
Judiciary Committee

HB 1917

Title: An act relating to video and/or sound recordings made by law enforcement or corrections officers.

Brief Description: Concerning video and/or sound recordings made by law enforcement or corrections officers.

Sponsors: Representatives Hansen, Pettigrew, Ortiz-Self and Appleton.

Brief Summary of Bill

- Provides that video and/or sound recording, of any kind, made by uniformed law enforcement or corrections officers while in the course of their duty are not subject to provisions of the Privacy Act.
- Prohibits certain recordings from being made available to the public through a public records request, unless the request is for a specific incident and the request is made by either a person directly involved in the incident or a person with a court order.
- Amends the Privacy Act to allow law enforcement agencies to record private communications when the officer's presence is concealed if the officer has judicial authorization.

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 records 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.

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

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 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. Any person who violates this is subject to civil liability and any information obtained in violation of this is inadmissible in any civil or criminal case.

Certain recordings are exempt from provisions of the Privacy Act and thus do not require all parties to consent to the recording.

Sound recordings that correspond to video images recorded by video cameras mounted in law enforcement vehicles are exempt from provisions of the Privacy Act. The Privacy Act also allows for video and/or sound recordings of arrested persons by police officers before their first appearance in court. However such video must:

- include a statement informing the arrested person that such recording is being made;
- begin and terminate with an indication of the time;
- include a statement fully informing the arrested person of his or her constitutional rights; and
- be used only for valid police or court activities.

There are also exceptions to the all party consent requirement that allow law enforcement officers to record when only one party consents to the recording. Law enforcement may record a communication with one-party consent if: (1) the officer obtains authorization from a judge; and (2) there is probable cause to believe that the non-consenting party has committed, is engaged in, or is about to commit a felony or there is probable cause to believe the communication involves a drug offense.

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:

All audio and/or video recordings made by uniformed law enforcement or corrections officers while in the course of their official duties are exempt from provisions of the Privacy Act.

Disclosure of audio and/or video recordings made by uniformed law enforcement or corrections officers pursuant to the PRA is prohibited, unless:

- the request is specific as to the incident; and
- the requester is either a person directly involved in the incident, or his or her attorney, or any other person with a court order finding that public interest in disclosure significantly outweighs the privacy concerns of those recorded.

Law enforcement or corrections agencies are permitted to require a requester of a recording to identify him or herself to ensure compliance with these provisions. Law enforcement or corrections agencies are also permitted to require a person who makes a request for a recording to pay for the costs of redacting any portion of the recording.

A person who receives a recording may not disclose the recording to any other person until he or she gives direct third party notice to all non-law enforcement officers whose image or sound is recorded and allow them reasonable opportunity to obtain an order from a court to enjoin the disclosure.

The Privacy Act is modified to remove provisions regulating the use of vehicle mounted cameras.

The Privacy Act is also modified to remove the one party consent exception and allow law enforcement officers, acting in the performance of their duties, to intercept certain private oral conversations in situations where the law enforcement officer's presence is concealed to one or more parties of the conversation. In order to make such a recording the officer must have judicial authorization as provided for in the Privacy Act.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

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