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# JESSE KREMER

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

*Testimony before the Assembly Committee on Health  
State Representative Jesse Kremer  
August 2, 2017*

Good morning,

Thank you Chairman Spiros 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.



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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 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.
- *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.



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# PATRICK TESTIN

## STATE SENATOR

DATE: October 5, 2017  
RE: **Testimony on 2017 Assembly Bill 351**  
TO: The Assembly Committee on Criminal Justice and Public Safety  
FROM: Senator Patrick Testin

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Mr. Chairman and 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.



To: Assembly Committee on Criminal Justice and Public Safety  
From: Badger State Sheriffs' Association  
Wisconsin Sheriffs and Deputy Sheriffs Association  
Date: October 5, 2017  
RE: **Support for Assembly Bill 351**

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Badger State Sheriffs' Association (BSSA) and Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA) submit these comments in support of Assembly Bill 351. WS&DSA is a statewide organization representing over 1,000 members, including Sheriffs, Deputies, and jail officers, and BSSA is a statewide organization representing all of Wisconsin's 72 Sheriffs. BSSA and WS&DSA have a joint legislative committee and work closely on public safety issues of concern to our members.

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<sup>1</sup> 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.

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



*October 5, 2017*

To: Chairman Spiros and Members of the Assembly Criminal Justice and Public Safety Committee  
From: Chief Bernie Coughlin, Verona, Wisconsin Chiefs of Police Association Legislative Co-Chair  
Re: Support for Assembly Bill 351

Thank you, Chairman Spiros and members of the committee, for the chance to testify in support of AB 351 today. I am Police Chief Bernie Coughlin, one of the legislative Co-Chairs of the Wisconsin Chiefs of Police Association (WCPA). We represent nearly 700 Wisconsin law enforcement leaders across State of Wisconsin.

We have appreciated working with Representative Jesse Kremer 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 a victim, 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 polices are attached.

Rep. Kremer has 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 Rep. Kremer for his 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

Rep. John Spiros, chair  
Assembly Committee on Criminal Justice and Public Safety  
Room 15 North, State Capitol  
Madison, WI 53708

October 5, 2017

## Regarding AB-351

Dear Chairman Spiros and members of the Committee:

I write 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 organization 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 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.

Currently, AB-351 states: "If the data record a location where an individual may have a reasonable expectation of privacy, the data recording the location are not subject to the right of inspection and copying under s. 19.35 (1) unless each individual who is a known victim or witness or an owner, or a person authorized by each such individual as described under s. 19.32 (1m), provides the law enforcement agency with written permission for the release."

The bill stipulates that law enforcement agencies must make an effort to contact all of these individuals in the event of a request and to deny the request if there is no reply.

Besides creating considerable additional work for law enforcement, these requirements completely fail to acknowledge the public's right to know about the actions of police in certain critical situations.

What if serious police misconduct occurs 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.

What if a person falsely accuses responding police of engaging in abusive language or conduct in one of these locations? AB-351 as written means that person can block the release of video that would prove them wrong.

The authors of this bill and the committee may want to look at model language for police body camera footage offered by the Media Law Resource Center, a national nonprofit group. It states:

“Recordings of home searches or other lawful entries into private property are not subject to the same presumption of public access, but should nonetheless be available as public records if the requester demonstrates a legitimate public interest in the subject matter of the events that occurred inside the home or other private property. Even in cases of ordinary, routine and lawful home entries (where the event is not of unusual public interest), particular unique circumstances may warrant public disclosure of such recordings; law enforcement officials should be given discretion, in those circumstances, to make such recordings available to the public, particularly with any private or sensitive information redacted. In addition, the public should be permitted the right to petition a court for an order granting access to such recordings on the same basis.”

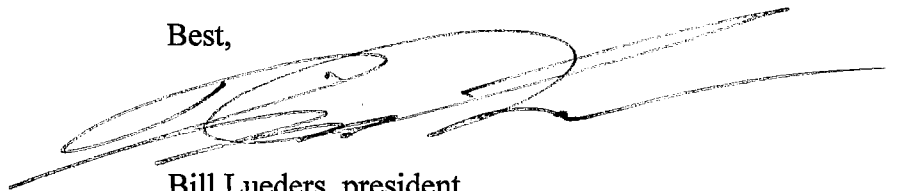
The Council is also concerned that the law seems to prohibit disclosure of police body camera footage unless it falls into three categories: use of force, arrest and detention. This seems unnecessarily restrictive, given that there will surely be occasional public interest in video of other kinds of situations, like contacts 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 video evidence 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