



January 3rd, 2024

Senator Wanggaard, Chair
Members of the Senate Committee on Judiciary and Public Safety

Testimony on 2023 Senate Bill 789

Relating to: fees for redacting certain records of law enforcement agencies.

Thank you, Chairman Wanggaard and other members of the committee, for hearing my testimony on Senate Bill 789 today. Government transparency is something we aim to uphold every day in our jobs. As government employees, we are subject to open records laws that we must abide by, and local law enforcement departments are no exception.

Many law enforcement agencies receive a fair number of open records requests, with the amount varying per agency. Larger agencies can sometimes fulfil hundreds of requests per month. Unless you have an employee dedicated solely to locating, redacting, and sending out records, this can be a particularly tedious and time consuming task for members of the department to complete.

I want to focus on one specific part of that process: redacting. Police department records contain a wide range of information that is considered exempt from open records law that would need to be redacted before the items of the fulfilled request are sent. This information includes records that would contain personally-identifiable information that is connected to a complaint or investigation or that would endanger the individual's life or safety, reveal the identity of a confidential informant, endanger the security of any state prison, jail, or other secured facilities, or compromise the rehabilitation of an individual in custody. For law enforcement agencies with body camera footage, redacting this information in videos can take on average 1.5 hours for every hour of the video. Depending on the request itself, and the total amount of requests an agency has at a given time, fulfilling the request could take up valuable agency time, especially for departments that are already understaffed.

Current law allows government officials or agencies to charge the requester of the records for the actual, necessary, and direct cost incurred to locate, if the costs exceeds \$50. This bill would allow law enforcement and corrections agencies to charge the requester a fee for the actual, necessary, and direct cost of redacting, by pixilation or other means, recorded video content disclosed in a response to the open records request. This would help law enforcement agencies recuperate some of the time and resources spent on these administrative tasks.

Being a law enforcement officer, I know firsthand how our law enforcement departments and agencies can be scrutinized, especially in the last few years. They face open records request constantly, and while they are happy to fulfill them to keep our government open and transparent, they would appreciate an opportunity to be properly compensated for that time. Thank you, and I will take any questions at this time.

Respectfully,

A handwritten signature in black ink, appearing to read "Jesse James".

Senator Jesse James
23rd Senate District
Sen.James@legis.wisconsin.gov



JOHN SPIROS

State Representative • 86th Assembly District

January 3, 2024

Testimony on Senate Bill 789

Good Afternoon Chairman Wanggaard and members of the Senate Committee on Judiciary and Public Safety, and thank you for allowing me to submit written testimony on Senate Bill 789. This bill allows law enforcement to charge a fee when redaction of video footage is necessary following an open records request.

To be clear, Senate Bill 789 does not change access to public records that are currently available under the open records laws. The bill simply allows agencies to charge the requestor a fee for the actual, necessary, and direct cost of redacting recorded video content.

Current law allows government officials or agencies to charge a fee for locating a record, reproducing or transcribing a record, copying or photographing a record, and mailing a record. When these provisions were enacted, the use of body cameras by law enforcement officers was not common.

Law enforcement agencies receive a high volume of open records requests, especially large agencies which receive hundreds of requests per month. When a department must redact video footage, for example if bystanders are in the video, it typically takes an hour and a half to redact every hour of video. This length, in addition to the volume of requests, puts a costly administrative burden on many departments.

This issue has previously come before the Wisconsin Supreme Court in a 2012 case, *Milwaukee Journal Sentinel v. City of Milwaukee*. The Court ruled that departments were unable to recuperate redaction costs given current law and precedent. However, the Court did specifically indicate that the Legislature, as the policy-making branch, has the authority to amend fee provisions. This bill does just that.

Senate Bill 789 has been crafted in close coordination with law enforcement, and is supported by the Wisconsin Chiefs of Police Association, Badger State Sheriffs' Association, Wisconsin Sheriffs and Deputy Sheriffs Association, and the Fraternal Order of Police.

Again, thank you Chairman Wanggaard and committee members for allowing me to submit testimony on this common sense bill to support law enforcement.



To: Members, Senate Committee on Judiciary and Public Safety
From: Badger State Sheriffs' Association (BSSA)
Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA)
Date: January 3, 2024
RE: Testimony in Support of Senate Bill 789

The Badger State Sheriffs' Association and Wisconsin Sheriffs and Deputy Sheriffs Association respectfully submit our support for SB 789. This bill will allow law enforcement and corrections agencies to recoup costs associated with redacting recorded content in response to a public records request.

Complying with public record requests in accordance with the Open Records Law is a common occurrence for law enforcement agencies. As technology has become more mainstream, law enforcement agencies now receive numerous requests for video of body cameras and dash cam footage. Redaction involves editing or obscuring certain parts of a video, such as faces, license plates, or other identifying information, to prevent the disclosure of sensitive details or to ensure compliance with privacy laws. This process helps balance the need for transparency with the need to protect individuals' identities and sensitive information.

Redacting recordings can be a time-consuming process. Redaction software tools can range in price and capabilities, and the redaction process can be complex depending on the detail and volume of requests. For example, one Wisconsin sheriff recently reported that they are being inundated with requests for squad/body camera video from YouTubers who make money by sharing law enforcement videos on their YouTube channel. In fact, the YouTubers submitted six requests over the course of one night! These types of requests put a huge strain on resources and several agencies have had to hire new clerical staff to comply. In another recent example, a Sheriff stated that after a fatal crash, his agency spent a tremendous amount of time redacting portions of the video to protect the victim.

SB 789 will ensure law enforcement agencies can recoup costs associated with the "actual, necessary, and direct cost of redacting." This will help alleviate the financial strain and support the resources to fulfil the requests to comply with constitutional, statutory, or common law.

Thank you for your consideration of this bill.

The Badger State Sheriffs' Association represents all of Wisconsin's 72 elected county sheriffs. The Wisconsin Sheriffs and Deputy Sheriffs Association is a professional organization representing over 1,000 members, including sheriffs, deputies, and jail officers. Our organizations have a joint legislative committee and work closely on public safety issues of concern to our members.



January 3, 2024

To: Chairman Wanggaard and Members of the Senate Committee on Judiciary and Public Safety

From: Wisconsin Chiefs of Police Association

Re: Support Senate Bill 789, Fees for redacting certain records of law enforcement agencies

Chairman Wanggaard and members of the committee, thank you for your willingness to hold a hearing on this legislation. We would also like to thank Senator James and Representative Spiros for authoring this legislation.

Senate Bill 789 would allow law enforcement agencies to charge a fee for staff time when redaction of body camera footage is required, by state statute, when processing an open records request. This proposal makes no other changes to the current statutorily defined open records process and does not impact access to records.

Current law prescribes when fees can be charged while processing an open records request. Fees may be charged for locating a record, reproducing or transcribing a record, copying or photographing a record, and mailing a record.

Many law enforcement agencies receive a high volume of open records requests. Some larger agencies receive hundreds of monthly requests, often including requests for multiple videos. Video redaction typically takes 1.5 hours for every hour of video.

The volume of requests involving video footage has been increasing. There has been a corresponding increase in staff time dedicated to processing and fulfilling this increased workload. Some departments have reported losing an average of \$8,000 per month in staff time. While others now have staff solely dedicated to fulfilling requests.

We are before you with this request after the 2012 Wisconsin Supreme Court ruling in *Milwaukee Journal Sentinel v. City of Milwaukee*. The Justices found that “*Such costs do not fit within the fees set forth in Wis. Stat. § 19.35(3)(a)-(d).*”

Law enforcement strongly believes in and supports an individual’s ability to receive information. This legislation does not impact access to this information. What the legislation does is include video redaction of statutorily prohibited information in the list of actions that are allowable charges when an open records request is fulfilled.



I want to be clear; my colleagues and I are dedicated to keeping our communities safe. The taxpayer dollars dedicated to fulfilling these time-consuming requests are dollars that cannot be allocated to officer training or other public safety investments to improve and protect our communities.

In addition to the Chiefs, this legislation is supported by the Badger State Sheriffs' Association, the Wisconsin Sheriffs and Deputy Sheriffs Association, and the Wisconsin State Fraternal Order of Police.

Thank you again for your attention to this matter and I would be happy to take questions at this time.



207 East Buffalo Street, Ste 325
Milwaukee, WI 53202
(414) 272-4032
aclu-wi.org

Wisconsin

January 3, 2024

Chair Wanggaard, Vice-Chair Jacque, and Honorable Members of the Senate Committee on Judiciary and Public Safety:

The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide written testimony on Senate Bill 170, Senate Bill 384, and Senate Bill 789.

ACLU-WI Supports SB-170

In Wisconsin, approximately 1.4 million people have a criminal record, which can result in many collateral consequences that can make successful re-entry a daunting task.¹ People often struggle mightily to land a stable job, secure housing, access public benefits, get an education, and more. A Wisconsin Watch report cites statistics from the Prison Policy Initiative which found that while 93% of formerly incarcerated people between the ages of 25 and 44 actively seek work, they are five times more likely to be unemployed than the average American.² Taking into account the scope and scale of our criminal legal system, mass joblessness among the 1.4 million Wisconsinites with a criminal record has profound implications for our economy.

The thoughtful work and recommendations of the Legislative Council Study Committee on Increasing Offender Employment Opportunities culminated in a package of legislation centering around addressing these obstacles faced by Wisconsinites transitioning back to the community from incarceration. As multiple presentations during Study Committee meetings illuminated, employment reduces recidivism, and incentives for individuals to seek employment matter. SB-170 is one necessary component of that package that will increase self-sustaining job opportunities for formerly incarcerated people in our state and keep our communities safe by reducing recidivism.

The Earned Release Program (ERP) has existed in some form in Wisconsin since the 1980s. Under current law, a person may be eligible for reduced confinement time converted to community supervision time if they are incarcerated for a crime other than a specified violent crime, the sentencing court deems the person eligible, and the person successfully completed a Department of Corrections (DOC) substance use treatment program.

¹ "A Fresh Start: Wisconsin's Atypical Expungement Law and Options for Reform," Wisconsin Policy Forum (June 2018), <https://wispolicyforum.org/research/a-fresh-start-wisconsins-atypical-expungement-law-and-options-for-reform/>.

² "Convictions bar Wisconsinites from many jobs, making re-entry 'a real struggle,'" Wisconsin Watch (May 29, 2021), <https://wisconsinwatch.org/2021/05/convictions-bar-wisconsinites-from-many-jobs-making-re-entry-a-real-struggle/>.

SB-170 expands this existing program to eligible individuals who complete an employment readiness training program. If the individual petitions the sentencing court to determine eligibility to participate in an employment readiness training program and the court determines the individual is eligible to participate, completion of the program provides the incentive of converting confinement time to community supervision time provided that they have served at least two-thirds of their confinement time of a bifurcated sentence prior to their release to community supervision.

Under the bill, Wisconsin would join Arkansas, California, Colorado, Delaware, Florida, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Rhode Island, South Carolina, Tennessee, Texas, and West Virginia in authorizing a reduction of confinement time for completion of vocation or educational training programs.³ The ACLU of Wisconsin appreciates the Study Committee's work and strongly urges committee members to support this legislation.

ACLU-WI Opposes SB-384

There are roughly 159,000 immigrants living in Wisconsin who are not yet U.S. citizens—many have been living here for years or even decades.⁴ Their immigration status runs from permanent resident, DREAMER, refugee, to holders of work and student visas, as well as those who are undocumented. They work in a wide variety of jobs, including being the backbone of the state's dairy and farming industry. They live in communities throughout Wisconsin and are our neighbors, friends and family members. And all of them run the risk of being deported through some contact with the criminal justice system. In addition to exacerbating Wisconsin's jail-to-deportation pipeline,⁵ SB-384 would invite racial profiling and ultimately undermine public safety by diminishing immigrant communities' trust in law enforcement.

Similar to Arizona's "show me your papers" law that inspired it, SB-384 would create a scheme requiring local law enforcement officers to verify the immigration status of individuals stopped by police and cited, arrested, or charged, regardless of the nature of the allegations, functionally compelling all people in the state of Wisconsin, citizens and non-citizens alike, to carry identification documents on them at all times, just in case they are cited by police officers and asked to prove their citizenship or immigration status.

³ "Good Time and Earned Time Policies for People in State Prisons," National Conference of State Legislatures (December 2020), <https://documents.ncsl.org/wwwncsl/Criminal-Justice/Final-Sentence-Credit-50-State-Chart-2020.pdf>.

⁴ "immigration Data Profile for State of Wisconsin," Migration Policy Institute, <https://www.migrationpolicy.org/data/state-profiles/state/demographics/WI>.

⁵ "Report: Wisconsin's Jail-to-Deportation Pipeline," ACLU of Wisconsin (August 25, 2022), <https://www.aclu-wi.org/en/publications/report-wisconsins-jail-deportation-pipeline>.

SB-384 would require law enforcement officers to verify the immigration status of anyone who is arrested for or charged with any crime or cited for any civil infraction that may result in the imposition of a forfeiture. As the bill is written, the basis for the arrest or citation triggering SB-384's verification requirements could include allegations of disorderly conduct, truancy, underage drinking, or not wearing a seat belt. For context, municipal court statistics published by the Wisconsin Court System estimate a total of 390,004 municipal citations for civil infractions were issued in 2022 alone.⁶ The Wisconsin Department of Justice Uniform Crime Reporting Data indicates 190,300 arrests were made across the state in 2022.⁷

If an officer alleges that a person is not lawfully present based on reasonable suspicion, and the person cannot provide documentary proof of lawful presence, the officer must attempt to verify the person's immigration status with the federal government. Even if someone who is stopped by police has one of the acceptable forms of identification, local law enforcement officers are not trained to identify the validity of the items outlined in Section 1 of the bill.

While the text of the bill states, "A law enforcement officer may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the U.S. and Wisconsin Constitutions," in practice SB-384 would absolutely invite racial profiling. Law enforcement might find a reason to stop people for minor infractions based on the way they look, and then demand to see their papers. Alternatively, enforcement may stop them for an unbiased reason and then, based on appearance or accent, demand their papers and decide to subject them to a lengthy investigation of their immigration status.

By telling police officers to investigate the citizenship or immigration status of anyone they stop when they have "reasonable suspicion," the law invites police officers to rely on stereotypes when determining who is and who is not in the country lawfully. Police officers are put in the position of relying on race, ethnicity, or accent to decide whose status to investigate.

Ultimately, SB-384 undermines public safety by diminishing trust in law enforcement by immigrants and others who may be presumed to be "foreign." Immigrants will not come forward with vital information about crimes for fear that they or their family members will be subject to detention and investigation. Everyone's safety, including citizens', is put in jeopardy when victims and witnesses don't feel safe coming forward with critical information about crimes committed against them, their families, or members of the larger community. Police depend on the cooperation and trust of these communities to ensure public safety. If enacted,

⁶ "Municipal court statistics," Wisconsin Court System, <https://www.wicourts.gov/publications/statistics/municipal/municipalstats.htm>.

⁷ "UCR Arrest Data," Wisconsin Department of Justice, <https://www.doj.state.wi.us/dles/bjia/ucr-arrest-data>.

the bill would prohibit local law enforcement agencies and communities from maintaining policies that prioritize public safety and welfare over immigration enforcement.

ACLU-WI Opposes SB-789

Under current law, a government official or agency may charge a fee to a requester of public records for the actual, necessary, and direct cost incurred to locate, if the cost exceeds \$50, copy, and mail public records in response to the request. Under the ruling in the 2012 Wisconsin Supreme Court case *Milwaukee Journal Sentinel v. City of Milwaukee*, state public records law does not allow an authority to impose fees on a requester for the costs of redacting information from a record.⁸ As the opinion in the case highlighted, fees related to obtaining public records impacts access:

This case is not about a direct denial of public access to records, but the issue in the present case directly implicates the accessibility of government records. The greater the fee imposed on a requester of a public record, the less likely the requester will be willing and able to successfully make a record request. Thus, the imposition of fees limits and may even serve to deny access to government records. In interpreting the Public Records Law, we must be cognizant that the legislature's preference is for “complete public access” and that the imposition of costs, as a practical matter, inhibits access.⁹

The opinion also included text of the Wisconsin Public Records Law “Declaration of Policy”¹⁰ in its entirety.

SB-789 would authorize law enforcement and corrections agencies to charge a requester a fee for the actual, necessary, and direct cost of redacting, whether by pixelization or other means, recorded video content disclosed in response to a public records request to the extent redaction is necessary to comply with applicable constitutional, statutory, or common law. While enactment of this proposal would change the law interpreted in the case above, it would not change the reality that additional imposition of fees limits and may even serve to deny access to government records in the possession of law enforcement and corrections agencies.

Records—including reports and body camera footage—containing evidence of officer misconduct, disciplinary records, or officer use of force or other critical incidents are implicated by SB-789. While the proliferation of police worn body cameras was intended to increase transparency and accountability, especially in circumstances when an individual is killed by law enforcement, a recent investigation by Pro Publica found that release of footage had not occurred over a year after the incident in the

⁸ *Milwaukee Journal Sentinel v. City of Milwaukee*, 341 Wis.2d 607 (2012).

⁹ *Id.* at 613.

¹⁰ Wis. Stat. § 19.31.

vast majority of cases.¹¹ In some circumstances, the video was available but at a cost prohibitive fee.

In Wisconsin, one detective explicitly acknowledged that excessive fees are used as a tactic to deter public requests for police records. In an email he stated, “He said that trying to fight the release of the personnel file would be a waste of time/money and it’s rarely successful. He said many departments combat the issue by charging a high price to fill those requests, so maybe that’s something to look at in the future.”¹²

Lack of transparency and police accountability creates further distrust in law enforcement, making community engagement with law enforcement more fraught and less effective. Ultimately, proposals like SB-789 could allow law enforcement to shirk their obligation to be publicly accountable, and further erode the belief that police protect communities rather than their only their own.

¹¹ Umar Farooq, “Body Cameras Were Sold as a Tool of Police Reform. Ten Years Later, Most of the Footage is Kept From Public View,” Pro Publica (December 18, 2023),

<https://www.propublica.org/article/body-camera-videos-police-killings-remain-hidden-from-public>.

¹² Isiah Holmes, “Internal email suggests Tosa PD use high fees to ‘combat’ record requests,” Wisconsin Examiner (November 23, 2020), <https://wisconsinexaminer.com/2020/11/23/internal-email-suggest-tosa-pd-use-high-fees-to-combat-records-requests/>.