

HOUSE BILL REPORT

HB 2876

As Reported by House Committee On:
Judiciary

Title: An act relating to sound and video recordings by law enforcement officers.

Brief Description: Clarifying procedures for sound and video recordings by law enforcement officers.

Sponsors: Representatives Ericksen, Wood, Dunn, Armstrong and Ericks; by request of Washington State Patrol.

Brief History:

Committee Activity:

Judiciary: 1/25/06, 1/30/06 [DPS].

Brief Summary of Substitute Bill

- Modifies the simultaneous sound and video recording requirement that applies to video equipment installed in law enforcement vehicles.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Bill Perry (786-7123).

Background:

The Privacy Act.

Washington's Privacy Act generally prohibits the interception or recording of any private communication or conversation without the consent of all parties to the communication or conversation. There are several exceptions to this general prohibition, including exceptions allowing one-party consent in a variety of cases, and conditions under which a court may authorize the interception or recording.

In addition, there are many exceptions from the Privacy Act's provisions, including certain common carrier services; 911 services; police, fire, emergency medical service and poison centers when recording incoming calls; the Department of Corrections recording of inmate

conversations; and video and sound recordings of arrested persons by police officers responsible for making arrests.

Communications or conversations that are intercepted or recorded without the consent of all parties are generally not admissible in court, except in limited circumstances.

Simultaneous Sound and Video Recordings by Law Enforcement.

The Privacy Act's provisions prohibiting the interception or recording of a private communication or conversation without the consent of all parties do not apply to sound recordings that correspond to video images recorded by video cameras mounted in law enforcement vehicles, as long as certain conditions are met. One of these conditions is that the recording device only be operated simultaneously with the video camera. Other conditions that must be met are:

- the officer wearing the recording device must be in uniform;
- the recording device may not be turned off by the officer during the operation of the video camera;
- any sound or video recording may not be duplicated and made available to the public until final disposition of criminal or civil litigation arising from the incident recorded;
- the sound recording may not be divulged or used by law enforcement for commercial purposes; and
- the officer must inform the person being recorded that a sound recording is being made, unless the person is being recorded under exigent circumstances, and the statement informing the person must be included in the recording. The officer is not required to inform the person of a video recording.

It is a gross misdemeanor to knowingly alter, erase, or wrongfully disclose any recording in violation of these restrictions. Sound recordings made under this provision are not inadmissible in court under the Privacy Act.

Summary of Substitute Bill:

The requirement that sound recording equipment be operated simultaneously with video recording equipment that is mounted in a police vehicle is modified. Simultaneous operation is required only "when the operating system has been activated for an event." Once an event has been recorded, the audio equipment may be turned off and the operating system may be placed in its "pre-event" mode.

Substitute Bill Compared to Original Bill:

The substitute bill makes a technical adjustment to provide consistency in terms used to describe what is being recorded by the audio and video equipment.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: The technology of video recording devices has changed so that in its pre-event mode the camera is "on" but recording only a looping 90 second interval. The camera is "on" in this manner, however, whenever an officer is in a patrol car. Literally read, the current law would require the audio recorder to be on even when nothing but this looping interval is being recorded by the camera. Such audio recordings would have nothing to do with the video recording of an event. The bill requires the audio recorder to be turned on only when the camera is switched to event mode and is making an ongoing continuous video recording of an event. The bill represents no loss in recorded material from what was anticipated by the legislation that created the current law.

Testimony Against: None.

Persons Testifying: Representative Doug Ericksen, prime sponsor; and Jeff DeVere, Washington State Patrol.

Persons Signed In To Testify But Not Testifying: None.