
Judiciary Committee

HB 1910

Title: An act relating to law enforcement oversight recorders.

Brief Description: Encouraging effective oversight of law enforcement conduct.

Sponsors: Representatives Ryu, Moscoso, Gregerson, Appleton and Taylor.

Brief Summary of Bill

- Defines "law enforcement oversight recorder" as cameras mounted in law enforcement vehicles or worn by law enforcement officers.
- Provides that recordings made by law enforcement oversight recorders may only be used in relation to officer misconduct.
- Regulates the storage, retrieval, and disclosure of recordings made by law enforcement oversight recorders.

Hearing Date: 2/12/15

Staff: Brent Campbell (786-7152).

Background:

The Public Records Act.

The Public Records Act (PRA) requires all state and local government agencies to make all public records available for public inspection and copying unless the recordings fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally and the exceptions narrowly in order to effectuate a general policy favoring disclosure.

Certain information is exempt from disclosure under the PRA. If information falls under an exemption, an agency must redact the document to the extent necessary to remove the information. Exempted information includes, but is not limited to: certain personal records or

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personal information; real estate appraisals; and financial, commercial, and proprietary information.

Some information relating to investigations, law enforcement, and crime victims are also exempt. These exemptions include, but are not limited to:

- specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies;
- information revealing the identity of persons who are witnesses to or victims of crime or who file complaints, if disclosure would endanger any person's life, physical safety, or property;
- information revealing the identity of child victims of sexual assault who are under age 18;
- personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs; and
- the felony firearm offense conviction database of felony firearm offenders.

The Privacy Act.

Under the Privacy Act, it is generally unlawful to record a private conversation without the consent of all parties to the communication.

The Privacy Act exempts certain recordings, including sound recordings that correspond to video images recorded by vehicle mounted cameras. The Privacy Act also regulates vehicle mounted cameras and includes provisions that: (1) require officers to notify a person that they are being recorded; (2) require officers to not intentionally turning off the system during the recording of an event an event; and (3) allow officers to turn off the audio recorder and to set the system into a "pre-event" mode once event has been recorded.

Body Cameras and the Privacy Act.

A 2014 Attorney General Opinion analyzed whether the use of body cameras violates current law. The opinion states:

1. The Washington Privacy Act does not require the consent of a law enforcement officer to use body cameras attached to police uniforms.
2. Conversations between law enforcement officers and members of the public are not generally considered private for purposes of the Privacy Act.
3. As a general matter, the Privacy Act does not require a law enforcement officer to cease recording a conversation at the request of a citizen, because such conversations are not private to begin with.
4. In order to use a recording as evidence in a criminal or civil case, the recording would be subject to the same laws and rules governing all evidence, including the requirement that the chain of custody be established to prove no tampering has occurred. Laws relating to the retention and disclosure of public records, including records retention schedules, would govern retention and disclosure of recordings.
5. The Privacy Act does not limit the use of body cameras to the use of such cameras in conjunction with vehicle-mounted cameras.

Summary of Bill:

Law Enforcement Oversight Recorders.

"Law enforcement oversight recorder" is defined as a recorder that is either mounted in a marked law enforcement vehicle or worn by a law enforcement officer. Recordings made by law enforcement oversight recorders are exempt from provisions of the Privacy Act.

Audio and video captured by law enforcement oversight recorders may only be used by law enforcement supervisors, internal investigation officers, and external investigators and prosecutors and only during investigations of potential law enforcement misconduct. Audio and video may not be used in court in a proceeding unless the proceeding relates to law enforcement misconduct.

Law enforcement officers are not required to use law enforcement oversight recorders; however, if a law enforcement oversight recorder is used, then the law enforcement officer must operate it continuously while on duty. An officer is not considered on duty if he or she is using a public or private restroom or is on a scheduled or routine break.

Storage of Recordings.

Law enforcement agencies that use law enforcement oversight recorders are required to use a storage and retrieval system that is capable of: (1) identifying and labeling the data; (2) permit the recordings be further searched and segregated into shorter recordings of specific incidents; (3) allow recordings to be flagged, maintain flag status, and allow retaining and destroying recordings in compliance with a set retention policy. The system must also maintain a complete metadata log of these features.

Recordings must be "flagged" if certain requirements are met. "Flagged" recordings are recordings that potentially contain evidence that is useful for purposes of oversight of law enforcement conduct. A recording must be flagged if: (1) the recordings relates to an incident involving the use of force; (2) a subject of the recording requests that the recording be flagged, or (3) any other person requests that the recording be flagged if the recording was not made inside a private residence and the requester presents facts to support a reasonable belief that law enforcement misconduct occurred.

Law enforcement agencies are also required to keep recordings in a secure system that limits individuals or entities from accessing, viewing, deleting, or distributing any recording.

Public Records Disclosure.

Disclosure of recordings is required based on the flagged status of the recording.

- Flagged recordings are subject to the Public Records Act.
- Any recording must be disclosed to a subject of the recording. If the recording has multiple subjects, the recording shall be redacted, if feasible, to obscure the identity of all subjects who have not consented.
- Unflagged recordings are confidential and shall only be disclosed with the consent of all subjects of the recording except as provided by (2) above.

Failure to disclose in the manner provided is a gross misdemeanor.

Privacy Act.

Current regulations regarding vehicle mounted cameras are removed.

Audit and Evaluation

Any jurisdiction that uses law enforcement oversight recorders must provide for audit and evaluation to be conducted by an independent entity. The auditing body is required to provide a report of the audit and evaluation to the governing body of the jurisdiction and make the report available to the public.

Any person who violates any provision of this Act is subject to legal action for damages or equitable relief. An injured person is entitled to actual damages, reasonable attorneys' fees, and other costs of litigation.

Appropriation: None.

Fiscal Note: Requested on February 5, 2015.

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