

SENATE BILL REPORT

SHB 1080

As Reported by Senate Committee On:
Law & Justice, March 28, 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: Passed House: 2/9/23, 96-1.

Committee Activity: Law & Justice: 3/14/23, 3/28/23 [DPA].

Brief Summary of Amended Bill

- Establishes procedures for a qualifying attorney to identify any body worn camera recordings that the attorney has received through the discovery process.
- Provides that any body worn camera recording responsive to a Public Records Act request that was not received by a qualifying attorney through the discovery process shall be provided to the attorney free of cost.
- Requires a qualifying attorney to pay for redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of a body worn camera recording that was identified by the attorney as having been received through the discovery process.
- Requires any agency that possesses law enforcement or corrections agency body worn camera recordings to follow the public disclosure procedures and exemptions from disclosure for such recordings.

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.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member; Kuderer, McCune, Pedersen, Salomon, Torres, Valdez, Wagoner and Wilson, L..

Staff: Ryan Giannini (786-7285)

Background: A body worn camera recording is a video or sound recording, or both, 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 the officer's official duties.

Washington's Public Records Act (PRA) provides for the full disclosure of public records, limited by specific exemptions. Among other records, body-worn camera recordings are exempt 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.

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 PRA 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 their 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 PRA 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 Amended Bill: Any agency that possesses law enforcement or corrections agency body worn camera recordings are required to follow the public disclosure procedures, and exemptions from disclosure, for such recordings.

The following qualifying individuals shall include in a request for body worn camera

recordings the date, time, and location of the incident or incidents of any relevant body worn camera recordings that were received through the discovery process:

- an attorney representing a person directly involved in a recorded incident;
- an attorney who requests a body worn camera recording relevant to a criminal case involving the attorney's client; 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.

Recordings responsive to a qualifying attorney's request and identified by the attorney as not received through the discovery process shall be provided to the attorney free of cost. Recordings responsive to the request and identified by the attorney as having been received through the discovery process may be excluded from the request, unless the attorney requests such recordings. If the attorney requests recordings identified by the attorney as having been received through the discovery process, the attorney shall pay for the cost of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of the recording.

Any agencies responding to a public records request from a qualifying individual may not charge for the costs of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring portions of a body-worn camera recording, unless the requestor is a qualifying attorney listed above who has indicated that the recording has been provided through the discovery process.

EFFECT OF LAW & JUSTICE COMMITTEE AMENDMENT(S):

- Restores current statutory language allowing a right to access body worn camera recordings for an attorney representing a person directly involved in an incident, a person or the person's attorney in a criminal case involving that person, or an attorney who represents a person regarding a potential or existing civil cause of action involving the denial of civil rights under the federal or state Constitution, or a violation of a United States Department of Justice settlement agreement.
- Establishes procedures for an attorney to identify any body worn camera recordings that the attorney has received through the discovery process.
- Provides that any body worn camera recording responsive to a Public Records Act request that was not received by an attorney through the discovery process shall be provided to the attorney free of cost.
- Requires an attorney to pay for redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of a body worn camera recording that was identified by the attorney as having been received through the discovery process.
- Requires any agency that possesses law enforcement or corrections agency body worn camera recordings to follow the public disclosure procedures and exemptions from disclosure for such recordings.

Appropriation: None.

Fiscal Note: Available.

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 on Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Responding to public records requests for body worn camera recordings takes time and resources. Cities bear the financial burden of providing redacted footage, and the costs of providing this service are spread across all city taxpayers. Use of body worn cameras are expanding, and the changes in this bill makes responding to public records requests for these recordings more manageable. Attorneys are far and away the primary requestors of this footage. Defense attorneys have used the Public Records Act (PRA) as a second check on the discovery process to ensure that the prosecution has provided all records through discovery. Defense attorneys who request recordings under the PRA and through discovery receive both a redacted and unredacted version, respectively. This bill will make it so that defense attorneys need to pay for body worn camera recordings if they request such recordings through the PRA, as opposed to having taxpayers pay. This is no different from the legal costs that defense attorneys would incur as costs of the case. In all other cases where public records are involved, the cost is borne by the legal side. The bill would retain the ability for an individual featured in the recording to obtain the recording for free.

CON: This bill will interfere with attorney access to body worn camera recordings before the filing of a case. This fundamentally alters the pre-file investigation process for civil and criminal attorneys. Attorneys need to have access to these body worn camera recordings earlier since it could take months for a civil action or charge to be filed and for discovery to begin. Having access to these recordings during the pre-filing process is essential to know whether a case is legitimate, and to aid in negotiations. Client access to redacted body worn camera recordings is not a substitute, due to delays and the release of the recordings in multiple installments over the course of months or years. This bill will result in increased litigation because the only way to obtain this information is to file a lawsuit and go through the discovery process. Charging attorneys for access to redacted recordings is bad policy because the attorneys will need to pass on the costs to clients. PRA requests are an essential part of a defense attorneys' tools to properly and adequately defend persons accused by the government. Governments should bear the costs of transparency, since defense attorneys are making these requests to vindicate peoples' rights.

Persons Testifying: PRO: Representative Jamila Taylor, Prime Sponsor; Lindsey Hueer, Association of Washington Cities; Monica Alexander, Washington State Criminal Justice Training Commission; Christina Schuck, City of Kent Deputy City Attorney; Kim Komoto, Kent City Clerk/Public Records Officer; Rowland Thompson, Allied Daily Newspapers, WA Newspaper Publisher Assn, and WA State Assn of Broadcasters.

CON: Braden Pence; Jason Lantz, Washington Association of Criminal Defense Lawyers and Washington Defender Association; Larry Shannon, WA State Association for Justice.

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