

By: West

S.B. No. 380

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the investigation and prosecution of criminal offenses  
3 and to certain recordings created by peace officers during an  
4 investigation or other law enforcement activity; creating a  
5 criminal offense.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. (a) This Act shall be known as the "Botham Jean  
8 Act."

9 (b) Sections 6 and 7 of this Act shall be known as "Bo's  
10 Law."

11 SECTION 2. Sections [1701.655](#)(b) and (c), Occupations Code,  
12 are amended to read as follows:

13 (b) A policy described by Subsection (a) must ensure that a  
14 body worn camera is activated only for a law enforcement purpose and  
15 must include:

16 (1) guidelines for when a peace officer should  
17 activate a camera or discontinue a recording currently in progress,  
18 considering the need for privacy in certain situations and at  
19 certain locations;

20 (2) provisions relating to data retention, including a  
21 provision requiring the retention of video for a minimum period of  
22 90 days;

23 (3) provisions relating to storage of video and audio,  
24 creation of backup copies of the video and audio, and maintenance of

1 data security;

2 (4) provisions relating to the collection of a body  
3 worn camera, including the applicable video and audio recorded by  
4 the camera, as evidence;

5 (5) guidelines for public access, through open records  
6 requests, to recordings that are public information;

7 (6) [~~(5)~~] provisions entitling an officer to access  
8 any recording of an incident involving the officer before the  
9 officer is required to make a statement about the incident;

10 (7) [~~(6)~~] procedures for supervisory or internal  
11 review; and

12 (8) [~~(7)~~] the handling and documenting of equipment  
13 and malfunctions of equipment.

14 (c) A policy described by Subsection (a) must [~~may not~~]  
15 require a peace officer who participates in an investigation, as  
16 defined by Section 38.20, Penal Code, to keep a body worn camera  
17 activated for the entirety of the investigation unless the camera  
18 has been collected as evidence by another peace officer in  
19 accordance with:

20 (1) the policy described by Subsection (a) and any  
21 other policy adopted by the law enforcement agency regarding the  
22 collection of evidence; and

23 (2) applicable law [~~entire period of the officer's~~  
24 ~~shift~~].

25 SECTION 3. Section 1701.657(b), Occupations Code, is  
26 amended to read as follows:

27 (b) Subject to Section 1701.655(c), a [A] peace officer

1 equipped with a body worn camera may choose not to activate a camera  
2 or may choose to discontinue a recording currently in progress for  
3 any nonconfrontational encounter with a person[~~, including an~~  
4 ~~interview of a witness or victim~~].

5 SECTION 4. Section 1701.661(h), Occupations Code, is  
6 amended to read as follows:

7 (h) A recording is confidential and excepted from the  
8 requirements of Chapter 552, Government Code, if:

9 (1) the recording:

10 (A) [~~(1)~~] was not required to be made under this  
11 subchapter or another law or under a policy adopted by the  
12 appropriate law enforcement agency; and

13 (B) [~~(2)~~] does not relate to a law enforcement  
14 purpose;

15 (2) the recording documents a crime victim expressing  
16 a clear and unambiguous desire to not:

17 (A) be recorded; or

18 (B) allow the recording to be available to the  
19 public;

20 (3) the recording documents a person providing  
21 assistance to a law enforcement investigation and expressing a  
22 clear and unambiguous desire to:

23 (A) not be recorded; or

24 (B) provide the assistance in an anonymous  
25 manner;

26 (4) the recording documents a child younger than 17  
27 years of age; or

1           (5) the recording was made:

2                   (A) on the grounds of any public or private  
3 primary or secondary school; or

4                   (B) inside a home by a peace officer who entered  
5 the home without at least one of the following:

6                           (i) a warrant;

7                           (ii) consent; or

8                           (iii) accompanying exigent circumstances  
9 that would by law authorize the officer to enter the home without a  
10 warrant.

11           SECTION 5. Section 8.02, Penal Code, is amended by amending  
12 Subsection (a) and adding Subsection (c) to read as follows:

13           (a) It is a defense to prosecution that the actor through  
14 mistake formed a reasonable belief about a matter of fact if his  
15 mistaken belief negated the culpable mental state [~~kind of~~  
16 ~~culpability~~] required for commission of the offense.

17           (c) The defense provided by this section does not apply to  
18 an actor's belief that is required to raise any other defense or  
19 affirmative defense.

20           SECTION 6. Section 9.31(a), Penal Code, is amended to read  
21 as follows:

22           (a) Except as provided in Subsection (b), a person is  
23 justified in using force against another when and to the degree the  
24 actor reasonably believes the force is immediately necessary to  
25 protect the actor against the other's use or attempted use of  
26 unlawful force. The actor's belief that the force was immediately  
27 necessary as described by this subsection is presumed to be

1 reasonable if:

2           (1) the actor:

3                    (A) was physically present in the actor's own  
4 habitation, vehicle, or place of business or employment at the time  
5 the force was used and the actor [~~(1)~~] knew or had reason to believe  
6 that the person against whom the force was used:

7                           (i) [~~(A)~~] unlawfully and with force  
8 entered, or was attempting to enter unlawfully and with force, the  
9 actor's occupied habitation, vehicle, or place of business or  
10 employment; or

11                           (ii) [~~(B)~~] unlawfully and with force  
12 removed, or was attempting to remove unlawfully and with force, the  
13 actor from the actor's habitation, vehicle, or place of business or  
14 employment; or

15                           (B) knew or had reason to believe that the person  
16 against whom the force was used [~~(C)~~] was committing or attempting  
17 to commit aggravated kidnapping, murder, sexual assault,  
18 aggravated sexual assault, robbery, or aggravated robbery;

19           (2) the actor did not provoke the person against whom  
20 the force was used; and

21           (3) the actor was not otherwise engaged in criminal  
22 activity, other than a Class C misdemeanor that is a violation of a  
23 law or ordinance regulating traffic at the time the force was used.

24           SECTION 7. Section 9.32(b), Penal Code, is amended to read  
25 as follows:

26           (b) The actor's belief under Subsection (a)(2) that the  
27 deadly force was immediately necessary as described by that

1 subdivision is presumed to be reasonable if:

2 (1) the actor:

3 (A) was physically present in the actor's own  
4 habitation, vehicle, or place of business or employment at the time  
5 the deadly force was used and the actor [~~(1)~~] knew or had reason to  
6 believe that the person against whom the deadly force was used:

7 (i) [~~(A)~~] unlawfully and with force  
8 entered, or was attempting to enter unlawfully and with force, the  
9 actor's occupied habitation, vehicle, or place of business or  
10 employment; or

11 (ii) [~~(B)~~] unlawfully and with force  
12 removed, or was attempting to remove unlawfully and with force, the  
13 actor from the actor's habitation, vehicle, or place of business or  
14 employment; or

15 (B) knew or had reason to believe that the person  
16 against whom the deadly force was used [~~(C)~~] was committing or  
17 attempting to commit an offense described by Subsection (a)(2)(B);

18 (2) the actor did not provoke the person against whom  
19 the deadly force was used; and

20 (3) the actor was not otherwise engaged in criminal  
21 activity, other than a Class C misdemeanor that is a violation of a  
22 law or ordinance regulating traffic at the time the deadly force was  
23 used.

24 SECTION 8. Chapter 38, Penal Code, is amended by adding  
25 Section 38.20 to read as follows:

26 Sec. 38.20. DEACTIVATION OF RECORDING DEVICE. (a) In this  
27 section:

1           (1) "Recording device" includes any video or audio  
2 equipment in a vehicle used by a peace officer for a law enforcement  
3 purpose, a body worn camera as defined by Section 1701.651,  
4 Occupations Code, and an alarm system as defined by Section  
5 1702.002, Occupations Code.

6           (2) "Investigation" means an inquiry conducted by a  
7 law enforcement agency to determine whether:

8                   (A) a person has committed an offense, regardless  
9 of whether a person is arrested or detained in connection with the  
10 inquiry; or

11                   (B) an employee of a law enforcement agency has  
12 violated a policy, order, rule, or other regulation of the law  
13 enforcement agency.

14           (3) "Law enforcement agency" means an agency of the  
15 state or a political subdivision of the state authorized by law to  
16 employ peace officers.

17           (b) A person commits an offense if the person knows that an  
18 investigation is ongoing and intentionally or knowingly  
19 deactivates, orders the deactivation of, or causes to be  
20 deactivated a recording device being used in the investigation.

21           (c) An offense under this section is a felony of the third  
22 degree.

23           (d) It is an affirmative defense to prosecution under this  
24 section that:

25                   (1) the recording device was a body worn camera;

26                   (2) the actor is a peace officer, other than the peace  
27 officer to whom the body worn camera was issued; and

1           (3) the actor deactivated the body worn camera in  
2 accordance with:

3           (A) any policy adopted by the employing law  
4 enforcement agency regarding the collection of evidence; and

5           (B) applicable law.

6           (e) It is an affirmative defense to prosecution under this  
7 section that:

8           (1) the actor is not a peace officer; and

9           (2) the actor deactivated the recording device at the  
10 request or command of a peace officer who made the request or  
11 command in accordance with:

12           (A) any policy adopted by the employing law  
13 enforcement agency regarding the collection of evidence; and

14           (B) applicable law.

15           SECTION 9. Sections [8.02](#), [9.31](#), and [9.32](#), Penal Code, as  
16 amended by this Act, apply only to an offense committed on or after  
17 the effective date of this Act. An offense committed before the  
18 effective date of this Act is governed by the law in effect when the  
19 offense was committed, and the former law is continued in effect for  
20 that purpose. For purposes of this section, an offense was  
21 committed before the effective date of this Act if any element of  
22 the offense occurred before that date.

23           SECTION 10. Section [1701.661\(h\)](#), Occupations Code, as  
24 amended by this Act:

25           (1) applies to a recording described by that section,  
26 regardless of the date the recording is created; and

27           (2) applies only to a request for information that is



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1 received by a governmental body or an officer for public  
2 information on or after the effective date of this Act.

3 SECTION 11. This Act takes effect September 1, 2021.