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HOUSE OF REPRESENTATIVES
Unofficial Engrossment

House Engrossment of a Senate File

EIGHTY-NINTH SESSION

S. F. No. 498

Senate Author(s): Latz and Newman

House Action

- 05/04/2016 Companion to House File No. 430. (Authors: Cornish; Johnson, B.; Schoen and Metsa)
Read First Time and Referred to the Committee on Civil Law and Data Practices
- 05/11/2016 Adoption of Report: Amended and re-referred to the Committee on Public Safety and Crime Prevention Policy and Finance
Pursuant to Joint Rule 2.03, re-referred to the Committee on Rules and Legislative Administration
Adoption of Report: Re-referred to the Committee on Public Safety and Crime Prevention Policy and Finance
- 05/12/2016 Adoption of Report: Placed on the General Register as Amended
Read Second Time

1.1 A bill for an act
 1.2 relating to data practices; classifying portable recording system data; establishing
 1.3 requirements for portable recording systems; requiring written policies and
 1.4 procedures; providing for damage awards; requiring a legislative auditor review;
 1.5 amending Minnesota Statutes 2014, section 13.82, subdivisions 6, 7, 15;
 1.6 Minnesota Statutes 2015 Supplement, section 13.82, subdivision 2; proposing
 1.7 coding for new law in Minnesota Statutes, chapters 13; 626.

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

1.9 Section 1. Minnesota Statutes 2015 Supplement, section 13.82, subdivision 2, is
 1.10 amended to read:

1.11 Subd. 2. **Arrest data.** The following data created or collected by law enforcement
 1.12 agencies which document any actions taken by them to cite, arrest, incarcerate or
 1.13 otherwise substantially deprive an adult individual of liberty shall be public at all times
 1.14 in the originating agency:

- 1.15 (a) time, date and place of the action;
- 1.16 (b) any resistance encountered by the agency;
- 1.17 (c) any pursuit engaged in by the agency;
- 1.18 (d) whether any weapons were used by the agency or other individual;
- 1.19 (e) the charge, arrest or search warrants, or other legal basis for the action;
- 1.20 (f) the identities of the agencies, units within the agencies and individual persons
 1.21 taking the action;
- 1.22 (g) whether and where the individual is being held in custody or is being incarcerated
 1.23 by the agency;
- 1.24 (h) the date, time and legal basis for any transfer of custody and the identity of the
 1.25 agency or person who received custody;

2.1 (i) the date, time and legal basis for any release from custody or incarceration;

2.2 (j) the name, age, sex and last known address of an adult person or the age and sex
2.3 of any juvenile person cited, arrested, incarcerated or otherwise substantially deprived
2.4 of liberty;

2.5 (k) whether the agency employed ~~an~~ a portable recording system, automated license
2.6 plate reader, wiretaps or other eavesdropping techniques, unless the release of this specific
2.7 data would jeopardize an ongoing investigation;

2.8 (l) the manner in which the agencies received the information that led to the arrest
2.9 and the names of individuals who supplied the information unless the identities of those
2.10 individuals qualify for protection under subdivision 17; and

2.11 (m) response or incident report number.

2.12 Sec. 2. Minnesota Statutes 2014, section 13.82, subdivision 6, is amended to read:

2.13 Subd. 6. **Response or incident data.** The following data created or collected by
2.14 law enforcement agencies which document the agency's response to a request for service
2.15 including, but not limited to, responses to traffic accidents, or which describe actions taken
2.16 by the agency on its own initiative shall be public government data:

2.17 (a) date, time and place of the action;

2.18 (b) agencies, units of agencies and individual agency personnel participating in the
2.19 action unless the identities of agency personnel qualify for protection under subdivision 17;

2.20 (c) any resistance encountered by the agency;

2.21 (d) any pursuit engaged in by the agency;

2.22 (e) whether any weapons were used by the agency or other individuals;

2.23 (f) a brief factual reconstruction of events associated with the action;

2.24 (g) names and addresses of witnesses to the agency action or the incident unless the
2.25 identity of any witness qualifies for protection under subdivision 17;

2.26 (h) names and addresses of any victims or casualties unless the identities of those
2.27 individuals qualify for protection under subdivision 17;

2.28 (i) the name and location of the health care facility to which victims or casualties
2.29 were taken;

2.30 (j) response or incident report number;

2.31 (k) dates of birth of the parties involved in a traffic accident;

2.32 (l) whether the parties involved were wearing seat belts; ~~and~~

2.33 (m) the alcohol concentration of each driver; and

2.34 (n) whether the agency used a portable recording system to document the agency's
2.35 response or actions.

3.1 Sec. 3. Minnesota Statutes 2014, section 13.82, subdivision 7, is amended to read:

3.2 Subd. 7. **Criminal investigative data.** Except for the data defined in subdivisions
3.3 2, 3, and 6, investigative data collected or created by a law enforcement agency in order
3.4 to prepare a case against a person, whether known or unknown, for the commission of a
3.5 crime or other offense for which the agency has primary investigative responsibility are
3.6 confidential or protected nonpublic while the investigation is active. Inactive investigative
3.7 data are public unless the release of the data would jeopardize another ongoing investigation
3.8 or would reveal the identity of individuals protected under subdivision 17. Images and
3.9 recordings, including photographs, video, and audio records, which are part of inactive
3.10 investigative files and which are clearly offensive to common sensibilities are classified
3.11 as private or nonpublic data, provided that the existence of the ~~photographs~~ images and
3.12 recordings shall be disclosed to any person requesting access to the inactive investigative
3.13 file. An investigation becomes inactive upon the occurrence of any of the following events:

3.14 (a) a decision by the agency or appropriate prosecutorial authority not to pursue
3.15 the case;

3.16 (b) expiration of the time to bring a charge or file a complaint under the applicable
3.17 statute of limitations, or 30 years after the commission of the offense, whichever comes
3.18 earliest; or

3.19 (c) exhaustion of or expiration of all rights of appeal by a person convicted on
3.20 the basis of the investigative data.

3.21 Any investigative data presented as evidence in court shall be public. Data
3.22 determined to be inactive under clause (a) may become active if the agency or appropriate
3.23 prosecutorial authority decides to renew the investigation.

3.24 During the time when an investigation is active, any person may bring an action in
3.25 the district court located in the county where the data are being maintained to authorize
3.26 disclosure of investigative data. The court may order that all or part of the data relating to
3.27 a particular investigation be released to the public or to the person bringing the action. In
3.28 making the determination as to whether investigative data shall be disclosed, the court
3.29 shall consider whether the benefit to the person bringing the action or to the public
3.30 outweighs any harm to the public, to the agency or to any person identified in the data.
3.31 The data in dispute shall be examined by the court in camera.

3.32 Sec. 4. Minnesota Statutes 2014, section 13.82, subdivision 15, is amended to read:

3.33 Subd. 15. **Public benefit data.** Any law enforcement agency may make any data
3.34 classified as confidential or protected nonpublic pursuant to subdivision 7 or as private
3.35 or nonpublic under section 13.825 accessible to any person, agency, or the public if the

4.1 agency determines that the access will aid the law enforcement process, promote public
4.2 safety, or dispel widespread rumor or unrest.

4.3 **Sec. 5. [13.825] PORTABLE RECORDING SYSTEMS.**

4.4 Subdivision 1. **Application; definition.** (a) This section applies to law enforcement
4.5 agencies that maintain a portable recording system for use in investigations, or in response
4.6 to emergencies, incidents, and requests for service.

4.7 (b) As used in this section, "portable recording system" means a device worn by a
4.8 peace officer that is capable of both video and audio recording of the officer's activities and
4.9 interactions with others or collecting digital multimedia evidence as part of an investigation.

4.10 Subd. 2. **Data classification; court-authorized disclosure.** (a) Data collected by
4.11 a portable recording system are private data on individuals or nonpublic data, except
4.12 that the following data are public:

4.13 (1) data which document a peace officer's use of force that results in substantial
4.14 bodily harm, as defined in section 609.02, subdivision 7a; and

4.15 (2) any data that a subject of the data requests be made accessible to the public,
4.16 provided that, subject to the restriction in subdivision 4, paragraph (b), data on a subject
4.17 who does not consent to the release must be redacted, if practicable.

4.18 A law enforcement agency may redact or withhold access to portions of data that are
4.19 public under this subdivision, if those portions of data are clearly offensive to common
4.20 sensibilities. Section 13.04, subdivision 2, does not apply to collection of data classified
4.21 by this subdivision.

4.22 (b) Notwithstanding paragraph (a):

4.23 (1) portable recording system data that are criminal investigative data are classified
4.24 as provided in section 13.82, subdivision 7, except that inactive criminal investigative data
4.25 are classified by this subdivision;

4.26 (2) portable recording system data that are public personnel data under section
4.27 13.43, subdivision 2, clause (5), are public; and

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

4.30 (c) Any person may bring an action in the district court located in the county where
4.31 portable recording system data are being maintained to authorize disclosure of data that
4.32 are private or nonpublic under this section. The person bringing the action must give
4.33 notice of the action to the law enforcement agency and subjects of the data, if known. The
4.34 law enforcement agency must give notice to other subjects of the data, if known, who did
4.35 not receive the notice from the person bringing the action. The court may order that all or

5.1 part of the data be released to the public or to the person bringing the action. In making
5.2 this determination, the court shall consider whether the benefit to the person bringing the
5.3 action or to the public outweighs any harm to the public, to the law enforcement agency,
5.4 or to a subject of the data. The data in dispute must be examined by the court in camera.
5.5 This paragraph does not affect the right of a defendant in a criminal proceeding to obtain
5.6 access to portable recording system data under the Rules of Criminal Procedure.

5.7 Subd. 3. **Retention of data.** Notwithstanding section 138.17:

5.8 (1) portable recording system data that relate to an active or inactive criminal
5.9 investigation must be retained for no longer than any applicable statute of limitations period
5.10 has expired, or 180 days after the investigation becomes inactive, whichever is later; and

5.11 (2) portable recording system data that do not relate to an active or inactive criminal
5.12 investigation must be maintained for at least 90 days, and destroyed within 12 months of
5.13 the date the data were collected.

5.14 Subd. 4. **Access by data subjects.** (a) For purposes of this chapter, a portable
5.15 recording system data subject includes the peace officer who collected the data, and any
5.16 other individual or entity, including any other peace officer, whose image or voice is
5.17 documented in the data. If an individual subject of portable recording system data is
5.18 deceased, a representative of the decedent, as defined in section 13.10, subdivision 1, is a
5.19 subject of the data for purposes of this chapter.

5.20 (b) Subjects of portable recording system data, including peace officers, must be
5.21 provided access to the data to the full extent required by this chapter while the data are
5.22 retained. If a subject of private or nonpublic portable recording system data requests
5.23 access to the data, data on any other subjects documented in the data who have not
5.24 consented to the data's release must be redacted, if practicable. The identity and activities
5.25 of an on-duty peace officer engaged in an investigation or response to an emergency,
5.26 incident, or request for service may not be redacted, unless the officer's identity is subject
5.27 to protection under section 13.82, subdivision 17, clause (a).

5.28 (c) Notwithstanding paragraph (b), a peace officer involved in an investigation or
5.29 response to an incident must be permitted to review any portable recording system data
5.30 that documents the investigation or incident response, unrestricted and its original form,
5.31 prior to the officer's submission of a written report or formal statement on the investigation
5.32 or response.

5.33 Subd. 5. **Inventory of portable recording system technology.** A law enforcement
5.34 agency that uses a portable recording system must maintain the following information,
5.35 which is public data:

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

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

6.3 (3) the policies and procedures for use of portable recording systems required by
6.4 section 626.8473; and

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

6.8 Subd. 6. **Use of agency-issued portable recording systems.** While on duty, a peace
6.9 officer may only use a portable recording system issued and maintained by the officer's
6.10 agency in documenting the officer's activities.

6.11 Subd. 7. **Authorization to access data.** (a) A law enforcement agency must comply
6.12 with sections 13.05, subdivision 5, and 13.055 in the operation of portable recording
6.13 systems and in maintaining portable recording system data.

6.14 (b) The responsible authority for a law enforcement agency must establish written
6.15 procedures to ensure that law enforcement personnel have access to the portable recording
6.16 system data that are not public only if authorized in writing by the chief of police, sheriff,
6.17 or head of the law enforcement agency, or their designee, to obtain access to the data for
6.18 a legitimate, specified law enforcement purpose. Consistent with the requirements of
6.19 paragraph (c), each access must be based on a reasonable suspicion that the data are
6.20 pertinent to an active criminal investigation and must include a record of the factual
6.21 basis for the access and any associated case number, complaint, or incident that is the
6.22 basis for the access.

6.23 (c) The ability of authorized individuals to enter, update, or access portable recording
6.24 system data must be limited through the use of role-based access that corresponds to
6.25 the official duties or training level of the individual and the statutory authorization that
6.26 grants access for that purpose. All queries and responses, and all actions in which data
6.27 are entered, updated, accessed, shared, or disseminated, must be recorded in a data
6.28 audit trail. Data contained in the audit trail are public, to the extent that the data are
6.29 not otherwise classified by law.

6.30 Subd. 8. **Sharing among agencies.** (a) Portable recording system data that are not
6.31 public may only be shared with or disseminated to another law enforcement agency, a
6.32 government entity, or a federal agency upon meeting the standards for requesting access to
6.33 data as provided in subdivision 7.

6.34 (b) If data collected by a portable recording system are shared with another state or
6.35 local law enforcement agency under this subdivision, the agency that receives the data must
6.36 comply with all data classification, destruction, and security requirements of this section.

7.1 (c) Portable recording system data may not be shared with, disseminated to, sold to,
7.2 or traded with any other individual or entity unless explicitly authorized by this section
7.3 or other applicable law.

7.4 Subd. 9. **Biennial audit.** (a) A law enforcement agency must maintain records
7.5 showing the date and time portable recording system data were collected and the applicable
7.6 classification of the data. The law enforcement agency shall arrange for an independent,
7.7 biennial audit of the data to determine whether data are appropriately classified according
7.8 to this section, how the data are used, and whether they are destroyed as required under this
7.9 section, and to verify compliance with subdivisions 7 and 8. If the governing body with
7.10 jurisdiction over the agency determines that the agency is not complying with this section
7.11 or other applicable law, the governing body may order additional independent audits. Data
7.12 in the records required under this paragraph are classified as provided in subdivision 2.

7.13 (b) The results of the audit are public. The governing body with jurisdiction over
7.14 the law enforcement agency shall review the results of the audit. If the governing body
7.15 determines that there is a pattern of substantial noncompliance with this section, it must
7.16 order that operation of all portable recording systems be suspended until the governing
7.17 body has authorized the agency to reinstate their use. An order of suspension under this
7.18 paragraph may only be made following review of the results of the audit and review of the
7.19 applicable provisions of this chapter, and after providing the agency and members of the
7.20 public a reasonable opportunity to respond to the audit's findings in a public meeting.

7.21 (c) A report summarizing the results of each audit must be provided to the governing
7.22 body with jurisdiction over the law enforcement agency, to the chair and ranking minority
7.23 members of the committees of the house of representatives and the senate with jurisdiction
7.24 over data practices and public safety issues, and to the Legislative Commission on Data
7.25 Practices and Personal Data Privacy no later than 30 days following completion of the audit.

7.26 Subd. 10. **Penalties for violation.** In addition to any other remedies provided by
7.27 law, in the case of a willful violation of this section a law enforcement agency is subject
7.28 to exemplary damages of not less than twice the minimum, nor more than twice the
7.29 maximum allowable for exemplary damages under section 13.08, subdivision 1.

7.30 **EFFECTIVE DATE.** This section is effective August 1, 2016. Data collected
7.31 before the effective date of this section must be destroyed, if required by this section, no
7.32 later than 15 days after the date this section becomes effective.

7.33 Sec. 6. **[626.8473] PORTABLE RECORDING SYSTEMS ADOPTION;**
7.34 **WRITTEN POLICY REQUIRED.**

8.1 Subdivision 1. **Definition.** As used in this section, "portable recording system" has
8.2 the meaning provided in section 13.825, subdivision 1.

8.3 Subd. 2. **Public comment.** A local law enforcement agency must provide an
8.4 opportunity for public comment before it purchases or implements a portable recording
8.5 system. At a minimum, the agency must accept public comments submitted electronically
8.6 or by mail, and the governing body with jurisdiction over the law enforcement agency
8.7 must provide an opportunity for public comment at a regularly-scheduled meeting.

8.8 Subd. 3. **Written policies and procedures required.** (a) The chief officer of every
8.9 state and local law enforcement agency that uses or proposes to use a portable recording
8.10 system must establish and enforce a written policy governing its use. In developing and
8.11 adopting the policy, the law enforcement agency must provide for public comment and
8.12 input as provided in subdivision 1. Use of a portable recording system without adoption of
8.13 a written policy meeting the requirements of this section is prohibited. The written policy
8.14 must be posted on the agency's Web site.

8.15 (b) At a minimum, the written policy must incorporate the following:

8.16 (1) the requirements of section 13.825 and other data classifications, access
8.17 procedures, retention policies, and data security safeguards that, at a minimum, meet the
8.18 requirements of chapter 13 and other applicable law;

8.19 (2) procedures for testing the portable recording system to ensure adequate
8.20 functioning;

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

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

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

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

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

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

8.33 **EFFECTIVE DATE.** This section is effective August 1, 2016, provided that a law
8.34 enforcement agency using a portable recording system on that date must adopt the policy
8.35 required under this section no later than January 15, 2017.

9.1 **Sec. 7. LEGISLATIVE AUDITOR REVIEW.**

9.2 Beginning no earlier than January 1, 2019, the legislative auditor is requested to
9.3 conduct a comprehensive review of compliance with the requirements of Minnesota
9.4 Statutes, sections 13.825 and 626.8473. Data used for purposes of the review must
9.5 include the results of the biennial audits required by Minnesota Statutes, section
9.6 13.825, subdivision 9, and may also include any other data that, in the judgment of the
9.7 legislative auditor, assists in developing a complete understanding of any compliance
9.8 or implementation issues resulting from enactment of those sections. The legislative
9.9 auditor is requested to submit the results of the comprehensive review to the legislature
9.10 no later than January 15, 2020.