

2015 HOUSE JUDICIARY

HB 1264

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

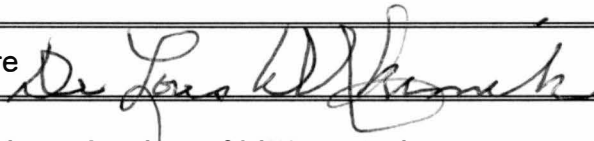
HB 1264

1/28/2015
22735

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to exempting law enforcement officer body camera images from open records requirements.

Minutes:

Testimony #1

Vice Chairman Karls: Opened the hearing with testimony in support.

Rep. K. Koppelman: The police chief in West Fargo requested this bill. The bill before you is very simple. It says: the idea behind the bill is some police officers are using body cameras and some are requiring them and as the technology moves forward and this become available there are a lot of good uses and reasons to have this kind of thing of video for public or department use. If you put a body camera onto a police officer in every facet of their duty you can imagine the kinds of things they might record.

Rep. Lois Delmore: I was happy to sign on this bill because I think discretion is important. If grandma was nude and holding a gun, but it may be necessary in some instances. Do you think this bill will address that?

Rep. K. Koppelman: I don't think anything in this bill would restrict the use of law enforcement or the courts for those kinds of records so in a case like that where grandma shoots the police officer obviously that is the commission of a crime and that will be a record they will use for that purpose.

Rep. Lois Delmore: I don't know how the law reads on accident victim. Is there protection for an accident victim? Would that be covered in in this bill as well and do we exempt some of that now?

Chairman K. Koppelman: There already are some protections already.

Rep. L. Klemin: This is an exempt record as opposed to confidential which as I understand it is within the discretion of the entity holding that record to determine whether to release it or not.

Rep. K.Koppelman: Yes you are right. It would be the discretion of the law enforcement agency.

Rep. Brabandt: Exempt one is where there is discretion; confidential is not. I wondered about line 8.

Rep. K.Koppelman: The courts have identified where you have

Rep. D. Larson: When I read this bill I was thinking about when an officer goes into the restroom. It didn't even occur to me that there would be a lot of places where an officer goes to attend to that would want some privacy. With officers having to have their cameras on all the time if that is what ends up happening; how many ways can we try to exempt this for the respect for families? This camera stuff opens up so many new areas? Are you trying to handle just in a private place and then other things to address other things?

Rep. K. Koppelman: Yes. In the public if you were pulled over by a policeman. I understand there are some places where they are already using them. Law enforcement has not asked for those to be exempt or at discretion, but only those private places.

Mike Reitan, Chief of Police of West Fargo: (See testimony #1) (10:00-14:07)

Rep. K. Wallman: If the federal government is pushing to require this have other states pushing to keep some of these records private?

Mike Reitan: I did not do any checking with other states. I think it is a genuine private issue that needs to be addressed. Once we have created that public record now as it currently stands we would be obligated to release those.

Rep. Lois Delmore: Since it is in your discretion and grandma had a gun and shot an officer or whatever; would that eventually become part of public record because it is something you would need to use in court. How would that be handled?

Mike Reitan: As a criminal case that record is already protected by other parts of the statute. As the discussion was happening around this bill I reached out to Mr. McDonald and thought the media would certainly have an interest in this bill and we had the discussion on private place and trying to define that. We felt we would leave it as a private place. The Attorney General can make a final determination on the records if requested. We can only control the records we possess. If someone is standing at an accident alongside of us and filming we cannot control that.

Chairman K.Koppelman: In that same section of law it lists crime scene images of a victim of a homicide or sex crime or any image of a minor victim of any crime as an exempt record as defined in Subsection 5.

Vice Chairman Karls: I saw that the security guards at West Acres Mall in Fargo are all wearing body cameras. I wondered where they put them. Are they covered under this?

Mike Reitan: In the mall in general it would be a public recording and there would be no exemption under this. However bathrooms are considered private areas.

Chairman K.Koppelman: Are the security guards law enforcement?

Mike Reitan: No they are not.

Rep. L. Klemin: Do you use these body cameras in West Fargo Police Department.

Mike Reitan: No I do not use them. Grand Forks is deploying them at this time. I am on the fence on the technology and I think we need to look closely at the privacy issue before we begin to issue them to our officers.

Rep. L. Klemin: This technology with 1,000's of police officers using these body cameras there has to be some tremendous storage issues and how do you excess it.

Mike Reitan: Within the agency they have set rules on how long to retain these records. It also becomes a tremendous cost.

Opposition: None

Neutral:

Jack McDonald: ND Newspaper and ND Broadcaster Assoc.: This is new technology and it is also a question of the usefulness of it. What are you doing to use the 1,000s of 1,000s of video? The cameras can be turned on and off so they are not recording 24 hours a day. This is a good start to put something in place. Minnesota is not even this far along.

Rep. L. Klemin: It says body camera or similar device. Would this cover camera on drones?

Jack McDonald: It probably would and cell phone camera and things like that.

Chairman K.Koppelman: You talked about officers having discretion when to turn them on or off. I thought the purpose was to have these things on or if they have discretion.

Jack McDonald: I am sure the individual police officers will have to set by the departments.

Chairman K.Koppelman: So something like this might be wise to have it on all the time except when I went to the bathroom and then I forgot to turn it off and now that is a record. Am I going to get in trouble to try and erase that?

Jack McDonald: Yes there is a place for this law with discretion.

Chairman K.Koppelman: Say you forgot to turn it off maybe I forgetting to turn it on. Am I getting in trouble?

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Jack McDonald: I imagine it would.

Hearing closed.

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1264
1/28/2015
23256

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman K.Koppelman: Discussed HB 1264.

Rep. Mary Johnson: I contacted Lt. Love in the Grand Forks Police Department who told me yes they can shut them off. Can they erase it. There is nothing prohibiting them from erasing them, but they don't because it becomes an evidentiary issue.

Do Pass Motion Made by Rep. L. Klemin: Seconded by Rep. Mary Johnson:

Roll Call Vote: 12 Yes 0 No 1 Absent **Carrier: Rep. Mary Johnson:**

Date: 1-28-15
Roll Call Vote #:1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL NO. HB 1264**

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. L. Klemin: Seconded By Rep. Mary Johnson:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson	X	
Vice Chairman Karls	X		Rep. Delmore	X	
Rep. Brabandt	X		Rep. K. Wallman	X	
Rep. Hawken	X				
Rep. Mary Johnson	X				
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson	X				
Rep. Maragos	----				
Rep. Paur	X				

Total (Yes) 12 No 0

Absent 1

Floor Assignment: Rep. Mary Johnson:

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1264: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1264 was placed on the
Eleventh order on the calendar.

2015 SENATE JUDICIARY

HB 1264

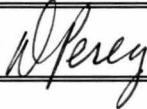
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1264
3/17/2015
24955

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

1,2

Ch. Hogue: We will open the hearing on HB 1264.

Mike Reitan, Chief of Police, West Fargo Police Department, in support, attached testimony #1, as amended in HB 1264 a recording in a private place would be an exempt record. Such recording could be released under a request only after an assessment of the recording has been completed to ensure private interests are protected. I would ask you amend this bill to add similar recordings created by firefighters also be considered as exempt recordings.

Sen. Armstrong: we talked about adding EMS services but we don't have to, right?

Mr. Reitan: I checked with them, under HIPAA they felt they were protected and the information would not be available to the public.

Sen. Casper: are you already using body cameras, if so under what authority or are you planning to use them?

Mr. Reitan: there is no federal legislation at this time directing that. Following Ferguson they came out with language strongly suggesting that law enforcement agencies do that. As far as my agency I am not comfortable with it until we take care of the privacy issues and concerns. ACLU is asking for body cameras to make sure police behave and followed up with their concern about citizen's privacy. There are a lot of issues and debates. The only law enforcement agency that I am aware of is the Grand Fork Police Dept.

Chairman Hogue: do the Highway Patrol use body cameras?

Mr. Reitan: I don't believe so. There are cameras in the car that capture things in public places. I fully support vehicle and mall cameras.

Sen. Luick: How long of a recording time, battery life do the cameras have?

Mr. Reitan: depends on manufacturer, 2-3 hrs. , information stored depends on the quality of the video we want to capture

Sen. Luick: what is the length of time you have to keep the recording?

Mr. Reitan: by policy, and an adapted best practice thru the international chiefs of police association, they indicate 90 days retention, unless it will be used in a case then kept until case is disposed of as part of the criminal record. If there is going to be an internal investigation about officer misconduct it will be held as long as needed until issue is solved.

Rep. K Koppelman: there are circumstances where some of these devices could record things we don't want to be public, the bill makes them exempt records which means it is at the discretion of the entity holding the records. It would be up to the law enforcement agency what can be released or not.

Sen. Luick: the agency will decide for how long kept, what happens if there is something the department decides the officer did and the officer takes this out.

Rep K Koppelman: You raise a good question but I don't know the answers.

Sen. Armstrong: Nothing in this bill precludes a defense attorney of the court from having these documents.

Rep K Koppelman: not at all and that is my point, if needed for court case the records will be turned over at their request.

Jack MacDonald: ND Newspaper Assn., ND Broadcasters Assn. we are not supporting any closure of records; but in this case it seems reasonable and there is a reason for the exemption. I can see a problem coming down the road and that is how do you sort and archive these records

No additional testimony. Hearing closed. We will get the amendment in draft form.

Chairman Hogue distributed Sen. Armstrong's amendment.

Senator Armstrong moved to adopt amendment (see attached #2).

Sen. Grabinger seconded.

No further discussion. **Voice vote, all ayes, none opposed. Amendment is adopted.**

Sen. Grabinger moved do pass as amended.

Sen. Casper seconded the motion.

Sen. Hogue: do we need to define what a private place is?

Sen. Luick: isn't that in statute already?

Sen. Hogue: when we start creating exceptions to our open records, open meetings law we have to be especially careful. We have to decide what a private place is. **Let the issue lie now.**

Roll call vote was taken: Yes 6 No 0 Absent 0

Carrier: Sen. Luick

15.0676.01001
Title.02000

Adopted by the Judiciary Committee

March 17, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1264

Page 1, line 2, after "officer" insert "and firefighter"

Page 1, line 7, after "officer" insert "or a firefighter"

Renumber accordingly

JD
3/17/15

HB 1264
3/17/15

Date: 3/17/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 1264

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Armstrong Amendment (see #2)

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Seconded By

Motion Made By Sen. Armstrong

Sen. Grabinger

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion Carried

Date: 3/17/15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 1264

Senate

JUDICIARY

Committee

☐ Subcommittee

Amendment LC# or Description: 15.0676.01001 02000

Recommendation: ☐ Adopt Amendment

☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☒ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Grabinger Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Luick

REPORT OF STANDING COMMITTEE

HB 1264: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1264 was placed on the Sixth order on the calendar.

Page 1, line 2, after "officer" insert "and firefighter"

Page 1, line 7, after "officer" insert "or a firefighter"

Renumber accordingly

2015 TESTIMONY

HB 1264

#1
HB1264
1-28-15
pg 1

House Bill 1264

Sixty-fourth Legislative Assembly

Testimony of Mike Reitan, Chief of Police, West Fargo Police Department

Good morning Chairman Koppelman, Vice Chair Karls and members of the Judiciary Committee. My name is Mike Reitan and I am the Chief of Police of the West Fargo Police Department. I ask your support of House Bill 1264.

Every day you are subjected to being recorded in a public location whether it is here in the Capitol, at the mall or in the grocery store. Such recordings have become part of everyday life. A new era is upon us in the large scale push for law enforcement agencies to deploy body worn cameras to be worn by officers conducting their normal duties. President Obama and Attorney General Holder are directing all law enforcement agencies to require their officers to wear and use body cameras or similar recording devices. Certain sectors of the public and some activist groups are also asking for the same.

Law enforcement officers respond to many different types of calls where there is an interaction between the officer and a citizen within the person's home or 'private place'. The call may be a medical call; a call relating to a mental health issue for the person or another family member; questions about a child's behavior; or a family matter the caller wishes to discuss. The call may also be a law enforcement action relating to an active criminal investigation, a search or a physical arrest. At times, because of the private location of a home, officers will encounter adults or children who may be nude or semi-nude.

Law enforcement officers will also enter restricted areas within a business or a commercial setting on calls for assistance. Within those areas there may be found protected personal information such as financial information or trade secret information which may be found in manufacturing or agricultural research and development facilities. The business information itself may be afforded protected under NDCC 44-04 but could potentially be disclosed through a request for a body camera recording.

Under the current open records law visual and audio recordings made through the use of a body camera would be available to public upon request once the information is no longer part of a criminal intelligence record or investigative case. As amended in HB 1264 a recording made in a private place would be an exempt record. Such a recording could be released under a request but only after an assessment of the recording has been completed to ensure your private interests are protected.

I thank you for your time and ask for your fair consideration in support of HB 1264. I stand before you to respond to any questions you may have.

Michael D Reitan
Chief of Police, West Fargo

#1-1

House Bill 1264

Sixty-fourth Legislative Assembly

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Following passage in the House it was suggested similar recordings created by fire fighters also be considered an exempt recording. I would respectfully ask your fair consideration of making such an amendment to HB1264.

I thank you for your time and ask for your support of HB 1264. I stand before you to respond to any questions you may have.

Michael D Reitan

Chief of Police, West Fargo

HB 1264
3/17/15

#2-1
3/17/15

PROPOSED AMENDMENTS TO HB 1264
(Sen. Armstrong)

1 A BILL for an Act to create and enact a new subsection to section 44-04-18.7 of the
2 North Dakota Century Code, relating to exempting law enforcement officer and firefighter
3 body camera images from open records requirements.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new subsection to section 44-04-18.7 of the North Dakota
6 Century Code is created and enacted as follows:

7 An image taken by a law enforcement officer or a firefighter with a body
8 camera or similar device and which is taken in a private place is an
9 exempt record.