

Michelle Vetterkind Intro

SB-50 Hearing 9/17/19

Thank you Chairman Wanggaard 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 over 95 percent of the stations licensed in Wisconsin are WBA members.

We appreciate the opportunity to discuss SB-50, the bill relating to the use of body cameras on law enforcement officers.

I want to thank Senators Testin and Taylor for their leadership on the Legislative Study Committee that generated this bill.

Today, I'd like to introduce Ben Hart. Ben is the news director at WISN-TV in Milwaukee. He sat on the Legislative Study Committee that produced this bill. His background and experience have made him an excellent resource on the issue of body cameras as it relates to media access. He is well-respected among his broadcast peers and we're grateful for his service on this important topic.



To: Senate Committee on Judiciary and Public Safety
From: Badger State Sheriffs' Association
Wisconsin Sheriffs and Deputy Sheriffs Association
Date: September 17, 2019
RE: Support for Senate Bill 50

Good afternoon, I am Captain Jeff Klatt of St. Croix County here today to testify in support of Senate Bill 50. 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.

Last year, I had the opportunity to sit on the Legislative Council Study Committee on the Use of Police Body Cameras. Throughout the committee progress, I wanted 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.

After months of meetings and compromise, I am proud to report that this legislation balances a standard body camera policy for improved public safety, while protecting the public's privacy.

First, this legislation sets overarching policy standards for law enforcement agencies deploying body cameras. This includes usage and retention requirements, and disposal timelines. Our organizations provided input on the minimum 120-day retention requirement and believe this timeline reflects a reasonable standard already in place.

Second, this 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.

This legislation proactively creates protections necessary to address privacy issues that might rise from 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.

One of the goals of this policy is to encourage more law enforcement agencies to utilize the technology. Our organizations believe this legislation is necessary to ensure consistent policies and privacy protections. We thank the members of the Legislative Council Study Committee, the Chair Senator Testin, for allowing our organizations the opportunity to provide feedback. We ask for the committee's support of this legislation.

MEMORANDUM

TO: Honorable Members of the Senate Committee on Judiciary and Public Safety

FROM: Marcie Rainbolt, Government Affairs Associate

DATE: September 17, 2019

SUBJECT: Senate Bill 50 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. Senate Bill 50 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 4, lines 12-16, the bill states:

Data from a body camera used on a law enforcement officer that record 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.



PATRICK TESTIN

STATE SENATOR

REMARKS OF SENATOR PATRICK TESTIN, CHAIR, JOINT LEGISLATIVE COUNCIL STUDY COMMITTEE ON THE USE OF POLICE BODY CAMERAS, TO THE SENATE COMMITTEE ON JUDICIARY AND PUBLIC SAFETY

September 17, 2019

Good morning, Chairman Wanggaard and members of the Judiciary and Public Safety Committee. During this past interim session, I served as the chairperson of the Study Committee on the Use of Police Body Cameras. I am here today to describe the committee's activities and how we arrived at the draft that became Senate Bill 50.

The study committee was directed to review law enforcement policies regarding the use of body cameras and recommend legislation to establish uniform procedures regarding the retention and release of body camera video for state and local law enforcement agencies.

Membership of the study committee consisted of two senators, two representatives, and six public members. The public members included representatives from numerous law enforcement entities and various media and open records advocates. The study committee met four times from July to November 2018, and heard testimony from the Wisconsin Department of Justice; a company that both manufactures body cameras and stores data from cameras; law enforcement representatives that have already implemented body cameras on their officers; the National Conference of State Legislatures; and others.

The committee also had the benefit of drawing upon two different legislative proposals regarding the use of police body cameras, one which I authored, and one which was authored by the study committee Vice-Chair, Representative Taylor.

The study committee bill, Senate Bill (SB) 50, includes aspects from each of those bills and also includes language based on the scope of the committee's charge and the committee's independent study of the issues. The study committee recommended introduction of the bill draft on a vote of 9 Ayes, and 1 No, after a vote by mail ballot.

SB 50 addresses various issues related to the use of body cameras by law enforcement officers, including policies on the use of the cameras, retention by the law enforcement agency of data collected by the cameras, and release of such data to the public. Specifically, the bill includes the following key provisions:

- The bill does not require a law enforcement agency to deploy body cameras on its officers, but if an agency deploys such cameras, the bill requires the agency to adopt and administer a written policy addressing the use, maintenance, and storage of the cameras and their data.
- The bill establishes 120 days from the date of recording as the default amount of time during which body camera data must be retained by a law enforcement agency and clarifies that such an agency is the custodian of data obtained by its body cameras for purposes of the open records law. Unless the data is the subject of an open records request, the agency is not required to retain the data beyond the minimum 120-day period except under specific circumstances.
- The bill provides that body camera data is generally subject to release in response to an open records request, but it includes exceptional treatment favoring privacy over public release for data that depicts certain individuals.

I would be happy to answer any questions. Dan Schmidt, Steve McCarthy, and Ethan Lauer from Legislative Council are here with me today to also help answer any questions. Thank you for hearing my comments today.



CHRIS TAYLOR

STATE REPRESENTATIVE ♦ 76th ASSEMBLY DISTRICT

September 17, 2019

Dear Chair Wanggaard and Committee Members,

Thank you so much to Chair Wanggaard and the other members of this committee for hearing testimony on this important bipartisan bill

I was the Vice-Chair of the 2018 Legislative Council Study Committee on the Use of Police Body Cameras with Senator Testin, and I'm really proud of the work we did to craft this legislation.

We were able to receive almost unanimous support for this bill to set statewide standards and offer some consistency to law enforcement in the event body cameras are implemented in a community.

We started out on the committee pretty far apart from each other but were able to come together on some really important issues regarding the retention of camera footage and the privacy concerns of individuals. We set a general requirement that body camera data must be retained for a minimum of 120 days, but must be retained longer in the event of a critical incident such as the physical injury of an individual, an encounter that resulted in an arrest, or any encounter that includes the use of force by a law enforcement officer.

We were also able to protect the presumption that this data should be released in the event of an investigation, which is so important.

And we provided guidance on privacy concerns. Specifically, the bill provides that the privacy of a subject who is a minor, is a victim of a sensitive or violent crime, or has a reasonable expectation of privacy must be maintained and that access to such data must be provided only if the public interest is so great as to outweigh that public policy.

In these cases, the protected record subject's face and anything else that would allow the protected record subject to be identified may be redacted using pixelization or another method of redaction.

Thank you again for hearing my testimony. We are so proud of the work we did, and I hope you consider voting for SB 50.

Sincerely,
Representative Chris Taylor
76th Assembly District



PATRICK TESTIN

STATE SENATOR

REMARKS OF SENATOR PATRICK TESTIN, CHAIR, JOINT LEGISLATIVE COUNCIL STUDY COMMITTEE ON THE USE OF POLICE BODY CAMERAS, TO THE SENATE COMMITTEE ON JUDICIARY AND PUBLIC SAFETY

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I would be happy to answer any questions. Dan Schmidt, Steve McCarthy, and Ethan Lauer from Legislative Council are here with me today to also help answer any questions. Thank you for hearing my comments today.

**Testimony before the Senate Committee on Judiciary and Public Safety regarding SB 50
Sept. 17, 2019**

Say what you see.

It's a pretty simple concept. And saying exactly what 'is' -- is the basis of what Journalists are trying to achieve all over the world.

In the past, People only had a handful of sources to get their news: Newspapers, television and radio.

The traditional press generally worked hard to get the story right, because we have skin in the game.

We have to deliver the facts objectively and fairly. If we get to the irrefutable truth - the public could generally feel comfortable to trust the press.

But with the advent of the internet, information SOURCES have multiplied fast, much faster than any of us could have predicted.

With more sources of information, comes the risk of more noise and less clarity about what is "true" and what is "opinion".

The internet can blur the lines of what can be trusted as fact.

Fact, is the most important aim for news broadcasters.

But in this new age, millions of people are finding out what they know from places like Facebook, Twitter and Instagram, before any journalist has a chance to present what is truth. Local TV news teams have to move faster than ever to keep up, and sometime "correct" the messages from independent tweets, posts and blogs.

We consider it a calling.

It is our job to make sure the public has a consistent place to find real, dependable, irrefutable facts.

These days "Irrefutable" is hard to come by.

Luckily, Wisconsin has a proud tradition of Transparency.

Today I want to encourage you to take an important step in furthering that tradition.

In the past decade, 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.

While there is never a perfect answer, we believe that the ‘transparency’ that these body cameras provide, can be the quickest path to find and report “Irrefutable” facts.

As the broadcast media, that is our aim.

We want to provide, truth, community awareness, and a sober fact-based society. To that end, Pictures are worth a thousand words.

The Civil Rights movement was once centered on the images of Emmitt Till and the March on Selma where some Americans saw the unedited truth with their own eyes.

A few years ago in Milwaukee, uninformed Citizens burned down a neighborhood in response to what they **thought** was an act of police brutality.

The death of Syville Smith was a tragedy.

But it was almost 2 years later, when police released the actual body cam video in a courtroom. In the video, you saw Smith running on foot and armed with a handgun when the officer shot him.

Let’s be honest. It is never a good situation when an officer draws a gun.

Most people agree, it may have helped spare millions of dollars’ worth of damage, if the information was transparent as soon as possible.

The point I’m trying to make is, when people feel informed, it can help make tough situations more palatable. As a member of the Wisconsin Media we implore you to keep that in mind. This bill you are considering today is one built from compromise.

I was just one part of a legislative study committee led by Senator Patrick Testin and Representative Chris Taylor.

It was exciting in this current political environment to see both sides be “nimble” and “accommodating” to the opposing points of view.

The process of creating this bill was full of bipartisanship. The leaders from both parties explained how practical measures could help serve our citizens of Wisconsin for years to come. As a member of the media, our emphasis in this process was to remind the legislators how ‘transparency’ is a tenant of the Constitution. We hope the spirit of this new Body Camera legislation is a chance to let people judge for themselves the complex work of our law enforcement officers.

We are living in an era where ‘facts’ matter more than ever. As members of the media, we are responsible to keep information flowing to our communities, with as little “opinion” or

assumption as possible.

We all know that the State of Wisconsin is at a point where we need to address the privacy implications that come with modern and developing technology. We understand the challenges this technology presents for some smaller departments.

With the bill on the table we are ready to address Wisconsin's long tradition of transparency and fuse that with the standards of where the citizens of our state can expect access. Never before has a police officer crossed so many lines of privacy with cameras in tow.

We agree with the spirit of the bill, and we worked for months alongside law enforcement leaders hand-in-hand as we heard their concerns, and they heard ours.

This bill sets reasonable expectations for law enforcement to address privacy, reasonably protect investigations and the give access to the public.

I'd like to thank the Senators and Representatives who have taken this task so seriously. They have been responsible in realizing the precedent that we will set here.

Ultimately our idea is that we should stay as transparent as we can be for the good of the public.

I'd like to thank Senator Wanggaard and this committee for holding a hearing on this bill and I'd like to thank Senator Testin and Representatives Chris Taylor for their leadership of the Legislative Study Committee.

This bill is a good compromise to move forward into law.

Ben Hart
News Director
WISN-TV, Milwaukee



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 SB 50 Relating to: body cameras on law enforcement officers.
Senate Committee on Judiciary and Public Safety
September 17, 2019

Good morning, Chairman Wanggaard and members of the Senate Committee on Judiciary & Public Safety. The City of Milwaukee is pleased to offer its input on Senate Bill 50 today and posit a law-enforcement supported recommendation for the committee's consideration. We have previously shared this amendment with the Legislative Council staff, the office of Senator Testin, and the office of Senator Wanggaard,

Please know that we support the majority of this legislation 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 the conclusion of an encounter.

***Please note that the current sub. (1) would have to be relabeled as sub. (2), the current sub. (2) would have to be relabeled as 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 in which 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 1-120 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.