

# HOUSE BILL REPORT

## HB 1991

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**As Reported by House Committee On:**  
Civil Rights & Judiciary

**Title:** An act relating to body worn cameras.

**Brief Description:** Concerning body worn cameras.

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

**Brief History:**

**Committee Activity:**

Civil Rights & Judiciary: 1/25/22, 2/1/22 [DPS].

**Brief Summary of Substitute Bill**

- Authorizes law enforcement and corrections agencies responding to a public records request to provide an unredacted copy of a body camera recording if the requestor would otherwise be entitled to receive an unredacted copy in the course of discovery.
- Requires defense attorneys and agencies receiving an unredacted recording to agree to restrictions on use of the unredacted recording, violation of which may result in sanctions.
- Authorizes law enforcement and corrections agencies responding to a public records request to charge certain parties requesting a redacted recording for the costs of redaction if the requesting party is entitled to receive an unredacted copy. Agencies may not charge for unredacted recordings.

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### HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.

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*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.*

Signed by 11 members: Representatives Hansen, Chair; Simmons, Vice Chair; Davis, Entenman, Goodman, Kirby, Orwall, Peterson, Thai, Valdez and Walen.

**Minority Report:** Do not pass. Signed by 5 members: Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member; Graham, Assistant Ranking Minority Member; Abbarno and Ybarra.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Klippert.

**Staff:** John Burzynski (786-7133).

### **Background:**

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.

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 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 protected subjects that are presumed to be highly offensive to a reasonable person, including 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.

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. 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; and (5) an attorney representing a person regarding a civil cause of action involving the denial of civil rights, if the recording is relevant to the cause of action.

In addition to Public Records Act requests, individuals and their attorneys may also be entitled to obtain body worn camera recordings through discovery in a criminal or civil proceeding.

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### **Summary of Substitute 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 or defense agency in a criminal matter without the disclosure being considered highly offensive if the defense attorney or agency would otherwise be entitled to receive an unredacted copy during discovery in the criminal matter.

A defense attorney or agency 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 sign a written agreement that the attorney will maintain exclusive custody of the unredacted copy, but may make disclosures authorized by this act.

A defense attorney or agency may provide a copy of the unredacted recording to a consulting expert witness or defense investigator, and may file the unredacted recording in court under seal or use the unredacted recording during court proceedings conducted in camera or during closed hearings, subject to court order. A defense attorney or agency may not disclose or publish the unredacted recording, except as authorized by this act or court order.

An unredacted body worn camera recording provided under a written agreement pursuant to this act is not deemed published or otherwise exposed to the public eye. However, a violation of the written agreement or the restrictions established by this act 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.

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 or the restrictions established by this act 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 pursuant to this act. An agency may not charge for production of an unredacted copy of the recording.

**Substitute Bill Compared to Original Bill:**

The substitute bill makes the following revisions to the underlying bill:

- clarifies that an agency may charge certain individuals, who are seeking a redacted copy of a worn body camera recording, the costs of redaction if the requesting individual is entitled to receive an unredacted copy, but an individual requesting an unredacted copy must not be charged costs;
- expands the list of entities that may request an unredacted recording, if they would otherwise be entitled to receive an unredacted copy in the course of discovery, to include defense agencies in addition to defense attorneys;
- provides that defense attorneys and defense agencies receiving an unredacted recording: (1) must sign a written agreement that they will maintain exclusive custody of the unredacted recording, but may provide copies of the unredacted recording to others as authorized by this act; (2) may provide a copy of the unredacted recording to consulting expert witnesses and defense investigators, who must abide by the same conditions of disclosure as defense attorneys; (3) may provide a copy of the unredacted recording to the court under seal, and may use the unredacted recording during court proceedings conducted in camera or during closed hearings, subject to court order; and (4) must not disclose or publish the unredacted recording, except as authorized by this act or court order; requests to the defense unrelated to the case seeking access to or production of the unredacted recording must be referred to the original provider; and
- provides that violations of the restrictions established by this act, in addition to violations of the written agreement, that result in redisclosure of the unredacted recording are presumed to be highly offensive if the recording depicts a protected subject or is considered highly offensive under law, and may result in sanctions under the civil or criminal court rules.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) The Public Records Act's redaction requirements impose costs on agencies that manage records. The rules around disclosure are well developed, but a redundancy exists under current law when a defense attorney requests a body camera recording under both the rules of discovery in a court proceeding and the Public Records Act. Under the rules of discovery, the agency can provide an unredacted copy of the recording, while under the Public Records Act it must provide a redacted copy of the recording. Domestic violence cases in particular impose a high redaction workload. This bill addresses the redundancy and costs, provides responding jurisdictions with some relief in managing public records, and protects privacy interests by mirroring the same court rules that apply to discovery.

(Opposed) None.

(Other) This bill controls who can receive certain records and what they can do with them. Attempting to mirror the discovery rules is cumbersome, takes management out of the hands of criminal court judges, and moves this matter into civil court where resolution could take months. Cities will need to begin actions in civil court against attorneys who disclose recordings in violation of this law. This bill will create more problems than it solves. Cities can respond to Public Records Act requests by offering to provide material more quickly through discovery. This matter should be addressed through a court rule to better control discovery and push defense counsel to ask for discovery instead of disclosure under the Public Records Act.

**Persons Testifying:** (In support) Representative Jamila Taylor, prime sponsor; and Bijan Hughes and Briahna Murray, City of Kent.

(Other) Rowland Thompson, Allied Daily Newspapers of Washington.

**Persons Signed In To Testify But Not Testifying:** None.