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February 23, 2021

By: Haste of the Senate

and

Dills of the House

An Act relating to the Oklahoma Open Records Act; amending 51 O.S. 2011, Section 24A.8, as last amended by Section 2, Chapter 370, O.S.L. 2015 (51 O.S. Supp. 2020, Section 24A.8), which relates to disclosure of law enforcement records; prohibiting disclosure of certain audio or video recordings; authorizing viewing of certain recordings under certain circumstances; defining term; construing provisions; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 51 O.S. 2011, Section 24A.8, as last amended by Section 2, Chapter 370, O.S.L. 2015 (51 O.S. Supp. 2020, Section 24A.8), is amended to read as follows:

Section 24A.8. A. Law enforcement agencies shall make available for public inspection and copying, if kept, the following records:

1. An arrestee description, including the name, date of birth, address, race, sex, physical description, and occupation of the arrestee;

- 1 2. Facts concerning the arrest, including the cause of arrest
2 and the name of the arresting officer;
- 3 3. A chronological list of all incidents, including initial
4 offense report information showing the offense, date, time, general
5 location, officer, and a brief summary of what occurred;
- 6 4. Radio logs, including a chronological listing of the calls
7 dispatched;
- 8 5. Conviction information, including the name of any person
9 convicted of a criminal offense;
- 10 6. Disposition of all warrants, including orders signed by a
11 judge of any court commanding a law enforcement officer to arrest a
12 particular person;
- 13 7. A crime summary, including an agency summary of crimes
14 reported and public calls for service by classification or nature
15 and number;
- 16 8. Jail registers, including jail blotter data or jail booking
17 information recorded on persons at the time of incarceration showing
18 the name of each prisoner with the date and cause of commitment, the
19 authority committing the prisoner, whether committed for a criminal
20 offense, a description of the prisoner, and the date or manner of
21 discharge or escape of the prisoner;
- 22 9. Audio and video recordings from recording equipment attached
23 to law enforcement vehicles or associated audio recordings from
24 recording equipment on the person of a law enforcement officer;

1 provided, the law enforcement agency may, before releasing any audio
2 or video recording provided for in this paragraph, redact or obscure
3 specific portions of the recording which:

- 4 a. depict the death of a person or a dead body, unless
5 the death was effected by a law enforcement officer,
- 6 b. depict nudity,
- 7 c. would identify minors under the age of sixteen (16)
8 years or would undermine any requirement to keep
9 certain juvenile records confidential as provided for
10 in Title 10A of the Oklahoma Statutes,
- 11 d. depict acts of severe violence resulting in great
12 bodily injury, as defined in Section 11-904 of Title
13 47 of the Oklahoma Statutes, against persons that are
14 clearly visible, unless the act of severe violence was
15 effected by a law enforcement officer,
- 16 e. depict great bodily injury, as defined in Section 11-
17 904 of Title 47 of the Oklahoma Statutes, unless the
18 great bodily injury was effected by a law enforcement
19 officer,
- 20 f. include personal medical information that is not
21 already public,
- 22 g. would undermine the assertion of a privilege provided
23 in Section 1-109 or Section 3-428 of Title 43A of the
24 Oklahoma Statutes for detention or transportation for

1 mental health evaluation or treatment or drug or
2 alcohol detoxification purposes,

3 h. include personal information other than the name or
4 license plate number of a person not arrested, cited,
5 charged or issued a written warning. Such personal
6 information shall include any government-issued
7 identification number, date of birth, address or
8 financial information, or

9 i. reveal the identity of law enforcement officers who
10 have become subject to internal investigation by the
11 law enforcement agency as a result of an event
12 depicted in the recording. The option to protect the
13 identity of a law enforcement officer shall not be
14 available to the law enforcement agency after the law
15 enforcement agency has concluded the investigation and
16 rendered a decision as to final disciplinary action.
17 At such time when an investigation has concluded and
18 the law enforcement agency has rendered its decision
19 as to final disciplinary action, the portions of the
20 recordings previously withheld as provided for in this
21 subparagraph shall be available for public inspection
22 and copying. The audio and video recordings withheld
23 as provided for in this subparagraph shall be
24 available for public inspection and copying before the

1 conclusion of the investigation if the investigation
2 lasts for an unreasonable amount of time; and

3 10. a. Audio and video recordings from recording equipment
4 attached to the person of a law enforcement officer
5 that depict:

6 (1) the use of any physical force or violence by a
7 law enforcement officer,

8 (2) pursuits of any kind,

9 (3) traffic stops,

10 (4) any person being arrested, cited, charged or
11 issued a written warning,

12 (5) events that directly led to any person being
13 arrested, cited, charged or receiving a written
14 warning,

15 (6) detentions of any length for the purpose of
16 investigation,

17 (7) any exercise of authority by a law enforcement
18 officer that deprives a citizen of his or her
19 liberty,

20 (8) actions by a law enforcement officer that have
21 become the cause of an investigation or charges
22 being filed,

23 (9) recordings in the public interest that may
24 materially aid a determination of whether law

1 enforcement officers are appropriately performing
2 their duties as public servants, or

3 (10) any contextual events occurring before or after
4 the events depicted in divisions (1) through (9)
5 of this subparagraph.

6 b. Notwithstanding the provisions of subparagraph a of
7 this paragraph, the law enforcement agency may, before
8 releasing any audio or video recording provided for in
9 this paragraph, redact or obscure specific portions of
10 the recording that:

11 (1) depict the death of a person or a dead body,
12 unless the death was effected by a law
13 enforcement officer,

14 (2) depict nudity,

15 (3) would identify minors under the age of sixteen
16 (16) years or would undermine any requirement to
17 keep certain juvenile records confidential as
18 provided for in Title 10A of the Oklahoma
19 Statutes,

20 (4) depict acts of severe violence resulting in great
21 bodily injury, as defined in Section 11-904 of
22 Title 47 of the Oklahoma Statutes, against
23 persons that are clearly visible, unless the act
24

1 of severe violence was effected by a law
2 enforcement officer,

3 (5) depict great bodily injury, as defined in Section
4 11-904 of Title 47 of the Oklahoma Statutes,
5 unless the great bodily injury was effected by a
6 law enforcement officer,

7 (6) include personal medical information that is not
8 already public,

9 (7) undermine the assertion of a privilege as
10 provided in Section 1-109 or Section 3-428 of
11 Title 43A of the Oklahoma Statutes for detention
12 or transportation for mental health evaluation or
13 treatment or drug or alcohol detoxification
14 purposes,

15 (8) identify alleged victims of sex crimes or
16 domestic violence,

17 (9) identify any person who provides information to
18 law enforcement or the information provided by
19 that person when that person requests anonymity
20 or where disclosure of the identity of the person
21 or the information provided could reasonably be
22 expected to threaten or endanger the physical
23 safety or property of the person or the physical
24 safety or property of others,

1 (10) undermine the assertion of a privilege to keep
2 the identity of an informer confidential as
3 provided for in Section 2510 of Title 12 of the
4 Oklahoma Statutes,

5 (11) include personal information other than the name
6 or license plate number of a person not
7 officially arrested, cited, charged or issued a
8 written warning. Such personal information shall
9 include any government-issued identification
10 number, date of birth, address or financial
11 information,

12 (12) include information that would materially
13 compromise an ongoing criminal investigation or
14 ongoing criminal prosecution, provided that:

15 (a) ten (10) days following the formal
16 arraignment or initial appearance, whichever
17 occurs first, of a person charged in the
18 case in question, the recording shall be
19 made available for public inspection and
20 copying with no redaction of the portions
21 that were temporarily withheld by reliance
22 on this division. Provided, before
23 potential release of a recording as provided
24 for in this subdivision, the prosecutor or

1 legal representative of the person charged
2 may request from the appropriate district
3 court an extension of time during which the
4 recording may be withheld under the
5 provisions of this division. When a request
6 for an extension of time has been filed with
7 the court, the recording in question may be
8 withheld until the court has issued a
9 ruling. Such requests for an extension of
10 the time during which the recording may be
11 withheld may be made on the grounds that
12 release of the recording will materially
13 compromise an ongoing criminal investigation
14 or criminal prosecution or on the grounds
15 that release of the recording will
16 materially compromise the right of an
17 accused to a fair trial that has yet to
18 begin. Courts considering such requests
19 shall conduct a hearing and consider whether
20 the interests of the public outweigh the
21 interests asserted by the parties. In
22 response to such requests, the court shall
23 order that the recording be made available
24 for public inspection and copying with no

redaction of the portions that were temporarily withheld by reliance on this division or order an extension of time during which the recording may be withheld under the provisions of this division. Provided further, each such time extension shall only be ordered by the court for an additional six-month period of time or less and cumulative time extensions shall not add up to more than eighteen (18) months, or

(b) in the event that one hundred twenty (120) days expire from the date of the events depicted in the recording without any person being criminally charged in the case in question and release of a recording or portions of a recording have been denied on the grounds provided for in this division, an appeal of such denial may be made to the appropriate district court. In situations where one hundred twenty (120) days have expired since the creation of the recording, criminal charges have not been filed against a person and the recording is being withheld on the grounds provided for in this

1 division, courts considering appeals to the
2 use of the provisions of this division for
3 temporarily withholding a recording shall
4 conduct a hearing and consider whether the
5 interests of the public outweigh the
6 interests of the parties protected by this
7 division. In response to such appeals, the
8 district court shall order that the
9 recording be made available for public
10 inspection and copying with no redaction of
11 the portions that were temporarily withheld
12 by reliance on this division or order an
13 extension of time during which the recording
14 may be withheld under the provisions of this
15 division. An order granting an extension of
16 time shall be applicable to the recording
17 against all appellants for the duration of
18 the extension. Provided, each such time
19 extension shall only be ordered by the
20 district court for an additional twelve-
21 month period of time or less and cumulative
22 time extensions shall not add up to more
23 than three (3) years. Provided, charges
24 being filed against a person in the case in

1 question automatically cancels any extension
2 of time. A new request for an extension of
3 time following an arraignment or initial
4 appearance may be requested by the parties
5 on the grounds and under the terms provided
6 for in subdivision (a) of this division.

7 The options presented in this division to
8 potentially withhold a recording or portions of a
9 recording on the grounds provided for in this
10 division shall expire in totality four (4) years
11 after the recording was made at which time all
12 recordings previously withheld on the grounds
13 provided for in this division shall be made
14 available for public inspection and copying, or

15 (13) reveal the identity of law enforcement officers
16 who have become subject to internal investigation
17 by the law enforcement agency as a result of an
18 event depicted in the recording. The option to
19 protect the identity of a law enforcement officer
20 shall not be available to the law enforcement
21 agency after the law enforcement agency has
22 concluded the investigation and rendered a
23 decision as to final disciplinary action. At
24 such time when an investigation has concluded and

1 the law enforcement agency has rendered its
2 decision as to final disciplinary action, the
3 portions of the recordings previously withheld as
4 provided for in this division shall be available
5 for public inspection and copying. The audio and
6 video recordings withheld on the grounds provided
7 for in this division shall be available for
8 public inspection and copying before the
9 conclusion of the investigation if the
10 investigation lasts for an unreasonable amount of
11 time.

12 B. 1. Except for the records listed in subsection A of this
13 section and those made open by other state or local laws, law
14 enforcement agencies may deny access to law enforcement records
15 except where a court finds that the public interest or the interest
16 of an individual outweighs the reason for denial. The provisions of
17 this section shall not operate to deny access to law enforcement
18 records if such records have been previously made available to the
19 public as provided in the Oklahoma Open Records Act or as otherwise
20 provided by law.

21 2. a. A law enforcement agency shall deny access to any
22 audio or video recording that depicts the death of a
23 law enforcement officer who was acting in the course
24 of his or her official duties including any related

1 acts or events immediately preceding or subsequent to
2 the acts or events that caused or otherwise relate to
3 the death, except where a court finds that the public
4 interest or the interest of an individual outweighs
5 the reason for denial. Provided, however, a law
6 enforcement agency may allow a family member of the
7 deceased law enforcement officer to hear or view such
8 audio or video recording under protocols established
9 by the law enforcement agency. For the purposes of
10 this subparagraph, "family member" means a spouse,
11 adult child, parent or sibling of the deceased law
12 enforcement officer.

13 b. Nothing in subparagraph a of this paragraph shall be
14 construed to prohibit the prosecution and defense
15 counsel from access to such audio or video recordings
16 or the use of such recordings as evidence in a legal
17 proceeding.

18 C. Nothing contained in this section imposes any new
19 recordkeeping requirements. Law enforcement records shall be kept
20 for as long as is now or may hereafter be specified by law. Absent
21 a legal requirement for the keeping of a law enforcement record for
22 a specific time period, law enforcement agencies shall maintain
23 their records for so long as needed for administrative purposes.

1 D. Registration files maintained by the Department of
2 Corrections pursuant to the provisions of the Sex Offenders
3 Registration Act shall be made available for public inspection in a
4 manner to be determined by the Department.

5 E. The Council on Law Enforcement Education and Training
6 (C.L.E.E.T.) shall keep confidential all records it maintains
7 pursuant to Section 3311 of Title 70 of the Oklahoma Statutes and
8 deny release of records relating to any employed or certified full-
9 time officer, reserve officer, retired officer or other person;
10 teacher lesson plans, tests and other teaching materials; and
11 personal communications concerning individual students except under
12 the following circumstances:

13 1. To verify the current certification status of any peace
14 officer;

15 2. As may be required to perform the duties imposed by Section
16 3311 of Title 70 of the Oklahoma Statutes;

17 3. To provide to any peace officer copies of the records of
18 that peace officer upon submitting a written request;

19 4. To provide, upon written request, to any law enforcement
20 agency conducting an official investigation, copies of the records
21 of any peace officer who is the subject of such investigation;

22 5. To provide final orders of administrative proceedings where
23 an adverse action was taken against a peace officer; and
24

1 6. Pursuant to an order of the district court of the State of
2 Oklahoma.

3 F. The Department of Public Safety shall keep confidential:

4 1. All records it maintains pursuant to its authority under
5 Title 47 of the Oklahoma Statutes relating to the Oklahoma Highway
6 Patrol Division, the Communications Division, and other divisions of
7 the Department relating to:

8 a. training, lesson plans, teaching materials, tests, and
9 test results,

10 b. policies, procedures, and operations, any of which are
11 of a tactical nature, and

12 c. the following information from radio logs:

13 (1) telephone numbers,

14 (2) addresses other than the location of incidents to
15 which officers are dispatched, and

16 (3) personal information which is contrary to the
17 provisions of the Driver's Privacy Protection
18 Act, 18 United States Code, Sections 2721 through
19 2725; and

20 2. For the purpose of preventing identity theft and invasion of
21 law enforcement computer systems, except as provided in Title 47 of
22 the Oklahoma Statutes, all driving records.

SECTION 2. This act shall become effective November 1, 2021.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
February 23, 2021 - DO PASS