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## Civil Rights & Judiciary Committee

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### HB 1080

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

**Sponsors:** Representatives Taylor, Peterson, Simmons, Walen, Reed, Stearns, Berry, Pollet, Goodman, Orwall, Bergquist, Gregerson and Thai.

#### 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 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.

**Hearing Date:** 1/11/23

**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.

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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.*

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: (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.

### **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 or defense agency in a criminal matter without the disclosure being considered highly offensive for purposes of the Public Records Act 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 also provide a copy of the recording to the defendant after making redactions consistent with the requirements of the Public Records Act. 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.

#### 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.

**Appropriation:** None.

**Fiscal Note:** Available.

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