

HOUSE BILL REPORT

SHB 1080

As Passed House:

February 9, 2023

Title: An act relating to body worn cameras.

Brief Description: Concerning body worn cameras.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Taylor, Peterson, Simmons, Walen, Reed, Stearns, Berry, Pollet, Goodman, Orwall, Bergquist, Gregerson and Thai).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/11/23, 1/27/23 [DPS].

Floor Activity:

Passed House: 2/9/23, 96-1.

Brief Summary of Substitute Bill

- Modifies the list of qualifying individuals who have a right to obtain body worn camera recordings and may not be charged the costs of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring portions of the recording.
- Authorizes law enforcement and corrections agencies responding to a public records request to charge qualifying individuals for the costs of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring portions of a body worn camera recording when the requestor is a party in a criminal or civil case on file in any court concerning the recorded incident.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Hansen, Chair; Farivar, Vice Chair; Cheney, Entenman, Goodman, Peterson, Rude and Walen.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Graham, Assistant Ranking Minority Member.

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. Disclosure of body worn camera recordings is presumed to be highly offensive to a reasonable person if the recordings depict: (1) certain medical facilities, counseling, or therapeutic program offices; (2) protected health information; (3) the interior of a 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 recording prior to disclosure 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 the recording. Qualifying individuals include:

- a person directly involved in a recorded incident;
- an attorney representing a person directly involved in a recorded incident;
- a person or his or her attorney who requests a body worn camera recording relevant to a criminal case involving that person;
- the executive directors of the Washington state commissions on African American affairs, Asian Pacific American affairs, or Hispanic affairs; and

- 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 certain body worn camera recordings through discovery in a criminal or civil proceeding.

Summary of Substitute Bill:

The following individuals are removed from the list of qualifying individuals who have a right to obtain body worn camera recordings with no costs charged for any redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of the recording:

- an attorney representing a person directly involved in a recorded incident;
- a person or his or her attorney who requests a body worn camera recording relevant to a criminal case involving that person; and
- 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.

Law enforcement and corrections agencies responding to a public records request from a qualifying individual may charge for the costs of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring portions of a body worn camera recording when the requestor is a party in a criminal or civil case on file in any court concerning the recorded incident.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) Body worn camera recordings can exonerate criminal defendants and law enforcement of wrongdoing. Access to these recordings is essential.

This bill's goal is to address instances where an individual is entitled to recordings under both the Public Records Act and through discovery in a legal proceeding. The Public Records Act currently requires redactions be made to recordings, imposing work on cities for which they cannot seek reimbursement. Government agencies should be allowed to charge a requestor for the costs of redaction if the requestor is also entitled to an unredacted copy through discovery.

This bill is intended to expedite production and reduce costs to cities and their workload. At least one city receives over 200 requests each year for body worn camera recordings, requiring redaction of 150 hours of content. It takes about six minutes to redact one minute of content. This consumes staff time while the requestor may have already received an unredacted copy through discovery.

(Opposed) Body worn camera recordings tell the truth about interactions with police officers. These recordings are essential for monitoring police behavior. No one should be required to hide the truth about police misconduct. The Public Records Act should not authorize nondisclosure agreements and controls governing release of produced records.

The Public Records Act already balances privacy and accountability. The rules of discovery should not be imported into the Public Records Act. Adding discovery rules to the Public Records Act would complicate it.

Courts should be able to determine what attorneys can and cannot do with recordings obtained under the Public Records Act. If there is a problem with defense attorneys requesting the same records through both discovery and the Public Records Act, the solution is to force attorneys to use discovery and forgo use of the Public Records Act.

This legislation would place law enforcement in the position of needing to know and apply discovery rules, conditions, and exceptions. Law enforcement would be required to guess at whether a court would compel discovery of the requested records.

Current law creates a significant challenge for cities and counties, and efforts should be made to increase efficiency, but this bill is not the right solution.

(Other) This bill attempts to address a real problem, but law enforcement can not know what a judge will rule in discovery. The problem of defense attorneys using the Public Records Act to circumvent discovery rules may require a different legislative or judicial solution.

Persons Testifying: (In support) Representative Jamila Taylor, prime sponsor; and Christina Schuck and Kim Komoto, City of Kent.

(Opposed) Katherine George, Allied Daily Newspapers of Washington, Rowland Thompson, Allied Daily Newspapers of Washington, Washington Newspaper Publishers Association, and Washington State Association of Broadcasters; and Russell Brown, Washington Association of Prosecuting Attorneys.

(Other) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.