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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 3849

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The bill was read for the first time and referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy

1.1 A bill for an act
1.2 relating to public safety; providing grants and policy for portable recording systems;
1.3 authorizing local governments to establish civilian oversight councils; amending
1.4 Minnesota Statutes 2020, sections 626.8473, subdivision 3; 626.89, subdivision
1.5 17.

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

1.7 Section 1. Minnesota Statutes 2020, section 626.8473, subdivision 3, is amended to read:

1.8 Subd. 3. **Written policies and procedures required.** (a) The chief officer of every state
1.9 and local law enforcement agency that uses or proposes to use a portable recording system
1.10 must establish and enforce a written policy governing its use. In developing and adopting
1.11 the policy, the law enforcement agency must provide for public comment and input as
1.12 provided in subdivision 2. Use of a portable recording system without adoption of a written
1.13 policy meeting the requirements of this section is prohibited. The written policy must be
1.14 posted on the agency's website, if the agency has a website.

1.15 (b) At a minimum, the written policy must incorporate and require compliance with the
1.16 following:

1.17 (1) the requirements of section 13.825 and other data classifications, access procedures,
1.18 retention policies, and data security safeguards that, at a minimum, meet the requirements
1.19 of chapter 13 and other applicable law. The policy must prohibit altering, erasing, or
1.20 destroying any recording made with a peace officer's portable recording system or data and
1.21 metadata related to the recording prior to the expiration of the applicable retention period
1.22 under section 13.825, subdivision 3, except that the full, unedited and unredacted recording
1.23 of a peace officer using deadly force must be maintained indefinitely;

2.1 (2) mandate that a portable recording system be:

2.2 (i) worn where it affords an unobstructed view, and above the mid-line of the waist;

2.3 (ii) activated during all contacts with citizens in the performance of official duties other
2.4 than community engagement, to the extent practical without compromising officer safety;
2.5 and

2.6 (iii) activated when the officer arrives on-scene of an incident and remain active until
2.7 the conclusion of the officer's duties at the scene of the incident;

2.8 (3) mandate that officers assigned a portable recording system wear and operate the
2.9 system in compliance with the agency's policy adopted under this section while performing
2.10 law enforcement activities under the command and control of another chief law enforcement
2.11 officer or federal law enforcement official;

2.12 (4) mandate that any and all recordings from a peace officer's portable recording system,
2.13 redacted no more than what is required by law, involving the use of force by an officer upon
2.14 or toward the person of another without the other's consent, including the use of deadly
2.15 force, be treated as public benefit data pursuant to section 13.82, subdivision 15, and be
2.16 made available for viewing by the person upon whom force was used, the legal representative
2.17 of a person upon whom force was used, a deceased individual's next of kin, the legal
2.18 representative of the next of kin, or other parent of the deceased individual's children no
2.19 later than seven days after an incident where force was used by a peace officer, except that
2.20 a chief law enforcement officer may deny a request if investigators can articulate a compelling
2.21 reason as to why allowing review of the recordings would interfere with the agency
2.22 conducting a thorough investigation. If the chief law enforcement officer denies a request
2.23 under this provision, the agency's policy must require the chief law enforcement officer to
2.24 issue a prompt, written denial and provide notice to the person upon whom force was used,
2.25 the legal representative of a person upon whom force was used, deceased individual's next
2.26 of kin, legal representative of the next of kin, or other parent of the deceased individual's
2.27 children that they may seek relief from the district court;

2.28 (5) mandate that recordings of an incident where a peace officer used force upon or
2.29 toward the person of another without the other's consent, including the use of deadly force,
2.30 be treated as public benefit data pursuant to section 13.82, subdivision 15, and be released
2.31 to the person upon whom force was used, the legal representative of a person upon whom
2.32 force was used, the deceased individual's next of kin, legal representative of the next of kin,
2.33 and other parent of the deceased individual's children no later than 90 days after the incident.
2.34 If the chief law enforcement officer denies a request under this provision, the agency's policy

must require the chief law enforcement officer to issue a prompt, written denial and provide notice to the person upon whom force was used, the legal representative of a person upon whom force was used, deceased individual's next of kin, legal representative of the next of kin, or other parent of the deceased individual's children that they may seek relief from the district court;

(6) procedures for testing the portable recording system to ensure adequate functioning;

(3) (7) procedures to address a system malfunction or failure, including requirements for documentation by the officer using the system at the time of a malfunction or failure;

(4) (8) circumstances under which recording is mandatory, prohibited, or at the discretion of the officer using the system;

(5) (9) circumstances under which a data subject must be given notice of a recording;

(6) (10) circumstances under which a recording may be ended while an investigation, response, or incident is ongoing;

(7) (11) procedures for the secure storage of portable recording system data and the creation of backup copies of the data; and

(8) (12) procedures to ensure compliance and address violations of the policy, which must include, at a minimum, supervisory or internal audits and reviews, and the employee discipline standards for unauthorized access to data contained in section 13.09.

(c) The board has authority to inspect state and local law enforcement agency policies to ensure compliance with this section. The board may conduct this inspection based upon a complaint it receives about a particular agency or through a random selection process. The board may impose licensing sanctions and seek injunctive relief under section 214.11 for an agency's failure to comply with this section.

Sec. 2. Minnesota Statutes 2020, section 626.89, subdivision 17, is amended to read:

Subd. 17. **Civilian review.** (a) As used in this subdivision, the following terms have the meanings given them:

(1) "civilian oversight council" means a civilian review board, commission, or other oversight body established by a local unit of government to provide civilian oversight of a law enforcement agency and officers employed by the agency; and

(2) "misconduct" means a violation of law, standards promulgated by the Peace Officer Standards and Training Board, or agency policy.

4.1 (b) A local unit of government may establish a civilian review board, commission, or
4.2 other oversight body shall not have council and grant the council the authority to make a
4.3 finding of fact or determination regarding a complaint against an officer or impose discipline
4.4 on an officer. A civilian review board, commission, or other oversight body may make a
4.5 recommendation regarding the merits of a complaint, however, the recommendation shall
4.6 be advisory only and shall not be binding on nor limit the authority of the chief law
4.7 enforcement officer of any unit of government.

4.8 (c) At the conclusion of any criminal investigation or prosecution, if any, a civilian
4.9 oversight council may conduct an investigation into allegations of peace officer misconduct
4.10 and retain an investigator to facilitate an investigation. Subject to other applicable law, a
4.11 council may subpoena or compel testimony and documents in an investigation. Upon
4.12 completion of an investigation, a council may make a finding of misconduct and recommend
4.13 appropriate discipline against peace officers employed by the agency. If the governing body
4.14 grants a council the authority, the council may impose discipline on peace officers employed
4.15 by the agency. A council may submit investigation reports that contain findings of peace
4.16 officer misconduct to the chief law enforcement officer and the Peace Officer Standards
4.17 and Training Board's complaint committee. A council may also make policy
4.18 recommendations to the chief law enforcement officer and the Peace Officer Standards and
4.19 Training Board.

4.20 (d) The chief law enforcement officer of a law enforcement agency under the jurisdiction
4.21 of a civilian oversight council shall cooperate with the council and facilitate the council's
4.22 achievement of its goals. However, the officer is under no obligation to agree with individual
4.23 recommendations of the council and may oppose a recommendation. If the officer fails to
4.24 implement a recommendation that is within the officer's authority, the officer shall inform
4.25 the council of the failure along with the officer's underlying reasons.

4.26 (e) Peace officer discipline decisions imposed pursuant to the authority granted under
4.27 this subdivision shall be subject to the applicable grievance procedure established or agreed
4.28 to under chapter 179A.

4.29 (f) Data collected, created, received, maintained, or disseminated by a civilian oversight
4.30 council related to an investigation of a peace officer are personnel data as defined by section
4.31 13.43, subdivision 1, and are governed by that section.

4.32 **Sec. 3. BODY CAMERA GRANT PROGRAM; APPROPRIATION.**

4.33 (a) \$2,500,000 in fiscal year 2023 is appropriated from the general fund to the
4.34 commissioner of public safety for grants administered by the Office of Public Safety

Innovation to local law enforcement agencies for portable recording systems. The executive director shall award grants to local law enforcement agencies for the purchase and maintenance of portable recording systems and portable recording system data. An applicant must provide a 50 percent match to be eligible to receive a grant. The executive director must give priority to applicants that do not have a portable recording system program. The executive director must award at least one grant to a law enforcement agency located outside of the seven-county metropolitan area.

(b) As a condition of receiving a grant, a law enforcement agency's portable recording system policy required under Minnesota Statutes, section 626.8473, subdivision 3, must include the following provisions:

(1) prohibit altering, erasing, or destroying any recording made with a peace officer's portable recording system or data and metadata related to the recording prior to the expiration of the applicable retention period under Minnesota Statutes, section 13.825, subdivision 3, except that the full, unedited, and unredacted recording of a peace officer using deadly force must be maintained indefinitely;

(2) mandate that a deceased individual's next of kin, legal representative of the next of kin, or other parent of the deceased individual's children be entitled to view any and all recordings from a peace officer's portable recording system, redacted no more than what is required by law, of an officer's use of deadly force no later than seven days after an incident where deadly force used by a peace officer results in death of an individual, except that a chief law enforcement officer may deny a request if investigators can articulate a compelling reason as to why allowing the deceased individual's next of kin, legal representative of the next of kin, or other parent of the deceased individual's children to review the recordings would interfere with the agency conducting a thorough investigation. If the chief law enforcement officer denies a request under this provision, the agency's policy must require the chief law enforcement officer to issue a prompt, written denial and provide notice to the deceased individual's next of kin, legal representative of the next of kin, or other parent of the deceased individual's children that they may seek relief from the district court;

(3) mandate release of all recordings of an incident where a peace officer used deadly force and an individual dies to the deceased individual's next of kin, legal representative of the next of kin, and other parent of the deceased individual's children no later than 90 days after the incident; and

(4) mandate, whenever practicable, that an officer operating a portable recording system while entering a residence notify occupants of the residence that they are being recorded.