



---

# JESSE KREMER

---

STATE REPRESENTATIVE • 59<sup>TH</sup> ASSEMBLY DISTRICT

*Testimony before the Senate Committee on Judiciary and Public Safety  
State Representative Jesse Kremer  
January 30, 2017*

Good morning,

Thank you Chairman Wanggaard and committee members for holding a hearing on a proactive bill, AB351, to address technological advances in the law enforcement community – body camera footage; recordings that are intended to provide protection for both law enforcement officers and victims.

Let me illustrate the issue that many states have already tackled regarding body camera footage by focusing on a couple of hypothetical, real-world scenarios:

### Scenario #1

On February 18<sup>th</sup>, 2017 Officer Nelson responded to 228 Oak Street for a 24 year old woman who was concerned about an ex-boyfriend who had been stalking her. Nelson was invited into the woman's home, took a statement and asked if she had any protection. The woman advised Nelson that she has a concealed carry permit and there is a firearm in the house. She wanted the police to be aware of the situation "just in case".

A few days after the encounter, a local media station reviewed police "Calls for Service" (CFS), a task that they do on a weekly basis. The newspaper had been writing a story on domestic situations and the CFS intrigued them. Sgt. Roman, the records supervisor, received a request from the media outlet for video footage of the encounter. Sgt. Roman determined that because the footage is a public document and there is no investigation that it can be released – posing the threat that the inside of the woman's home, the fact that she owned a firearm and her legitimate concern for her safety could possibly hit a YouTube channel.

### Scenario #2

Or, consider this, a sexual assault victim is located in an alley, unconscious and stripped naked. The responding officers record the entire incident on their body cameras as required by department policy. Several months later, the case goes to trial. Is it OK that simply because a video recording is a public document that it be released to the public? Is it OK that this woman be victimized again as she is forced to relive the worst day of her life on the big screen in front of a courtroom – or should this video have limited access for a jury, prosecutors, defendants, judges and the law enforcement custodians.

These are just a couple of examples of the hundreds of scenarios that our law enforcement professionals handle on a daily basis. The release of virtually every video requested by the media or the public can create a chilling effect for tipsters, victims and the public if there is concern that their face or the inside of their home may be displayed on the evening news.



---

# JESSE KREMER

---

STATE REPRESENTATIVE • 59<sup>TH</sup> ASSEMBLY DISTRICT

The 21<sup>st</sup> century technology of body cameras, although highly beneficial, has placed us on thin ice with the Fourth Amendment and in situations where there is an *expectation of privacy* (as defined by court precedent). The “Balancing Test” is a tool that law enforcement agencies use to determine what is redacted or released, but in recent discussions with various Wisconsin law enforcement agencies, I have been told that 95% of what is requested is released under our Open Records Law. I have grave concerns with this, and so should victims, the public and the law enforcement community.

The purpose of AB351 is two-fold, “Policing Policy and “Public Privacy”:

## Policing Policy (Minimum Requirements)

- Written policy requirement for agencies with body cameras
- Minimum 120 day hold on all videos
- Preservation Order – any LEO, defendant, prosecutor or court can ask for a preservation order of greater than 120 days if desired.
- Some footage must be held indefinitely until a court disposition order
  1. Death or alleged physical injury
  2. Custodial arrest
  3. Search during temporary questioning

## Public Privacy

- *Recordings in a Public Location:* The only body camera footage that MAY be released for inspection and copying in a public area (*subject to the “Balancing Test”*) is that of a death, alleged physical injury, custodial arrest or search during a temporary questioning.
  - *In the “Interest of Justice”:* Footage from a body camera in a public area of a death, alleged physical injury, custodial arrest or search during a temporary questioning MAY be release if the law enforcement agency determines that releasing the data is in the interests of justice.
- *Recordings in a Location with an Expectation of Privacy:* Law Enforcement SHALL NOT release video footage of a death or alleged physical injury, custodial arrest or search during temporary questioning in a location where there is an expectation of privacy UNLESS a release is granted by any *known* victims or witnesses.
- All other footage from a location where there is an expectation of privacy SHALL NOT be released.



---

# PATRICK TESTIN

## STATE SENATOR

**DATE:** January 30, 2018  
**RE:** **Testimony on 2017 Assembly Bill 351**  
**TO:** The Senate Committee on Judiciary and Public Safety  
**FROM:** Senator Patrick Testin

---

Mr. Chairman and fellow Committee Members, thank you for allowing me to submit testimony on behalf of Assembly Bill 351. As technologies advance, we must make certain that law-abiding citizens are given a fair opportunity of privacy, including instances when police body cameras are involved.

AB 351 makes certain that law enforcement agencies across the state have a written policy in place regarding the use of body cameras. If implemented, all footage must be retained for a minimum of 120 days, unless there is a court order to hold on to the video longer. Many police departments already have a policy in place. AB 351 simply states that all departments, regardless of whether not they have already implemented rules regarding body cameras, must create written standards for the use and disbursement of these videos.

Additionally, AB 351 states that a body camera video shall not be made public if there is a reasonable expectation of privacy, or if a known victim or witness does not authorize the release of the tape. As described by Representative Kremer, under current law all videos taken by body cameras are subject to Wisconsin open records. The goal of this bill is to assure those that witness a crime, are a victim to a crime, or did nothing wrong but are simply in the wrong place at the wrong time, are not recorded and put in the public eye.

This legislation is supported by the Badger State Sheriffs' Association, the Wisconsin Chiefs of Police Association, and the Wisconsin Sheriffs and Deputy Sheriffs Association.

In closing, AB 351 is a simple bill that balances public safety and personal privacy. Thank you for allowing me to submit testimony on behalf of AB 351, and I ask that you support this important piece of legislation.



---

# JESSE KREMER

---

STATE REPRESENTATIVE • 59<sup>TH</sup> ASSEMBLY DISTRICT

*Testimony before the Senate Committee on Judiciary and Public Safety  
State Representative Jesse Kremer  
January 30, 2017*

Good morning,

Thank you Chairman Wanggaard and committee members for holding a hearing on a proactive bill, AB351, to address technological advances in the law enforcement community – body camera footage; recordings that are intended to provide protection for both law enforcement officers and victims.

Let me illustrate the issue that many states have already tackled regarding body camera footage by focusing on a couple of hypothetical, real-world scenarios:

### Scenario #1

On February 18<sup>th</sup>, 2017 Officer Nelson responded to 228 Oak Street for a 24 year old woman who was concerned about an ex-boyfriend who had been stalking her. Nelson was invited into the woman's home, took a statement and asked if she had any protection. The woman advised Nelson that she has a concealed carry permit and there is a firearm in the house. She wanted the police to be aware of the situation "just in case".

A few days after the encounter, a local media station reviewed police "Calls for Service" (CFS), a task that they do on a weekly basis. The newspaper had been writing a story on domestic situations and the CFS intrigued them. Sgt. Roman, the records supervisor, received a request from the media outlet for video footage of the encounter. Sgt. Roman determined that because the footage is a public document and there is no investigation that it can be released – posing the threat that the inside of the woman's home, the fact that she owned a firearm and her legitimate concern for her safety could possibly hit a YouTube channel.

### Scenario #2

Or, consider this, a sexual assault victim is located in an alley, unconscious and stripped naked. The responding officers record the entire incident on their body cameras as required by department policy. Several months later, the case goes to trial. Is it OK that simply because a video recording is a public document that it be released to the public? Is it OK that this woman be victimized again as she is forced to relive the worst day of her life on the big screen in front of a courtroom – or should this video have limited access for a jury, prosecutors, defendants, judges and the law enforcement custodians.

These are just a couple of examples of the hundreds of scenarios that our law enforcement professionals handle on a daily basis. The release of virtually every video requested by the media or the public can create a chilling effect for tipsters, victims and the public if there is concern that their face or the inside of their home may be displayed on the evening news.



---

# JESSE KREMER

---

STATE REPRESENTATIVE • 59<sup>TH</sup> ASSEMBLY DISTRICT

The 21<sup>st</sup> century technology of body cameras, although highly beneficial, has placed us on thin ice with the Fourth Amendment and in situations where there is an *expectation of privacy* (as defined by court precedent). The “Balancing Test” is a tool that law enforcement agencies use to determine what is redacted or released, but in recent discussions with various Wisconsin law enforcement agencies, I have been told that 95% of what is requested is released under our Open Records Law. I have grave concerns with this, and so should victims, the public and the law enforcement community.

The purpose of AB351 is two-fold, “Policing Policy and “Public Privacy”:

## Policing Policy (Minimum Requirements)

- Written policy requirement for agencies with body cameras
- Minimum 120 day hold on all videos
- Preservation Order – any LEO, defendant, prosecutor or court can ask for a preservation order of greater than 120 days if desired.
- Some footage must be held indefinitely until a court disposition order
  1. Death or alleged physical injury
  2. Custodial arrest
  3. Search during temporary questioning

## Public Privacy

- *Recordings in a Public Location:* The only body camera footage that MAY be released for inspection and copying in a public area (*subject to the “Balancing Test”*) is that of a death, alleged physical injury, custodial arrest or search during a temporary questioning.
  - *In the “Interest of Justice”:* Any footage from a body camera in a public area MAY be release if the law enforcement agency determines that releasing the data is in the interests of justice.
- *Recordings in a Location with an Expectation of Privacy:* Law Enforcement SHALL NOT release video footage of a death or alleged physical injury, custodial arrest or search during temporary questioning in a location where there is an expectation of privacy UNLESS a release is granted by any *known* victims or witnesses.
- All other footage from a location where there is an expectation of privacy SHALL NOT be released.

**SENATE COMMITTEE ON JUDICIARY AND PUBLIC SAFETY**

**ASSEMBLY BILL 351**

**TESTIMONY OF DUSTIN B. BROWN  
ON BEHALF OF THE  
WISCONSIN NEWSPAPER ASSOCIATION**

January 30, 2018

Mr. Chairman, members of the Committee, my name is Dustin Brown. I am an attorney with the Madison office of Godfrey & Kahn, S.C, and I speak today on behalf of the Wisconsin Newspaper Association (the "WNA"). Thank you for the opportunity to testify today.

Wisconsin's public records law is an enduring testament to this State's commitment to transparency and public accountability. The records law carries out this commitment in the simplest of ways, through a presumption that all government records are public. And it defines records expansively—covering paper documents, emails, databases, video recordings, frankly any kind of data that the government creates or maintains.

The bill before the committee today runs against this tradition because it flips the presumption of openness on its head as to one type of record: footage from body cameras used by law enforcement. Under this bill:

- Data from body cameras is presumed to be confidential and exempt from disclosure.
- The public records law applies only if the footage captures deaths, injuries, custodial arrests, or questioning.
- Even in those situations, however, the bill imposes an additional—and unprecedented—exception: if the footage is taken in a private setting like someone's home, access will be denied unless everyone present gives their written consent.

We recognize that video recordings taken within the confines of private spaces warrant special considerations. But this proposal is inconsistent with Wisconsin law and the state's longstanding traditions of openness. Under this bill:

- The authority to decide whether footage should be public is ceded entirely to the people who appear in the video.
- Law enforcement agencies would have no discretion to overrule the decisions of those private citizens.
- Likewise, the public's interest in disclosure would receive no consideration if an individual captured on the video declined to give consent.

This approach does not serve the interests of law enforcement or the public. For example, a homeowner could accuse a police officer of wrongdoing but then refuse to allow the disclosure of footage that vindicates the officer. Likewise, footage of an incident that draws

tremendous public attention would remain secret if a single witness forgot to return the written consent form.

There are far less extreme ways to protect the privacy of Wisconsin citizens. The public records law already mandates that records be redacted so that the portions that can be disclosed are disclosed. The right technology will allow law enforcement agencies to perform redactions that protect privacy while giving the public the access that is their right.

The advent of body cameras was not likely on the minds of your colleagues when they drafted the public records law more than a generation ago. But the public records law is brilliant in its adaptability. One way the presumption of openness can be overcome is through the “balancing test”—where the public’s right to know is weighed against the public’s interest in nondisclosure. Custodians apply the balancing test every time they respond to a public records request.

No matter how far technology advances, and no matter what kind of unforeseen scenario presents itself, the balancing test gives custodians an out. The government always retains the ability to withhold a document if the balance favors nondisclosure. Decades of cases illustrate this point.

Thus, there is no reason and no need to rush this process. The public records law would never force an authority to disclose footage that, for whatever reason, should not be disclosed.

We therefore urge this committee to have this issue addressed in a Legislative Council study commission, where all stakeholders—the media, law enforcement, freedom of information advocates, and private citizens—can collaborate in crafting the right approach for Wisconsin.

The legislature should eventually address this issue—but this legislation does not strike the right balance. Shrouding body camera footage in secrecy does not serve the interests of your constituents. Until we reach a consensus on the correct approach, the public records law in its current form is well equipped to deal with this issue.

18410838.1



To: Senate Committee on Judiciary and Public Safety  
From: Badger State Sheriffs' Association  
Wisconsin Sheriffs and Deputy Sheriffs Association  
Date: Tuesday, January 30, 2018  
**RE: Support for Assembly Bill 351**

---

Good afternoon, I am Captain Jeff Klatt of St. Croix County here today to testify in support of Assembly Bill 351. I am the legislative committee chair of the Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA), which represents over 1,000 members, including Sheriffs, Deputies, and jail officers. WS&DSA's legislative committee works in conjunction with the Badger State Sheriffs' Association, which represents all of Wisconsin's 72 Sheriffs.

As Sheriffs and Deputy Sheriffs, our job is to keep our communities safe. To do so, law enforcement utilize appropriate technology, such as body cameras, to improve transparency, community trust, and safety. This legislation balances a standard body camera policy for improved public safety, while protecting the public's privacy.

While some law enforcement agencies may have a body camera policy in place, many law enforcement agencies have no written policy on the devices, leaving grey areas around how footage that can be highly personal for victims should be treated. This legislation proactively creates protections necessary to address privacy issues that might rise from the fast-growing use of body camera technology and data in Wisconsin by ensuring that any law enforcement agency utilizing body cameras have a policy and by setting statewide policy parameters. This includes retention requirements and disposal timelines. Our organizations provided feedback to the author on these parameters and feel that they represent a standard reflective of policies already in place.

Finally, the bill sets forth a process by which law enforcement must receive written permission of release of footage if the footage was taken in a location where an individual may have a reasonable expectation of privacy, such as a home. This process provides law enforcement with a protocol and time frame, ensuring individuals in obtained footage are notified.

With more and more law enforcement agencies using body cameras, our organizations believe this legislation is necessary to ensure consistent policies and privacy protections. We thank the authors for allowing our organizations the opportunity to provide feedback and ask for the committee's support of this legislation.



## Body Cam Bill

I'm Ben Hart, News Director for WISN 12, the ABC Affiliate in Milwaukee. Our viewing area reaches from Sheboygan County to Kenosha, From Fon du Lac County to Walworth -- and every county in between. We even bleed into a substantial part of the Madison market.

Every day newsrooms across our state scramble to cover breaking news inside our coverage area, including things you do here in the Capitol. Over the years, we have all have developed working relationships with our local police, to tell the public what happened when police have to respond.

With long standing rules and laws, we generally work well together. When they respond to a crime scene, police have control of the scene. We get close enough to ask questions.

Police decide what parts they want to share from what they find pertinent.

One example happened in 2016.

After an officer involved shooting in Milwaukee, community members had a large protest that became violent -- all tied to what they "thought" an officer had done.

With a lack of clarity, -- the clamor for answers left the city in a massive unrest.

To this day, Milwaukee is rebuilding both physically and mentally.

A year later, when the same case finally went to trial the jury and the public saw the split second decision that the officer had to make. This time when most people saw the body cam, they could agree it was a hard position for the officer - to say the least. In that case, we found that with body cam video, the community was informed and therefore satisfied.

I'm not certain what the outcome would have been if this legislation was in fact law. We can't afford to make changes that impact people's lives unless we have a long and serious look at a proposal like this.

Police have a job to protect the community, and protect the integrity of the case. We are supposed to keep things illuminated, and work with the public to shine a light.

The word \*transparency\* has been one thing we can count on when it comes to letting the public know what's going on.

After several particularly rough years, taxpayer-funded body cameras have helped to help protect the police and the public from that \*grey\* area.

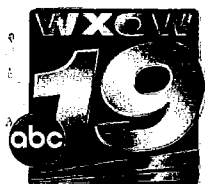
Body cameras and dash cameras keep everyone honest, and tell an unabridged story on the simple basis of fact. When this works well, journalists and police can agree on what we see. It also allows people to trust their own eyes and to put themselves in an officer's shoes.

This legislation has the noble goal of protecting the privacy of witnesses and bystanders, which is already a priority for broadcasters. The legislation creates unnecessary red tape and delays to address a concern that broadcasters not only share, but also address on a regular basis. We would propose amending SB 279 to allow the custodian of recordings from body cameras to work with broadcasters to redact the faces and voices of innocent people in these videos.

The balancing test works. SB 279 creates numerous complicated layers to the process that don't properly balance the goal of protecting privacy with the public's right to know.

We believe this new legislation is good intentioned, but bad for the practicality of truth.

We would ask that this issue be taken up by a study committee so that a proper balance can be struck between the rights of victims and witnesses and the public's right to know.



# LA CROSSE'S OWN

WXOW-TV NEWS19  
P.O. BOX 3119  
LA CROSSE, WI 54602-3119  
507.895.9969 [WXOW.COM](http://WXOW.COM)

Dear Senator Testin,

My name is Sean Dwyer. I'm the News Director at WXOW TV-19 in La Crosse. Our station is owned by Quincy Media Inc. which runs TV News departments in Eau Claire, Wausau, and Madison. In addition, our viewers are from Stevens Point, Marshfield, Wisconsin Rapids and other communities.

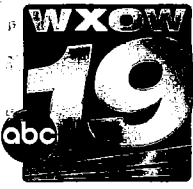
All TV newsrooms have daily contact with law enforcement. While crime and mayhem are a part of local coverage, newsrooms produce good news stories about officers, positive police interaction within our communities, crime prevention, staff training, department improvements and technology. Police body cameras are a component of tech improvements. The cameras provide a visual record of a police officer's job. When departments get the cameras, they are referred to as crime fighting technology. The cameras provide a visual context of what police deal with on the job.

Still every technology has limitations. Video storage, proper use, training, and how the video is used afterward factor into the effectiveness of the technology. The technology represents advancement, but raises complicated questions about best practices. The cameras help provide the public visual evidence of how law enforcement responds to crime. This is an important condition of the public's right to know.

Two recent crimes in the La Crosse area involved video of police's response to crime. In August a car chase ended when a suspect threatened officers with a gun. The police responded with deadly force. In August, La Crescent police were involved in another high speed chase that ended with suspects firing shots at local police. Police returned fire. In both instances judicious release of dash camera videos provided visual evidence that both shootings were warranted and justified. The video did not create or contribute to an invasion of privacy. Neither video clips threatened any citizen's fourth amendment rights. Each video sustained community confidence in their police.

The legislation, SB 279, adds complicated layers to existing open records law that. Broadcasters recognize the need to protect victims and witnesses, which is why we routinely edit videos to redact the identities of those people. This legislation creates delay when it's not necessary and tips the balancing test against the public's right to know. We would support an amendment to give the decision to release body camera video back to law enforcement if they don't hear from victims or witnesses, but this would still not address the issue of timeliness.

The balance between the rights of the victims and witnesses and the right of the public to access this footage is a complicated one, which is why we would prefer that this issue be taken to a study committee where the rights of all parties involved can be addressed.



## LA CROSSE'S OWN

WXOW-TV NEWS19

P.O. BOX 3119

LA CROSSE, WI 54602-3119

507.895.9969 [WXOW.COM](http://WXOW.COM)

As reporters we are motivated by transparency not invasion of privacy. Compared to the number of security cameras, cellphone cameras, social media video posts, and D-O-T traffic cameras most of us are under public video scrutiny more than we realize. Obviously when police are involved the video elevates to a public safety standard. The overlooked aspect of body cameras is that unlike social media videos or personal cell videos, there is an implied veracity to police body camera video. Not being forthcoming with the video undermines that public trust. The video exists. The public's faith in officers erodes if release is withheld or unjustly delayed. The choice to delay the release of body camera video creates an information vacuum. The lack of evidence space is quickly filled with public questioning and speculation. This proposed legislation will keep police departments from releasing video which exonerates officers decisions and actions. The taxpayer pays for the cameras they should have access to evidence they provide.

The state's public record laws already allow police to withhold information under several circumstances. There are already laws protecting privacy. The legislation is in need of serious examination which puts more emphasis on openness for Wisconsin's citizens. There is no need to rush this bill through right now. On behalf of the Wisconsin Broadcasters Association, I would propose, and respectfully ask that this committee study the proposal over the summer. I know that many broadcasters would give you as much time, information and expertise as necessary to improve this legislation and to provide the balance it needs to serve law enforcement, the media and the citizens of Wisconsin.

Regards,  
Sean Dwyer

News Director  
WXOW News19  
(507)895-9888  
[sdwyer@wxow.com](mailto:sdwyer@wxow.com)



# KEWASKUM POLICE DEPARTMENT

---

Thomas F Bishop, Chief of Police

204 First St  
PO Box 38  
Kewaskum, WI 53040

262.626.2323 - Office  
262.626.4909 - Fax  
policeinfo@village.kewaskum.wi.us

January 30, 2018

Testimony in front of Assembly and Senate Committee Hearings --

Good Afternoon,

I am Tom Bishop and I am the Chief of Police for the Kewaskum Police Department. I am honored to have been invited to speak to this committee on this particular bill.

Rep. Kremer and I have spoken on this topic numerous times over the last year or so. Body cameras are becoming more prevalent, and to some regard even expected to be worn and utilized by police officers throughout this county.

In Kewaskum, we do have body cameras in use. These cameras supplement our mobile audio and video cameras already in our police vehicles. We have been using cameras in our police vehicles for well over 15 years and they provide a wealth of information and aid our department in court proceedings and prosecutions, as well as personnel complaints and employee performance review.

Body cameras will enhance this even more, allowing judges and juries to see what has been, up to this point, unavailable to be seen with traditional fix mounted vehicle camera systems.

However, body cameras still have limitations and areas of concern; such as issues surrounding the expectation of privacy. This bill provides some protection for those whose privacy is being jeopardized and provides custodian of records, such as myself, some legal direction as to how to handle those requests.

This bill states that body camera video is essentially confidential and not open to inspection, unless the recorded incident involves the Use of Force, a battery occurred to any individual, a custodial arrest is made, or a Search during Temporary Questioning occurs, commonly referred to as a "Terry Stop".

Body camera video that meets these incident types shall be open to inspection unless they occurred where there existed an expectation of privacy. In these situations, law enforcement will have to seek permission to release the video from anyone in the video who is considered a victim or witness in the event.



# KEWASKUM POLICE DEPARTMENT

---

Thomas F Bishop, Chief of Police

204 First St  
PO Box 38  
Kewaskum, WI 53040

262.626.2323 - Office  
262.626.4909 - Fax  
policeinfo@village.kewaskum.wi.us

It should be noted that in these types of situations, the body camera video, specifically, is the only item not subject to inspection. The written report from the officer, squad video and audio recordings, ect, would still be open for public inspection as required by law. We are strictly talking about the body camera video.

This bill simply supports and reinforces every American's strongly held belief in the right to privacy. In an ever increasing technological world, we, as a society, are continually giving up our privacy in lieu of convenience or safety. But I still think most of us want our homes to remain private.

Body cameras are a great tool for our officers to wear and can protect the officer as well as the public. But people's homes are also important to keep private from outsiders with ill intent. For example -- The nosy neighbor next door. Or someone with criminal intent who wants to see what valuables you may have inside your home. Or even a stalker, who police are unaware of -- they just need to fill out an open records form and now they now have video footage inside your home.

We respond to many different types of calls for service, but when we deal with victims of serious crimes, they are, generally speaking, at the worst moment of their life -- domestic violence, abuse, sexual assault... rape. Or we respond to help those in need of medical attention and perform life saving measures such as CPR on your spouse or loved one, or administering NARCAN in an overdose situation -- sometimes unsuccessful in our efforts.

These are moments that take place inside of people's homes -- and they are private moments for family members and victims. Private moments that have been recorded on a body camera and are currently considered an open record.

Body cameras are a wonderful tool. But as with any new technology, there are unforeseen consequences. We need to strike a balance between open and transparent activities by law enforcement and the expectation of privacy we hold in our most personal spaces. I support Rep. Kremer's efforts on this bill and hope this, or some similar version of this bill, becomes law in the near future.

Thank you for your time and allowing me to address this committee.

Thomas F Bishop, Chief of Police  
Kewaskum Police Department



*January 30, 2018*

To: Chairman Van Wanggaard and Members of the Senate Committee on Judiciary and Public Safety  
From: Chief Greg Leck and Chief Bernie Coughlin Legislative Co-Chairs for the Wisconsin Chiefs of Police Association  
Re: Support for Assembly Bill 351

Thank you Chairman Wanggaard and members of the Committee for the chance to testify in support of AB 351 today. We are Chief Greg Leck and Chief Bernie Coughlin, the Legislative Co-Chairs for the Wisconsin Chiefs of Police Association. We represent nearly 700 Wisconsin law enforcement leaders across State of Wisconsin.

We have appreciated working with Representative Jesse Kremer and Sen. Van Wanggaard since the spring of 2016, on this important piece of legislation. We have all wanted to reach a consensus on legislation that balances transparency for both the public and law enforcement, while at the same time protecting victims, or an individual's right to privacy. The advance of body camera technology is a useful tool for both law enforcement and the public, when used properly. For many people, "seeing is believing."

This bill is not an unfunded mandate because it does not require the use of cameras. Instead it serves as a guide for those agencies that decide to use them. Police agencies should have policies that require training for officers and retention and confidentiality of data that is recorded. Law enforcement agencies should also be transparent with how they use body worn cameras. Furthermore, a written policy supports the public expectation of how, when, and where body cameras are used. We believe that departments who are using body cameras have already implemented a department policy; however, this bill ensures that they do have a policy.

Videos from body cameras have several benefits. They capture reality that can be viewed by others who were not present during the recording. These recordings are useful to supplement an officer's testimony. The videos can also protect an officer against false accusations of wrongdoing. Additionally, video can capture clues that may be helpful in solving crimes.

But this bill also takes it a step further. It puts measures in place to protect a victim or witness who may end up in a video, and perhaps not show them in the best light. If the individual is a known victim or witness the release of their personal information needs to be safeguarded. The bill requires law enforcement to seek permission to release video where an individual has a right to a "reasonable expectation of privacy."

If law enforcement does not receive written permission to release a video within 14 days, law enforcement may deny the request to release it. A law enforcement response to a domestic violence incident at a residence is an example of video that requires additional review. In cases such as this, people are more likely to have a reasonable expectation of privacy. Therefore, it is less likely that this type of video will be released. Is any public purpose really served in releasing this video?

Due to the cost of retaining video, we all support language in the bill that directs law enforcement to dispose of any video after a 120-day period unless there is an ongoing investigation.

Our national Association, the International Chiefs of Police Association (ICPA), represents thousands of local law enforcement agencies across the world. Our leadership has understood the shift in department's usage of body worn cameras and have had a model policy for agencies to adopt locally, since 2014. Those policies are on the ICPA and if you prefer we can provide them.

Sen. Wanggaard and Rep. Kremer have worked tirelessly with many stakeholders to try to address every possible scenario that protects the 4<sup>th</sup> amendment on the one hand, while not inhibiting what video in "real time" can capture when officers are undoubtedly under tremendous pressure.

It is a challenging time for law enforcement. The men and women in uniform take a pledge to serve their communities. Cameras help us provide the transparency that the public is asking for. We sincerely thank Sen. Wanggaard and Rep. Kremer for their diligent effort to work with us and make concessions to achieve the bill that is before you today.

We urge this committee to vote "yes" on AB 351.





# Wisconsin Freedom of Information Council

DEVOTED TO PROTECTING WISCONSIN'S TRADITION OF OPEN GOVERNMENT

Sen. Van Wanggaard, chair  
Senate Committee on Judiciary and Public Safety  
Room 319 South, State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

January 30, 2018

## Regarding AB-351

Dear Chairman Wanggaard and members of the Committee:

I appear on behalf of the Wisconsin Freedom of Information Council, an all-volunteer nonprofit group that advocates for public access to government meetings and records. The council, formed in 1978, includes representatives of the Wisconsin Newspaper Association, Wisconsin Broadcasters Association, Wisconsin Associated Press, Wisconsin News Photographers, and Wisconsin chapter of the Society of Professional Journalists.

Our group appreciates the need for consistent statewide policies regarding the use of police body cameras, and the retention and release of videos produced by this technology. We feel that AB-351 offers much good guidance toward these ends, but we do have some concerns.

Most significantly, we feel that the procedures regarding video footage taken in locations where individuals may have a reasonable expectation of privacy are too burdensome and restrictive. These are certain to create administrative headaches and result in the denial of access to records of public interest, including records that could protect police against unfair attacks.

The bill stipulates that, before fulfilling a request, law enforcement agencies must obtain written permission from "each individual who is a known victim or witness or an owner" and to deny the request if this is not obtained. Besides creating considerable additional work for law enforcement, these requirements fail to acknowledge the public's right to know about the actions of police in certain critical situations.

What if serious police misconduct occur in the presence of several individuals in a location where people would ordinarily expect privacy? AB-351 as drafted says the failure of even one person present, or the building's owner, to agree in writing to the release means that access must be denied.

And what if a person falsely accuses responding police of engaging in abusive conduct in one of these locations? AB-351 as written means that person can block the release of video that would disprove these allegations.

Under current law, police records custodians are able to withhold records in cases where it is determined that their release is contrary to the public interest. This is now being done by police agencies which acquire video through stationary public cameras, police squad car cameras, and police body cams. We are not been told of any occasions in which police departments have been forced to release videos they felt should have been withheld.

The Council is also concerned that AB 351 would prohibit disclosure of police body camera footage unless it falls into three categories: use of force, arrest and detention. This seems unnecessarily restrictive, given that there will surely be occasional public interest in video of other kinds of situations, like encounters on the street. Again, there will be times when this language would prevent the release of video that proves officers were behaving appropriately, despite allegations to the contrary.

Please consider retooling this legislation to give records custodians more discretion to release police body camera videos of public interest.

Additionally, the Council would advise that this bill strive to create greater transparency regarding police videos of shootings involving police. Chicago, for instance, requires that such videos be released within 60 days, regardless of whether internal reviews have been completed or the case adjudicated to an end. (See [www.chicagotribune.com/news/local/breaking/ct-chicago-police-videos-met-20160603-story.html](http://www.chicagotribune.com/news/local/breaking/ct-chicago-police-videos-met-20160603-story.html))

Let us remember that the primary reason for outfitting officers with body cameras is to increase police accountability and public confidence in the actions of law enforcement. Statutory language that allows or requires police body camera footage to be kept from public view is contrary to those goals.

Best,



Bill Lueders, president

Wisconsin Freedom of Information Council