



MEMORANDUM

TO: Honorable Members of the Assembly Committee on State Affairs

FROM: Marcie Rainbolt, Government Affairs Associate

DATE: February 13, 2020

SUBJECT: Assembly Bill 896 relating to body cameras on law enforcement officers.

As directed, the Legislative Council Study Committee on the Use of Police Body Cameras reviewed law enforcement policy, records retention, liability issues, and the release of data by law enforcement agencies. Assembly Bill 896 preserves a county's individual right to determine if they will utilize body cameras and also lays out requirements for department policy on storage, training, retention, and release of data for those agencies who utilize the technology.

There is one section of the legislation identified by the Wisconsin Counties Association (WCA) where the bill could be improved. On page 3, lines 1-5, the bill states:

Data from a body camera used on a law enforcement officer that depict any of the following shall be retained until final disposition on any investigation, case, or complaint to which the data pertain, except as provided in (c) and (d):

- 1. An encounter that resulted in the death of any individual or actual or alleged physical injury to an individual.*

WCA is requesting that the legislation also include a requirement regarding those who are asserting actual or alleged physical injury that they must also request the law enforcement agency, who is the legal custodian of the body camera data, preserve specific data within the 120 days of the event. By including this language in the legislation, the bill would be consistent with Wisconsin Statute §893.80 (1d)(a) which requires notification to the political corporation, governmental subdivision or agency within 120 days after the happening of the event giving rise to the claim. Often times, the Notice of Claim received by the political corporation, governmental subdivision or agency will be provided to their insurer or risk management however, the entity may unintentionally forget to inform the law enforcement agency who is the custodian of the data.

This language is a simple addition to the legislation that will ensure the data's legal custodian is aware of the Notice of Claim and that they retain the data. WCA respectfully asks for the committee's consideration of our request.

**Testimony on Assembly Bill 896
Assembly Committee on State Affairs
Thursday, February 13, 2020**

Hello, and thank you Chairman Swearingen and members of the Assembly Committee on State Affairs for allowing me to have the opportunity to share my testimony with you today regarding Assembly Bill 896, relating to body cameras on law enforcement officers.

In 2018 I served on the Legislative Council Study Committee on the Use of Police Body Cameras. The committee consisted of four legislators and six members of the public, who were representatives from law enforcement, media, and open records advocates. The result of the committee was a bill that passed the committee 9-1.

Because of the Legislative Council Study Committee process, the bill was introduced in the Senate, but not the Assembly. I introduced Assembly Bill 896 to serve as a companion to Senate Bill 50 so that the Assembly may consider the proposal as well.

This bill address issues related to police use of body cameras, including policies on the use of cameras, retention by the law enforcement agency of data collected by the cameras, and release of such data to the public. The bill includes the following provisions:

- The bill does not require law enforcement to deploy body cameras on officers, but if a department chooses to use cameras, it must have a written policy addressing the use, maintenance, and storage of cameras and data.
- The bill requires law enforcement agencies maintain data for 120. Unless the data is the subject of an open records request, the agency is not required to maintain the data beyond that 120-period, except under specific circumstances.
- The bill clarifies that body camera data is generally subject to release in response to an open records request, but the bill includes exception treatment favoring privacy over public release for data that depicts certain individuals.

Thank you again for allowing me the opportunity to share testimony in support of this bill, and I welcome any questions you might have.

Michelle Vetterkind Intro

SB-50 Hearing 2/13/20

Thank you Chairman Swearingen and members of the Committee. I'm Michelle Vetterkind, President and CEO of the Wisconsin Broadcasters Association representing more than 400 radio and television stations in Wisconsin, which employ more than 5,000 Wisconsinites. The WBA is proud to say that more than 95 percent of the stations licensed in Wisconsin are WBA members.

We appreciate the opportunity to discuss AB-896, the bill relating to the use of body cameras on law enforcement officers. This bi-partisan proposal, built by consensus between competing interests, deserves a vote in this session.

I want to thank Senator Testin and Representative Taylor for their leadership on the Legislative Study Committee that generated this bill. One of our members, Ben Hart, the news director at WISN-TV in Milwaukee, served on this committee and testified in favor of SB 50 in front of the Senate Committee on Judiciary and Public Safety.

Today, I'd like to introduce Ed Reams, the news director at WKOW-TV in Madison. Like all news directors across the state, Ed has taken an interest in this issue and its implications for Wisconsin's tradition of open government.

**Testimony before the Assembly Committee on State Affairs
regarding AB 896
Feb. 13, 2020**

Chairman Swearingen and members of the Committee...thank you for holding this hearing today on AB 896.

I'm Ed Reams, the news director at WKOW-TV in Madison.

Wisconsin's broadcasters support AB 896 which represents a lot of hard work by interests that started this process at opposite ends of the table.

This bill is a product of a Legislative Study Committee which overcame dramatic differences of opinion to generate a bipartisan bill which the committee approved 9-1. The Legislative Council and Senate Committee on Judiciary and Public Safety since approved the bill unanimously on bipartisan votes.

The Legislative Study Committee was given a tough job. It included lawmakers and representatives of law enforcement, the media, and the criminal justice system. It worked hard on issues that few agreed on when it started. The members debated and compromised, and after many long meetings, they agreed. All stakeholders gave something, got something, and in the end, came up with solutions that would largely address their concerns.

If approved, AB 896 would give law enforcement the guidance it seeks regarding the use of body cameras, would give the public the transparency it seeks, and demonstrate the value of the Legislative Study Committee process.

As the media we are called to make sure the public has a consistent place to find real, dependable, irrefutable facts. While the truth might be harder to determine because of the proliferation of questionable information on social media, we take the truth seriously.

With the advent of new camera technology, the people of Wisconsin have asked law enforcement to help eliminate some of the "grey area" surrounding interactions between the police and the public they serve. They asked for body

cameras to help the public understand those interactions, not just when there is controversy, but also when there isn't.

We believe the transparency that body cameras provide can be the quickest path to find and report irrefutable facts.

To that end, pictures are worth a thousand words.

Wisconsin has a long-standing standard of presuming that all public records are available for the public to view. The committee built on this standard in drafting the proposed legislation, as well as on the experience of other states that have dealt with this issue.

The bill addresses the concerns that were raised when body camera legislation was first proposed: privacy. AB 896 uses Wisconsin's time tested balancing test to take privacy concerns into consideration before video is released.

If AB 896 becomes law, law enforcement agencies will have new rules to help them navigate the use of this new technology. Victims and minors would know that their privacy has protections. The public and the media would continue to have access to police body camera recordings, and they would have the same remedies for appealing a record custodian's decision as they have today.

We respectfully ask that you vote to approve AB 896 and give the State Assembly the opportunity to vote on this issue.

Ed Reams
News Director
WKOW-TV



Department of Administration
Intergovernmental Relations Division

Tom Barrett
Mayor

Sharon Robinson
Director of Administration

Kimberly Montgomery
Director of Intergovernmental Relations

City of Milwaukee Testimony on AB 896 relating to body cameras on law enforcement officers
Assembly Committee on State Affairs
February 13, 2020

Good morning Chairman Swearingen and members of the Assembly Committee on State Affairs, the City of Milwaukee is pleased to offer our input on Assembly Bill 896 today, and posit a law-enforcement supported recommendation for the committee's consideration.

Please know the majority of this legislation we support as the Milwaukee Police Department is already proactively pursuing these requirements as part of our Standard Operating Procedure 747 in relation to body worn cameras. We appreciated the opportunity to present to the Legislative Council Study Committee on the Use of Police Body Cameras this past fall. We recommend a minor amendment supported by the League of Wisconsin Municipalities as well as the Badger State Sheriffs.

A new **165.87(1)** would be created to provide as follows:

- (1) "Data" means any footage recorded by a body camera between the time the body camera is activated by a law enforcement officer to record an encounter and the time the body camera is deactivated after the conclusion of an encounter. Except as specified in sub. (3)(f), "Data" does not include any footage recorded prior to the point at which a law enforcement officer activates the body camera to record an encounter or any footage recorded after the body camera is deactivated following conclusion of an encounter.

***Please note that the current sub. (1) would have to relabeled to sub. (2), the current sub. (2) would have relabeled to sub. (3), and the current sub. (3) would have to be relabeled as sub. (4). All references to the subsections elsewhere in the bill would also have to be similarly relabeled.**

Subsection **(3)(f)** (*following what is currently (2)(e)*) would also be created to provide as follows

(3) ...

- (f) A law enforcement agency may elect to configure body cameras to maintain footage taken immediately prior to a law enforcement officer activating the body camera to record an encounter. If a law enforcement agency elects to configure body cameras in this manner, the length of time of the footage to be maintained prior to the point a law enforcement officer activates the body camera to record an encounter shall be set forth in any written policy administered pursuant to sub. (2), and any footage recorded in this manner shall be considered "Data."

The language would allow law enforcement to maintain the ability to activate the body cameras after an encounter and still be able to access relevant footage, which is operationally beneficial and a law enforcement best practice, in that it allows an officer additional time to activate the body camera in circumstances where immediate activation is impossible or impractical. The way the Bill is currently worded would hinder law enforcement's ability to continue operating body cameras in this fashion, as, technologically, the ability to create this time buffer relies on the camera always recording, with footage being rewritten after a 1-200 second designated period of time. The current language of the Bill, which states that ALL data must be preserved for at least 120 days, would prohibit law enforcement from operating the body cameras in this fashion, and would make using the cameras cost prohibitive for local law enforcement.

Thank you for your consideration and we would be pleased to answer any questions.



To: Senate Committee on Judiciary and Public Safety
From: Badger State Sheriffs' Association
Wisconsin Sheriffs and Deputy Sheriffs Association
Date: February 13, 2020
RE: Support for Assembly Bill 896

BSSA and WS&DSA submit these comments in support of AB 896. In 2018, our organizations were represented on the Legislative Council Study Committee on the Use of Police Body Cameras. Throughout the committee progress, we worked to ensure that the bill helped law enforcement utilize body camera technology and did not hamper its use. Law enforcement utilize body cameras, to improve transparency, community trust, and safety.

Our organizations believe that the end product of the study committee – AB 896 - 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 agencies¹ 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 feel that these timelines represent a standard reflective of policies already in place.

Finally, the bill clarifies that in general, data from body cameras are Open Records. However, this bill carefully provides exceptions to ensure the privacy of certain individuals are protected. As the custodians of the record, law enforcement will be required to redact the record to protect the record subject's identity.

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 urge the committee to support AB 896,

¹ <http://www.latimes.com/nation/la-na-body-cameras-20140927-story.html>