



WISCONSIN LEGISLATIVE COUNCIL

MEETING MINUTES

STUDY COMMITTEE ON THE USE OF POLICE BODY CAMERAS

Room 225 Northwest
State Capitol
Madison, WI

October 17, 2018
10:00 a.m. – 2:40 p.m.

Call to Order and Roll Call

Chair Testin called the meeting to order. A quorum was determined to be present.

COMMITTEE MEMBERS PRESENT: Sen. Patrick Testin, Chair; Rep. Chris Taylor, Vice Chair; Sen. Chris Larson; Rep. John Spiros; and Public Members Kevin Croninger, James Friedman, Ben Hart, Mike Kass, and Jeff Klatt.

COMMITTEE MEMBER EXCUSED: Public Member Catherine Dorl.

COUNCIL STAFF PRESENT: Dan Schmidt, Principal Analyst, and Steve McCarthy and Ethan Lauer, Staff Attorneys.

Approval of the Minutes of the Meeting on September 13, 2018

Mr. Friedman moved, seconded by Mr. Hart, that the minutes from the September 13, 2018 meeting, be approved. The committee unanimously approved the minutes by a voice vote.

Discussion of Materials Distributed by Legislative Council Committee Staff

Steve McCarthy, Staff Attorney, and Dan Schmidt, Principal Analyst, described the bill draft, LRB-0396/P2. The description included an analysis of which parts of LRB-0396/P2 are derived from 2017 Assembly Bill 351 and 2017 Assembly Bill 557, and which parts of LRB-0396/P2 are new material. Additionally, Legislative Council committee staff described new material that incorporates aspects of current law related to the “Woznicki fix,” which provides that certain specified individuals have a right to be notified and seek judicial review of an

authority's decision to release certain records that may be considered to be of a highly personal nature.

Discussion of Bill Draft LRB-0396/P2

Chair Testin invited committee members to discuss any concerns with LRB-0396/P2 and ask questions of committee staff. A number of committee members asked questions about the effect of the "Woznicki fix" language, and voiced concern that the procedure may be too complex for law enforcement to administer.

Members discussed whether the draft too broadly covers the privacy interests of "witnesses" of a sensitive or violent crime, and unanimously agreed to remove all language from the draft that treats "witnesses" the same as minors, victims of a sensitive or violent crime, or individuals in a place with a reasonable expectation of privacy.

Members discussed whether any legislation the committee produces should apply to other types of police video, including dash cam and interrogation room video. Representative Taylor expressed a desire to see consistency in how all types of police video are treated under state law. Committee members discussed the committee's charge, and decided not to take any action relating to other types of police video as such action may be outside of the committee's scope.

Mr. Friedman expressed concern that LRB-0396/P2 specifically excludes certain body camera data, including data subject only to the 120-day retention period, data that depicts nudity, and matter subject to certain privileges, from inspection and copying under the Open Records Law.

Members also discussed minimum retention of body camera data that records a custodial arrest, death or injury, Terry stop, or use of force, and whether the requirement that such data must be retained until final disposition of any case or complaint to which the data pertain would be sufficient in all cases. Members voiced concern that circumstances could arise in which data that captures one of these events could be destroyed after 120 days if no case or complaint has been initiated. Members discussed whether LRB-0396/P2 could be modified to provide that body camera data that captures a custodial arrest, death or injury, Terry stop, or use of force must be retained for the longer of three years or until final disposition of any case or complaint to which the data pertain.

Chair Testin proposed a number of changes to LRB-0396/P2 based on discussions with committee members and asked committee staff to describe those changes. Specifically, Chair Testin proposed deleting all language from the bill draft relating to the "Woznicki fix" and deleting the list of types of body camera data that are not open to inspection and copying under the Open Records Law. Additionally, Mr. Friedman proposed adding language to LRB-0396/P2 that expressly allows a requester to challenge a record authority's decision to censor or deny access to data. These changes were approved by the committee by a voice vote.

Representative Taylor moved, seconded by Senator Larson, to add language to LRB-0396/P2 that provides that body camera data that captures a custodial arrest, death or injury, Terry stop, or use of force must be retained for the longer of three years or until final disposition of any case or complaint to which the data

pertain. The motion failed to pass by a vote of Ayes, 4 (Rep. Taylor; Sen. Larson; and Public Members Friedman and Hart); Noes, 5 (Sen. Testin; Rep. Spiros; and Public Members Croninger, Kass, and Klatt); and Absent, 1 (Public Member Dorl).

Senator Larson moved, seconded by Mr. Friedman, to remove language that expressly permits body camera data that is subject only to the 120-day retention period to be destroyed after that time expires. The motion passed by a voice vote.

Representative Taylor moved, seconded by Senator Larson, to add language to LRB-0396/P2 to require a law enforcement agency policy to include a presumption that body cameras would be activated by law enforcement officers in certain situations, but that the policy could provide for exceptions to this presumption. Members discussed the proposed language, and Representative Taylor agreed to withdraw her motion after Chair Testin offered to discuss the issue with Representative Taylor before the next meeting.

Senator Larson moved, seconded by Representative Taylor, to add language to LRB-0396/P2 to require that a law enforcement agency policy on body cameras must include disciplinary measures for violating the policy. The motion failed to pass by a vote of Ayes, 3 (Rep. Taylor; Sen. Larson; and Public Member Hart); Noes, 6 (Sen. Testin; Rep. Spiros; and Public Members Croninger, Friedman, Kass, and Klatt); and Absent, 1 (Public Member Dorl).

Plans for Future Meetings

Chair Testin advised committee members that he would announce a date for a fourth and final committee meeting at a later date.

Adjournment

The committee adjourned at 2:40 p.m.

SM:mcm;ksm