SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 86

(SENATE AUTHORS: LATZ, Kent and Hall)

DATE	D-PG	OFFICIAL STATUS
01/12/2015	54	Introduction and first reading
		Referred to Judiciary
01/29/2015	139a	Comm report: To pass as amended
		Rule 21, referred to Rules and Administration
02/19/2015	340	Comm report: Amend previous comm report
		Re-referred to Transportation and Public Safety
03/04/2015	517a	Comm report: To pass as amended and re-refer to Finance
05/06/2015	3306	Comm report: To pass
	3392	Second reading
05/07/2015	3420a	Special Order: Amended
	3424	Motion did not prevail to lay bill on the table
	3428	Third reading Passed
05/15/2015	3569	Returned from House with amendment
	3569	Senate not concur, conference committee of 3 requested
	3575	Senate conferees Latz; Kent; Hall
05/16/2015	3592	House conferees Cornish; Scott; Schoen
05/17/2015	3810c	Conference committee report, delete everything
		Senate adopted CC report and repassed bill
	3815	Third reading
	4254	House adopted SCC report and repassed bill
		Presentment date 05/20/15
		Governor's action Approval 05/23/15
		Secretary of State Chapter 67 05/23/15

A bill for an act

relating to data practices; classifying data and providing procedures related to automated license plate readers and portable recording systems; amending Minnesota Statutes 2014, section 13.82, subdivision 15, by adding subdivisions; proposing coding for new law in Minnesota Statutes, chapter 626.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2014, section 13.82, subdivision 15, is amended to read:

Subd. 15. **Public benefit data.** Any law enforcement agency may make any data classified as confidential or protected nonpublic pursuant to subdivision 7 or as private or nonpublic under subdivision 32 accessible to any person, agency, or the public if the agency determines that the access will aid the law enforcement process, promote public safety, or dispel widespread rumor or unrest.

Sec. 2. Minnesota Statutes 2014, section 13.82, is amended by adding a subdivision to read:

Subd. 31. **Automated license plate reader.** (a) As used in this subdivision, "automated license plate reader" means an electronic device mounted on a law enforcement vehicle or positioned in a stationary location that is capable of recording data on, or taking a photograph of, a vehicle or its license plate and comparing the collected data and photographs to existing law enforcement databases for investigative purposes. Automated license plate reader includes a device that is owned or operated by a person who is not a government entity to the extent that data collected by the reader are shared with a law enforcement agency.

(b) Unless the data are public under subdivision 2, 3, or 6, or active criminal investigative data, the following data collected by an automated license plate reader are private data on individuals or nonpublic data:

(1) license plate numbers;

(2) date, time, and location data on vehicles; and

(3) pictures of license plates, vehicles, and areas surrounding the vehicles.

(c) Notwithstanding section 138.17, data collected by an automated license plate reader must be destroyed:

(1) 90 days from the time of collection, if the data are classified under paragraph (b), provided that if the law enforcement agency has received a written request that the data be preserved from an individual who is the subject of a pending criminal charge or complaint that includes the case or complaint number and a statement that the data may be used as exculpatory evidence, the data must not be destroyed until the criminal charge or complaint is resolved or dismissed; or

(2) upon request of a program participant under chapter 5B, at the time of collection or upon receipt of the request, whichever occurs later, unless the data are active criminal investigative data.

Data on a request of a program participant under clause (2) are private data on individuals. If data collected by an automated license plate reader are shared with another law enforcement agency, the agency that receives the data must comply with the data destruction requirements of this paragraph.

(d) A law enforcement agency that installs or uses an automated license plate reader must maintain a log of its use, including:

(1) specific times of day that the reader actively collected data;

(2) the aggregate number of vehicles or license plates on which data are collected for each period of active use and a list of all state and federal databases with which data that were collected were compared unless the existence of the database itself is not public;

(3) for each period of active use, the number of vehicles or license plates in each of the following categories where the data identify a vehicle or license plate that has been stolen, a warrant for the arrest of the owner of the vehicle or an owner with a suspended or revoked driver's license, or are active investigative data; and

(4) for a reader at a stationary location, the location at which the reader actively collected data.

Data in a log required under this paragraph are public.

(e) In addition to the log required under paragraph (d), the law enforcement agency must maintain records showing the date the data were collected and the applicable

classification of the data. The law enforcement agency shall arrange for an independent, triennial audit of the records to determine whether data currently in the records are classified and destroyed as required under this subdivision and to verify compliance with paragraph (f). Data in the records required under this paragraph are classified as provided in paragraph (b). The results of the audit are public.

(f) A law enforcement agency must comply with sections 13.05, subdivision 5, and 13.055 in the operation of automated license plate readers and access to the data. The responsible authority for a law enforcement agency must establish written procedures to ensure that law enforcement personnel have access to the data only if authorized in writing by the chief of police, sheriff, or head of the law enforcement agency, or their designee, to obtain access to data collected by an automated license plate reader for a legitimate, specified, and documented law enforcement purpose. Access to the data must be based only on a reasonable suspicion that the data are pertinent to a criminal investigation, and a request for access must include a record of the factual basis for the request and any associated case number, complaint, or incident that is the basis for the request. Notwithstanding subdivision 24, a law enforcement agency may share data that are classified under paragraph (b) with another law enforcement agency only if that agency complies with the requirements of this paragraph.

(g) Within ten days of the installation or current use of an automated license plate reader or the integration of automated license plate reader technology into another surveillance device, a law enforcement agency must notify the Bureau of Criminal Apprehension of any fixed location of a stationary automated license plate reader or other surveillance device with automated license plate reader capability and, if applicable, if the agency uses any other automated license plate reader or any other type of electronic device or technology that collects data on motor vehicles or occupants that may be used for identification purposes or for tracking activities of motor vehicles or individuals. The Bureau of Criminal Apprehension must maintain a list of law enforcement agencies using automated license plate readers, including locations of any fixed stationary automated license plate readers or other surveillance devices with automated license plate reader capability. Except to the extent that the bureau, upon request from the responsible authority of the law enforcement agency, determines that the location of a specific reader is security information, as defined in section 13.37, this list is accessible to the public and must be available on the bureau's Web site. In addition, the law enforcement agency must maintain a list of the current and previous locations, including dates at those locations, of any fixed stationary automated license plate readers or other surveillance devices with automated license plate reader capability used by the agency, which is accessible to the public.

EFFECTIVE DATE. This section is effective the day following final enactment. Data collected before the effective date of this section must be destroyed, if required by this section, no later than 15 days after the date this section becomes effective.

Sec. 3. Minnesota Statutes 2014, section 13.82, is amended by adding a subdivision to read:

Subd. 32. **Portable recording systems.** (a) As used in this subdivision:

(1) "portable recording system data" means audio or video data collected by a device worn by a peace officer that is capable of both video and audio recording of the officer's activities and interactions with others or collecting digital multimedia evidence as part of an investigation;

(2) "public place" means a location that is accessible to the general public where individuals do not have a reasonable expectation of privacy with respect to audio or video recording of their activities and interactions with others; and

(3) "redact" means to blur video or distort audio so that the identity of the subject in a recording is obscured sufficiently to render the subject unidentifiable.

For purposes of this subdivision, the peace officer who collected the portable recording system data or an officer whose image or voice is recorded is a subject of the data, regardless of whether the officer is or can be identified by the recording.

(b) Portable recording system data are private data on individuals or nonpublic data unless the recording occurred in a public place and:

(1) the incident involved the use of a dangerous weapon by a peace officer or use of physical coercion by a peace officer that causes at least substantial bodily harm, as those terms are defined in section 609.02; or

(2) a subject of the data requests that the data be accessible to the public, provided that data on a subject who is not a peace officer and who does not consent to the release must be redacted, if practicable.

A law enforcement agency may withhold access to data that are public under this paragraph or redact the data to the extent that the data are clearly offensive to common sensibilities.

(c) Notwithstanding paragraph (b):

(1) portable recording system data that are criminal investigative data are governed by subdivision 7, except that inactive criminal investigative data are governed by paragraph (b);

(2) portable recording system data that are public personnel data under section 13.43, subdivision 2, paragraph (a), clause (5), are public; and

(3) data that are not public data under other provisions of this section retain that classification.

(d) Any person may bring an action in the district court located in the county where portable recording system data are being maintained to authorize disclosure of data that are private or nonpublic under this subdivision. The person bringing the action must give notice of the action to the law enforcement agency and subjects of the data, if known. The law enforcement agency must give notice to other subjects of the data, if known, who did not receive the notice from the person bringing the action. The court may order that all or part of the data be released to the public or to the person bringing the action. In making this determination, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the law enforcement agency, or to a subject of the data. The data in dispute must be examined by the court in camera. This paragraph does not affect the right of a defendant in a criminal proceeding to obtain access to portable recording system data under the Rules of Criminal Procedure.

(e) A law enforcement agency that uses portable recording systems must maintain the following information, which is public data:

(1) the total number of devices owned or maintained by the agency;

(2) a daily record of the total number of devices actually deployed and used by officers and, if applicable, the precincts in which they were used;

(3) the law enforcement agency's policies and procedures for use of portable recording systems; and

(4) the total amount of recorded audio and video data collected by portable recording systems and maintained by the agency and the agency's retention schedule for the data and procedures for destruction.

(f) Notwithstanding section 138.17, portable recording system data that are not active or inactive criminal investigative data and are not described in paragraph (g) must be maintained for at least 90 days and destroyed within one year of the date the data were collected.

(g) Portable recording system data must be maintained for at least one year and destroyed within three years of the date the data were collected if:

(1) the incident involved the use of a dangerous weapon by a peace officer or use of physical coercion by a peace officer that causes at least substantial bodily harm, as those terms are defined in section 609.02; or

(2) a formal complaint is made against a peace officer related to the incident.

(h) If a subject of the data submits a written request to the law enforcement agency to retain portable recording system data beyond the applicable retention period for possible

evidentiary or exculpatory use in a future proceeding related to the circumstances under which the data were collected, the law enforcement agency shall retain the recording for an additional time period requested by the subject of up to 180 days and notify the requester that the recording will then be destroyed unless a new request is made under this paragraph.

(i) Notwithstanding paragraphs (f) to (h), a government entity may retain portable recording system data as long as reasonably necessary for possible evidentiary or exculpatory use in a future proceeding related to the incident with respect to which the data were collected.

(j) An individual who is the subject of portable recording system data has access to the data, including data on other individuals who are the subject of the recording. If the individual requests a copy of the recording, data on other individuals who do not consent to its release must be redacted from the copy.

(k) A law enforcement agency using portable recording systems must arrange for an independent triennial audit of data collected from the systems to determine whether the data have been maintained, classified, and destroyed as required by this subdivision. Summary data related to the results of the audit are public data.

(l) A law enforcement agency must not use a portable recording system unless the agency has adopted and enforces a written policy governing the use and operation of portable recording systems and standards and procedures for complying with this subdivision. At a minimum, the policy must:

(1) establish strict procedures governing access to the data to ensure that the data are not edited, altered, or prematurely destroyed, except to the extent that redaction of data is required under this subdivision;

(2) include guidelines or standards governing the circumstances under which a portable recording system must or may be activated or deactivated and whether notice of use is required; and

(3) provide for training of peace officers for purposes of complying with this subdivision and the policy.

(m) Within ten days of obtaining new surveillance technology that expands the type or scope of surveillance capability of a portable recording system device beyond video or audio recording, a law enforcement agency must notify the Bureau of Criminal Apprehension that it has obtained the new surveillance technology. The notice must include a description of the technology and its surveillance capability and intended uses. The notices are accessible to the public and must be available on the bureau's Web site.

(n) A law enforcement agency must not obtain or use a new surveillance technology that expands the type or scope of surveillance capability of a portable recording system

device beyond video or audio recording unless the local governing body with jurisdiction over the law enforcement agency has authorized its use.

EFFECTIVE DATE. This section is effective the day following final enactment. Data collected before the effective date of this section must be destroyed, if required by this section, no more than 90 days after the effective date. Chief law enforcement officers shall adopt the policy under paragraph (l), by January 15, 2016.

Sec. 4. Minnesota Statutes 2014, section 13.82, is amended by adding a subdivision to read:

Subd. 33. **Portable recording system vendor.** (a) For purposes of this subdivision, "portable recording system vendor" means a person who is not a government entity and that provides services for the creation, collection, retention, maintenance, processing, or dissemination of portable recording system data for a law enforcement agency or other government entity. By providing these services to a government entity, a vendor is subject to all of the requirements of this chapter as if it were a government entity.

(b) Subject to paragraph (c), in an action against a vendor under section 13.08 for a violation of this chapter, the vendor is liable for presumed damages of $2,500 or actual damages, whichever is greater, and reasonable attorney fees.

(c) In an action against a vendor that improperly discloses data made not public by this chapter or any other statute classifying data as not public, the vendor is liable for presumed damages of $10,000 or actual damages, whichever is greater, and reasonable attorney fees.

Sec. 5. **[626.8472] AUTOMATED LICENSE PLATE READER POLICY.**

Subdivision 1. **Statewide model policy.** The board, in consultation with representatives of law enforcement agencies and the commissioner of administration shall adopt and disseminate a model policy governing the use and operation of automated license plate readers and standards and procedures for compliance with section 13.82, subdivision 31. The board shall seek and consider comments of members of the public when adopting the policy.

Subd. 2. **Agency policies required.** The chief law enforcement officer of every state and local law enforcement agency shall establish and enforce a written policy governing automated license plate readers that is identical or substantially similar to the model policy adopted by the board. A law enforcement agency that does not comply with this subdivision must not use an automated license plate reader.

Sec. 6. **EFFECTIVE DATE; APPLICATION.**

(a) The Board of Peace Officer Standards and Training shall adopt the model policy under section 5, subdivision 1, by October 1, 2015.

(b) Chief law enforcement officers shall adopt the policy under section 5, subdivision 2, by January 15, 2016.