

HOUSE BILL REPORT

SB 6408

As Reported by House Committee On:
Judiciary

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:

Judiciary: 2/15/18, 2/22/18 [DP].

Brief Summary of Bill

- Removes a July 1, 2019, expiration date on laws governing the use of body worn cameras by law enforcement and corrections agencies.
- Amends Public Records Act (PRA) provisions governing body worn camera recordings to make them permanent and applicable to all law enforcement and corrections agencies that deploy body worn cameras.
- Amends the definition of "intimate image" under the PRA provisions applicable to body worn camera recordings.
- Provides that destruction of body worn camera recordings must be in accordance with the applicable records retention schedule.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 13 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Rodne, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Goodman, Haler, Hansen, Kirby, Klippert, Muri, Orwall, Shea and Valdez.

Staff: Edie Adams (786-7180).

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 legislation was enacted addressing the use of body worn cameras by law enforcement and corrections agencies. The legislation established requirements relating to the use of body worn cameras and standards for disclosure of body worn camera recordings under the Public Records Act (PRA). In addition, the legislation created a legislative Task Force on Use of Body Worn Cameras.

Body Worn Camera Usage.

The use of body worn cameras is limited to officers employed by general authority Washington law enforcement agencies and the Department of Corrections, and personnel for local jails and detention facilities. Law enforcement or corrections agencies that deploy body worn cameras are required to establish policies regarding their use that cover, at a minimum: activation/deactivation requirements, and officer discretion in this regard; how to respond to a person's unwillingness to communicate with an officer who is recording the communication; requirements for documenting reasons for camera deactivation prior to the conclusion of an interaction; requirements for notifying a member of the public that he or she is being recorded; training requirements; and security rules to protect body worn camera data. These provisions expire July 1, 2019.

Public Records Act Requirements.

Specific requirements under the PRA apply to body worn camera recordings. These requirements only apply to recordings from "covered jurisdictions" that are made on or after June 9, 2016, and before July 1, 2019. "Covered jurisdictions" are jurisdictions that deployed body worn cameras as of June 9, 2016, regardless of whether the cameras were being deployed on June 9, 2016.

Body worn camera recordings are exempt from the PRA to the extent nondisclosure is essential for the protection of any person's right to privacy. Disclosure of recordings that contain certain depictions are presumed to be highly offensive to a reasonable person, including depictions of: certain areas of a medical facility or protected health care information; the interior of a residence; an intimate image; a minor; the body of a deceased person; and the identity of or communication from a victim or witness of a domestic violence or sexual assault incident. "Intimate image" for the purpose of this presumption has the same meaning as under criminal laws governing disclosure of intimate images.

A request for disclosure of body worn camera recordings must specifically identify an incident, a name of a person or persons involved in an incident, the incident or case number, or an officer involved in the incident or incidents. With exceptions, a law enforcement agency may charge reasonable redaction costs to a person who requests body worn camera recordings. A person who prevails in court against a law enforcement or corrections agency that withholds or discloses all or part of a body worn camera recording is not entitled to fees, costs, or awards unless the law enforcement or corrections agency acted in bad faith or with gross negligence.

Task Force on Use of Body Worn Cameras.

The Task Force on Use of Body Worn Cameras (Task Force) was charged with examining the use of body worn cameras by law enforcement and corrections agencies. The Task Force was

directed to report findings and recommendations on: model body worn camera policies and policies adopted by agencies; use of body worn cameras in health care facilities subject to federal and state health care privacy laws; costs assessed to requestors; retention and retrieval of data; and use of body worn cameras for gathering evidence, surveillance, and police accountability. The Task Force submitted its report in December 2017.

Summary of Bill:

The July 1, 2019, expiration date applicable to laws governing body worn cameras is removed. The restriction that body worn camera provisions of the Public Records Act (PRA) apply only to recordings from "covered jurisdictions" made on or after June 9, 2016, and before July 1, 2019, is removed. The PRA provisions governing body worn camera recordings apply to all recordings made by any law enforcement agency that deploys body worn cameras.

Under the PRA provisions governing body worn camera recordings, the definition of "intimate image" is revised to mean an individual or individuals engaged in sexual activity, including sexual intercourse and masturbation, or an individual's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or postpubescent female nipple.

The destruction of body worn camera recordings that have been maintained for at least 60 days must be in accordance with the applicable records retention schedule.

Appropriation: None.

Fiscal Note: Not requested.

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) The Task Force on Use of Body Worn Cameras involved a variety of stakeholder interests and worked over the course of two interims to try to reach consensus on how to balance the interests of transparency and privacy. The protections the Legislature established for body worn cameras have allowed jurisdictions to move forward with adopting body worn camera programs. The use of body worn cameras helps protect both the public and law enforcement officers, and there are reasonable policies in place regarding public access.

The removal of the sunset provision will keep important privacy protections in place for medical information. Medical information in a hospital setting is protected by federal law, but once that information is captured on a body worn camera recording it is no longer protected. It will also keep in place important privacy protections for victims. The use of

body worn cameras has significant implications for victims of crime. There needs to be a balance between victim's privacy rights and the community's right to transparency.

The cost-shifting measures for disclosure of body worn camera recordings would fall away if this bill is not enacted. These cost-shifting measures are working to limit the scope of the requests that are being made. This helps reduce the burden on local jurisdictions that want to deploy body worn cameras. The bill represents a compromise that provides a workable scheme for the use of body worn cameras and disclosure of their recordings.

(Opposed) None.

Persons Testifying: Senator Padden, prime sponsor; James McMahan, Washington Association of Sheriffs and Police Chiefs; Logan Bahr, Association of Washington Cities; Lisa Thatcher, Washington State Hospital Association; Carey Morris, Washington State Coalition Against Domestic Violence; Brian Enslow, Washington State Association of Counties; Mary Perry, City of Seattle; and Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: None.