

# SENATE BILL REPORT

## SB 6408

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As Passed Senate, February 8, 2018

**Title:** An act relating to body worn cameras, but only with respect to making existing requirements and public records act provisions governing body worn cameras permanent and applicable to all law enforcement and corrections agencies deploying body worn cameras, strengthening privacy protections for intimate images in body worn camera recordings, and clarifying records retention requirements for body worn camera recordings.

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

**Sponsors:** Senators Padden and Pedersen.

**Brief History:**

**Committee Activity:** Law & Justice: 1/29/18, 2/01/18 [DP].

**Floor Activity:**

Passed Senate: 2/08/18, 47-0.

**Brief Summary of Bill**

- Removes expiration dates, making current requirements and the Public Records Act (PRA) provisions governing body worn cameras permanent and applicable to all law enforcement and corrections agencies deploying body worn cameras.
- Adds a definition of intimate images as it relates to body worn camera recordings.
- Clarifies records retention requirements for body worn camera recordings.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

**Staff:** Shani Bauer (786-7468)

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:** In 2016, the Legislature passed EHB 2362, which established public disclosure and other requirements relating to body worn camera recordings under the PRA and created the Joint Legislative Task Force on Body Worn Cameras (Task Force).

As adopted in 2016, body worn camera recordings are exempt from the PRA to the extent nondisclosure is essential for the protection of a person's privacy. The disclosure of certain recordings are presumed to be offensive to a reasonable person including: those occurring inside a medical facility or containing health care information; the interior of a person's residence; intimate images; a minor; the body of a deceased person; and location information or the identity of a victim to an incident involving domestic violence or sexual assault.

Required content of a request for body worn camera images is prescribed. Law enforcement agencies may require a requestor to pay the costs of redacting information to comply with applicable exemptions. A person who prevails in a court action seeking the right to inspect or copy a body worn camera recording is not entitled to fees, costs, or awards unless the law enforcement agency acted in bad faith or with gross negligence.

The provisions relating to body worn cameras only apply to body worn camera recordings made by a covered jurisdiction on or after June 9, 2016, and before July 1, 2019. Covered jurisdiction is defined as a jurisdiction that has deployed body worn cameras as of June 9, 2016.

Law enforcement or corrections agencies that deploy body worn cameras are required to establish policies regarding their use within minimum parameters. Body worn cameras may be used only by officers employed by general authority Washington law enforcement agencies, officers employed by the Department of Corrections, and personnel for local jails and detention facilities. These provisions expire July 1, 2019.

Finally, a Task Force was created to further examine the use of body worn cameras by law enforcement and corrections agencies. The Task Force was charged to specifically consider the use of body worn cameras in health care facilities subject to federal and state health care privacy laws, consulting with subject matter experts including the Washington State Hospital Association and the Washington State Medical Association. The Task Force issued its final report in December 2017.

**Summary of Bill:** Expiration dates are removed and the provisions in the PRA applicable to body worn camera recordings are no longer limited to recordings made between June 9, 2016, and July 1, 2019 by a covered jurisdiction.

An intimate image is generally defined to mean an individual or individuals engaged in sexual activity, including sexual intercourse and masturbation, or an individual's intimate body parts.

After the required retention period for body worn camera recordings, a law enforcement or corrections agency may destroy the records in accordance with the applicable records retention schedule.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Seattle currently has 920 officers wearing body worn cameras. The cost shifting provisions in the original legislation have been instrumental in allowing jurisdictions to expand the use of body worn cameras. The city receives about half the number of requests for body worn camera footage as that for in-car camera footage and the extraordinary requests from frequent fliers are much more narrowly tailored. Further footage may contain highly embarrassing images that is not appropriate to be released to the general public. It is appropriate that these images should be redacted.

The PRA exemption contains important privacy safeguards for victims of domestic violence or sexual assault. Just the act of being recorded may be traumatic for a victim and there are concerns it could act as a deterrent to reporting. The desire for privacy is the most frequent reason domestic violence victims cite for not contacting the police.

Body worn cameras are fundamentally a good thing and promote truth and justice in the criminal justice system. They are an important tool in holding people accountable. Prior to enactment of the exemptions, a survey of law enforcement showed ten agencies were using body worn cameras in some capacity. The goal of the legislation was to remove barriers. Now over 50 agencies are using body worn cameras and agencies cite the privacy and cost protections in the PRA as the reason they were able to move forward.

This bill was a compromise that was worked out two years ago and it has held up over the last two years as a workable solution for the press. The media has not experienced friction in obtaining needed video footage. It is important to have protections when law enforcement obtains health care information through body worn cameras or go into a health care facility. Police recordings do not have Health Insurance Portability and Accountability Act protection.

Police are capable of integrity, but proof available in video is important for both sides. Accounts of witnesses can be extremely different and sometimes a person is lying under oath. Cameras will help establish exactly what happened.

OTHER: It should be made clear that there are extraordinary reasons for the exception from the PRA so these types of exemptions are not expanded into other areas.

**Persons Testifying:** PRO: Senator Mike Padden, Prime Sponsor; Lisa Thatcher, Washington State Hospital Association; Mary Perry, City of Seattle; Kelly Starr, Washington Coalition Against Domestic Violence; James McMahan, Washington Association of Sheriffs & Police Chiefs; Rowland Thompson, Allied Daily Newspapers of Washington; Logan Bahr, Association of Washington Cities; Pastor Richmond Johnson, Partner for Youth Achievement; Jazz Jane, citizen; Frank Bowers, citizen; Devonte Garrett, citizen; Seth Dawson, citizen; Daniel Rosales, Partner for Youth Achievement.

OTHER: Arthur West, citizen.

**Persons Signed In To Testify But Not Testifying:** No one.