
Civil Rights & Judiciary Committee

HB 1991

Brief Description: Concerning body worn cameras.

Sponsors: Representatives Taylor, Hansen, Fitzgibbon, Gregerson, Johnson, J., Senn and Bateman.

Brief Summary of Bill

- Authorizes law enforcement and corrections agencies responding to a public records request to provide an unredacted copy of a body camera recording to a defendant's attorney, if the attorney would otherwise be entitled to receive an unredacted copy in the course of discovery, subject to certain limitations on use.
- Requires attorneys receiving an unredacted body camera recording to sign a written agreement that the attorney will maintain exclusive custody of the recording.
- Provides a violation of the written agreement that results in redisclosure of the unredacted body camera recording may subject the attorney to sanctions under the civil or criminal court rules, and that in any private cause of action resulting from improper redisclosure, the attorney may not use the receipt of the recording as a defense.
- Authorizes law enforcement and corrections agencies responding to a public records request to charge certain requesting parties for the costs of redaction if the requesting party is entitled to receive an unredacted copy.

Hearing Date: 1/25/22

Staff: John Burzynski (786-7133).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Washington's Public Records Act provides for the full disclosure of public records, limited by specific exemptions. The Public Records Act expressly exempts certain investigative, law enforcement, and crime victim information from disclosure. Among other records, body worn camera recordings are exempted from disclosure to the extent it is essential for the protection of any person's right to privacy. A "body worn camera recording" is a video and/or sound recording that is made by a body worn camera attached to the uniform or eyewear of a law enforcement or corrections officer while in the course of his or her official duties.

A person's right to privacy is violated if disclosure of information about the person would be highly offensive to a reasonable person and is not of legitimate concern to the public. The Public Records Act identifies the disclosure of specific body worn camera recordings that are presumed to be highly offensive to a reasonable person, including those that depict: (1) certain medical facilities, counseling, or therapeutic program offices; (2) protected health information; (3) the interior of a place of residence where a person has a reasonable expectation of privacy; (4) an intimate image; (5) a minor; (6) the body of a deceased person; (7) the identity of or communications from a victim or witness of an incident involving domestic violence, sexual assault, or disclosure of intimate images; or (8) the identifiable location information of a community-based domestic violence program.

Generally, a law enforcement or corrections agency responding to a request to disclose body worn camera recordings may require a requester to pay the reasonable costs of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of the body worn camera recording prior to disclosure to the extent necessary to comply with the restrictions of the Public Records Act and other laws.

However, qualifying individuals have a right to obtain body worn camera recordings, subject to exemptions, with no costs charged for any redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of a body worn camera recording, including: (1) a person directly involved in a recorded incident; (2) an attorney representing a person directly involved in a recorded incident; (3) a person or his or her attorney who requests a body worn camera recording relevant to a criminal case involving that person; (4) the executive directors of the Washington state commissions on African American affairs, Asian Pacific American affairs, or Hispanic affairs; or (5) an attorney representing a person regarding a civil cause of action involving the denial of civil rights under the federal or state Constitution, or a violation of a United States Department of Justice settlement agreement, if the recording is relevant to the cause of action.

Summary of Bill:

Unredacted Copies of Body Worn Camera Recordings.

A law enforcement or corrections agency responding to a request for a body worn camera recording may provide an unredacted copy to a defendant's attorney in a criminal matter without

the disclosure being considered highly offensive if the attorney would otherwise be entitled to receive an unredacted copy during discovery in the criminal matter.

An attorney receiving an unredacted copy of a body worn camera recording must use the unredacted copy only for the purposes of conducting the defendant's side of the criminal case as if it had been furnished in discovery, treat the unredacted copy as confidential as a matter of law, and must sign a written agreement that the attorney will maintain exclusive custody of the unredacted copy.

An unredacted body worn camera recording provided under a written agreement is not deemed published or otherwise exposed to the public eye. However, a violation of the written agreement that results in redisclosure of the unredacted recording is presumed to be highly offensive if it depicts a protected subject or is otherwise considered highly offensive as a matter of law. Protected subjects include recordings that depict: (1) certain medical facilities, counseling, or therapeutic program offices; (2) protected health information; (3) the interior of a place of residence where a person has a reasonable expectation of privacy; (4) an intimate image; (5) a minor; (6) the body of a deceased person; (7) the identity of or communications from a victim or witness of an incident involving domestic violence, sexual assault, or disclosure of intimate images; or (8) the identifiable location information of a community-based domestic violence program.

In any private cause of action resulting from improper redisclosure of an unredacted body worn camera recording, the attorney may not use the receipt of the recording as a defense. A violation of the written agreement may also result in sanctions under the civil or criminal court rules.

An attorney who receives an unredacted copy of a body worn camera recording may provide a copy of the recording to the defendant after making redactions consistent with the requirements of the Public Records Act.

Redaction Charges.

A law enforcement or corrections agency responding to a request for a body worn camera recording from a qualifying individual may charge the requester the costs of any redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of the recording if the requester is entitled to receive an unredacted copy.

Qualifying individuals include: (1) a person directly involved in a recorded incident; (2) an attorney representing a person directly involved in a recorded incident; (3) a person or his or her attorney who requests a body worn camera recording relevant to a criminal case involving that person; (4) the executive directors of the Washington state commissions on African American affairs, Asian Pacific American affairs, or Hispanic affairs; or (5) an attorney representing a person regarding a civil cause of action involving the denial of civil rights under the federal or state Constitution, or a violation of a United States Department of Justice settlement agreement, if the recording is relevant to the cause of action.

Appropriation: None.

Fiscal Note: Available.

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