private

h) Data collected for a law enforcement purpose (protected)

(2) Private and protected recordings may be released to a third party only when the public interest outweighs the privacy interest.

(3) All recordings shall be retained for no less than 30 days and can then be destroyed

AMENDMENT 1: add in Part I “POST is the Division of Peace Officer Standards and Training,” delete Part II and replace with “Any law enforcement agency with body-worn cameras shall at a minimum use the policy adopted by POST,” and then move Part II(a) & (b) to a POST model policy

AMENDMENT 2:

In Part II, add (c) which would say:

“When a law enforcement officer with a body-worn camera enters a private residence, the officer shall give notice to the occupants that the camera is in use & comply with requests to turn the camera off”

And delete Part III and replace with:

(1) A body-worn camera recording is a public record.

(2) All recordings shall be retained before they can be destroyed:

i) at a minimum for not less than 9 months in all cases (consistent with license plate readers), or

ii) at least as long as the statute of limitations for any criminal charge that may arise from evidence obtained from the recording

(3) A government entity must release a body-worn camera recording to a third party (such as a journalist, defense attorney, or private citizen) upon request.

BACKGROUND INFORMATION

A) There are some fundamental questions that this committee and local youth officials must ask:

- 1) Why do we want law enforcement officers to wear body-worn cameras?
- 2) Is the camera to monitor police officer conduct, aid a police officer in the investigation, or both?
- 3) What is the balance between the public interest in knowing what happened and the privacy of the individuals in the recording?
- 4) Is the financial cost worth it to society to invest in body-worn cameras?

B) What other states are doing

[http://www.ncsl.org/research/civil-and-criminal-justice/law-enforcement.aspx#Police use of body-cameras](http://www.ncsl.org/research/civil-and-criminal-justice/law-enforcement.aspx#Police%20use%20of%20body-worn%20cameras)

<http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>

- 19 states have body-worn camera laws
- 8 states have addressed public access to body-worn camera recordings
- 37 states considered legislation in 2015 (including Utah)
- Oklahoma 2015 law: all body-worn camera recordings are public though the agency can redact footage of nudity, minors, bodily injury, medical info, & personal info. Agencies may not redact footage that shows an officer pursuing someone, using force, or causing injury or death
- North Dakota 2015 law: An image taken by a law enforcement officer with a body camera and which is taken in a private place is an exempt record (note: "private place" is undefined)

C) Cost of body-worn cameras and storage

http://www.hendonpub.com/law_and_order/articles/2015/07/the_costs_and_benefits_of_body_worn_cameras

Rule: the longer an agency must store footage, the more expensive the body-worn camera policy will be.
Duluth, MN (86,000 pop.): 110 cameras, 10,000 videos/month, keep for at least 30 days = \$28,000/yr
Wichita, KS (388,000 pop.): 440 cameras, docking stations, IT, employees to track footage = \$350,112/yr

D) Utah body-worn camera status quo

- At least 44 law enforcement agencies in Utah currently use some body-worn cameras
- State law is silent about usage, activation, or public access to body-worn camera footage
- State law shows how the public can access other types of law enforcement records

E) Utah Government Records Access & Management Act (GRAMA; for more on the types of records & process to access records, see Utah Code 63G-2-1 at www.le.utah.gov):

- Every person has the right to a copy of a *public record* (for a reasonable cost)
- Governmental entity shall disclose a *private or protected record* to:
 - a) The subject of the record
 - b) The parent of legal guardian of the minor who is the subject of the record
 - c) Any person to whom the record must be provided pursuant to a court order
- Process for obtaining a public, private, or protected record:
 - i) Written request to city (city must respond in 10 days)
 - ii) Expedited response: a journalist can request a faster response if he/she demonstrates that the record request benefits the public rather than the individual requester
 - iii) If the city denies the request, the requester has 30 days to appeal to the city manager or local appeals board and then 30 days to appeal to the State Records Committee

STANDARD TO DETERMINE WHETHER A GOVERNMENTAL ENTITY MAY DISCLOSE A PRIVATE RECORD:

“Interests favoring access are greater than or equal to the interest favoring restriction of access”

Utah Supreme Court: “the presumption has always been in favor of public access, subject only to specific statutory restrictions, personal privacy rights, and countervailing public policy”

F) Other law enforcement records in Utah (some with retention schedules, some without; see

<http://archives.utah.gov/opengovernment/index.html>)

- Public:
 - Police in-car video recordings (retain for 3 months)
 - Questionable cases 911 dispatch recordings (retain for 2 years)
 - Names of victims
- Protected:
 - License plate data from an automatic license plate reader (destroy after 9 months)
 - Agency can restrict access to investigatory records if the disclosure could interfere with the investigation or deprive a person of a fair trial
- Private:
 - Arrest reports (retain for 5 years)
 - Records about someone’s medical history, condition, or treatment

ROLES FOR YOUR YOUTH COUNCIL FOR HB 7375 (we need approximately 60 youth council volunteers for 4 committee hearings, 2 groups per track)

We need youth council members to provide the following roles and/or fill the mock committee who must vote on the bill and amendment. We have included suggested arguments below and request that each volunteer elaborate on the arguments and prepare a 2 minute testimony on their topic. Please use ULCT as a resource at 801-328-1601 or kolson@ulct.org (Krysten) or bsmith@ulct.org (Brandon).

COMMITTEE MEMBERS: 6-10 volunteers, 3 of which must present amendments (2-3 min)

Chairperson of committee:

- Responsible to conduct the hearing, keep time, and use Roberts Rules of Order
- Manages vote, explains parliamentary procedure and what happens to the bill after the vote

Committee members (5-10 volunteers):

- Listen to debate and must vote on the Bill
- 2 VOLUNTEERS NEEDED to present Amendments 1 & 2 during the debate (see role below)

NON-COMMITTEE MEMBERS WHO PREPARE TESTIMONY ON AMENDMENTS: (2-3 min each)

ROLES:

1) BILL SPONSOR

- We want to encourage agencies to adopt body-worn cameras, but state law currently does not provide any guidelines
- Local law enforcement agencies are concerned about investing in cameras without understanding the rules of the game
- Part II provides minimum guidelines for when to wear and activate a camera
- Part II by extension explains when an office may de-activate the camera (whenever the provisions of (1)(b) no longer apply)
- Part III provides privacy protections for citizens, outlines how long to keep records and when the media can obtain the records, and identifies when law enforcement can protect records

2) Amendment 1 supporter: AMENDMENT SPONSOR/COMMITTEE MEMBER

- POST provides training to all law enforcement officers in Utah so defer to experts at POST instead of legislators to draft a model policy
- Technology is changing quickly so a POST model policy instead of state law allows for more flexibility during the year (legislature only meets for 45 days; POST can make changes anytime)
- Amendment is consistent with the state of Maryland, whose Training Commission provides policies and guidelines for usage of body worn cameras

3) Amendment 1 supporter: CITY ATTORNEY

- If POST provides a model policy, the model policy is more flexible than dictating the exact specifics of a law enforcement policy in state law
- State law can only be modified once a year while the legislature meets (Jan-Mar), whereas POST can solicit public feedback and modify the model policy throughout the year
- The POST model policy can still act as a minimum guideline which is what the bill sponsor intends, it just does so with more flexibility to evolve during the year and more flexibility for locals to enhance the policy
- Recognize that this is an internal policy for a local agency and the final decision should be left to local government policymakers

4) Amendment 1 opponent: CIVIL RIGHTS ACTIVIST

- It is important to have consistent standards across all jurisdictions in Utah
- Body-worn cameras are different than other local internal policies and there is a greater state and privacy interest here than for other policies
- The state legislature defines criminal conduct and a retention schedule for how long law enforcement agencies can keep records of electronic license plate records, so there is a precedent for the legislature defining the minimum standard instead of deferring to POST

5) Amendment 2 supporter: AMENDMENT PRESENTER/COMMITTEE MEMBER

- It is important that citizens trust our police officers & the best way to demonstrate that trust is to make sure that all body-worn camera recordings are public documents
- If citizens and police officers know that everything captured on a body-worn camera is public, that will encourage positive interactions
- Making the recordings public will also help police officers to defend themselves publicly against allegations of wrongdoing by showing the footage of what actually happened
- Retaining the records at least 9 months instead of just 30 days is consistent with the electronic license plate reader law & keeps record available for future civil claims or criminal investigations
- By giving an individual the right to ask the officer to turn off the camera, the individual can still protect his/her privacy

6) Amendment 2 comments in support and opposition: CIVIL LIBERTIES ADVOCATE

- While I agree with the supporters that the public interest is important, I am also concerned about removing the privacy exceptions
- I support the idea that an individual should have the right to tell the officer to turn the camera off, but that does not cover all of the privacy concerns
- Body-worn cameras can film private places and private information, and this amendment would make all of that private information available to the public
- For example, if a police officer responds to a call at someone's home, the body-worn camera footage could include graphic domestic violence, embarrassing moments, and specifics about home security (ie. gun safe location) that any member of the public could easily obtain
- Do we want somebody's humiliating and private moment played on the 6 pm news?

7) Amendment 2 supporter: NEWS MEDIA

- In general, the news media believes that the public interest in the body-worn camera footage must be a priority
- There is currently a level of distrust between the public and law enforcement, and making the footage available is a sign of good faith to the public that law enforcement agencies are willing to be transparent and open and not hide the footage behind the GRAMA law
- Other states have locked up body-worn camera footage and prevented the public from seeing what happened, which adds to distrust between public and police

8) Amendment 2 opponent: STUDENT ADVOCATE

- Support the original bill language and not the amendment because the original bill protected the privacy of students (most of which are under age 18) in school
- What happens if a school has a resource officer who wears a body-worn camera? Any time a resource officer interviews a student, that would a public record that anybody could access
- If every recording is public, then a vindictive student could obtain the footage of an embarrassing moment with another student and use the footage to mock & bully him/her

9) Amendment 2 opponent: RURAL MAYOR

- Concerned about the change in retaining records from 1 month (30 days) to 9 months
- Every extra day that the law requires an agency to keep video footage costs more money
- For small communities like us, long retention requirements would prevent us from investing in body-worn cameras because we can't afford the servers necessary to keep the footage that long

10) Amendment 2 opponent: DISTRICT ATTORNEY

- This amendment would make it possible for an alleged criminal to request a police officer to turn off his/her camera and thus prevent the police officer from collecting video evidence of the crime scene
- How many times would an officer have to ask the occupant? Is that a reasonable request of an officer during a potential life and death incident?
- If a police officer is required to turn his camera on and off at different times during an investigation, there will be gaps in the footage. A defense attorney could argue in court that because the video evidence is incomplete, no video evidence should be considered