



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Emily E. Wendel

Sub. H.B. 425

132nd General Assembly

(As Reported by S. Government Oversight and Reform)

Reps. Antani and Craig, Becker, Seitz, Sheehy, Lang, Anielski, Arndt, Barnes, Brown, Celebrezze, Cupp, Dever, Duffey, Fedor, Gavarone, Ginter, Gonzales, Green, Hagan, Hambley, Henne, Holmes, Hoops, Howse, Hughes, Ingram, Kent, Kick, Landis, Leland, Lepore-Hagan, Manning, Miller, O'Brien, Patterson, Patton, Perales, Ramos, Reece, Reineke, Rezabek, Riedel, Roegner, Rogers, Ryan, Schaffer, Scherer, Schuring, K. Smith, Stein, Sykes, West, Wiggam, Wilkin, Young

Sens. Coley, Uecker

BILL SUMMARY

Application of Public Records Law to law enforcement camera recordings

- Provides that a record created by a body camera worn by a law enforcement officer or a dashboard camera used by a law enforcement officer is a public record, subject to certain exceptions.
- Exempts from disclosure under the Public Records Law certain portions of a body-worn camera or dashboard camera recording, depending on the content of the recording.
- Specifies the circumstances in which any portion of a body-worn camera or dashboard camera recording that is otherwise exempt may be released by consent of the subject of the recording or that person's representative.
- Allows any person to file a mandamus action requesting the court to order the release of all or portions of a recording if a public office has denied a request to release restricted portions of a body-worn camera or dashboard camera recording.

Public school infrastructure records

- Specifies that an infrastructure record of a public school is not a public record subject to mandatory release or disclosure under the Public Records Law.

Protection orders

- Eliminates the expungement of ex parte orders and records pertaining to those orders in certain protection order cases if the ex parte order is revoked.
- Provides for the sealing, instead of expungement, of ex parte orders and records pertaining to those orders if the court refuses to grant a protection order in certain other protection order cases.
- Clarifies the rights of appeal provisions in relation to the sealing of certain ex parte orders.

Record sealing and expungement pilot program

- Eliminates a pilot program that created a procedure for removing sealed or expunged criminal records from databases, websites, and publications, upon notice of court orders sent to a qualified third party.

CONTENT AND OPERATION

Application of Public Records Law to law enforcement camera recordings

Ohio's Public Records Law requires a public office or person responsible for public records, upon request, to promptly prepare the public record and make it available to the requester for inspection or copying.¹ The bill exempts from disclosure under the Public Records Law certain "restricted portions of a body-worn camera or dashboard camera recording," as described below. A "body-worn camera" is defined in the bill as a visual and audio recording device worn by a peace officer while on duty.² A "dashboard camera" means a visual and audio recording device mounted on a peace officer's vehicle or vessel that is used while the peace officer is on duty.³

Restricted portions of a body-worn camera or dashboard camera recording

Under the bill, "restricted portions of a body-worn camera or dashboard camera recording" exempted from the Public Records Law include any visual or audio portion of a body-worn camera or dashboard camera recording that shows, communicates, or discloses any of the following:⁴

¹ R.C. 149.43(B).

² R.C. 149.43(A)(1)(gg), (13), and (15).

³ R.C. 149.43(A)(14).

⁴ R.C. 149.43(A)(15).



(1) The image or identity of a child or information that could lead to the identification of a child who is a primary subject of the recording when the law enforcement agency knows or has reason to know the person is a child based on the law enforcement agency's records or the content of the recording.

(2) The death of a person or a deceased person's body, unless the death was caused by a peace officer or, subject to "**Release of any portion of a body-worn camera or dashboard camera recording,**" below, the consent of the decedent's executor or administrator has been obtained.

(3) The death of a peace officer, firefighter, paramedic, or other first responder, occurring while the decedent was on duty, unless, subject to "**Release of any portion of a body-worn camera or dashboard camera recording,**" below, the consent of the decedent's executor or administrator has been obtained.

(4) Grievous bodily harm, unless the injury was effected by a peace officer or, subject to "**Release of any portion of a body-worn camera or dashboard camera recording,**" below, the consent of the injured person or the injured person's guardian has been obtained. As used in the bill, "grievous bodily harm" means serious bodily injury, including fractured or dislocated bones, deep cuts, torn ligaments, and serious damage to internal organs.⁵

(5) An act of severe violence against a person that results in serious physical harm to the person, unless the act and injury was effected by a peace officer or, subject to "**Release of any portion of a body-worn camera or dashboard camera recording,**" below, the consent of the injured person or the injured person's guardian has been obtained.

(6) Grievous bodily harm to a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was on duty, unless, subject to "**Release of any portion of a body-worn camera or dashboard camera recording,**" below, the consent of the injured person or the injured person's guardian has been obtained.

(7) An act of severe violence resulting in serious physical harm against a peace officer, firefighter, paramedic, or other first responder, occurring while the injured person was on duty, unless, subject to "**Release of any portion of a body-worn camera or dashboard camera recording,**" below, the consent of the injured person or the injured person's guardian has been obtained.

⁵ R.C. 5924.120(A)(6), referenced but not in the bill.

(8) A person's nude body, unless, subject to "**Release of any portion of a body-worn camera or dashboard camera recording**," below, the person's consent has been obtained.

(9) Protected health information (as defined in federal law),⁶ the identity of a person in a health care facility who is not the subject of a law enforcement encounter, or any other information in a health care facility that could identify a person who is not the subject of a law enforcement encounter.

(10) Information that could identify the alleged victim of a sex offense, menacing by stalking, or domestic violence. "Sex offense" is defined to include rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, and public indecency.⁷

(11) Information, other than a confidential law enforcement investigatory record, that could identify a person who provides sensitive or confidential information to a law enforcement agency when the disclosure of the person's identity or the information provided could reasonably be expected to threaten or endanger the safety or property of the person or another person.

(12) Personal information, such as any government-issued identification number, date of birth, address, financial information, or criminal justice information from the law enforcement automated data system or similar databases, of a person who is not arrested, cited, charged, or issued a written warning by a peace officer.

(13) Proprietary police contingency plans or tactics that are intended to prevent crime and maintain public order and safety.

(14) A personal conversation unrelated to work between peace officers or between a peace officer and an employee of a law enforcement agency.

(15) A conversation between a peace officer and a member of the public that does not concern law enforcement activities.

(16) The interior of a residence, unless it is the location of an adversarial encounter with, or a use of force by, a peace officer.

(17) Any portion of the interior of a private business that is not open to the public, unless it is the location of an adversarial encounter with, or a use of force by, a peace officer.

⁶ 45 C.F.R. 160.103, referenced but not in the bill.

⁷ R.C. 2907.10, referenced but not in the bill.



Release of any portion of a body-worn camera or dashboard camera recording

Any portion of a body-worn camera or dashboard camera recording, except for (1), (9), (10), (11), (12), (13), (14), (15), (16), and (17) under "**Restricted portions of a body-worn camera or dashboard camera recording**," above, may be released by consent of the subject of the recording or that person's representative only if either of the following applies:⁸

- The recording will not be used in connection with any probable or pending criminal proceedings;
- The recording has been used in connection with a criminal proceeding that was dismissed or for which a judgment has been entered pursuant to Rule 32 of the Criminal Rules, and will not be used again in connection with any probable or pending criminal proceedings.

Mandamus action to compel disclosure

If a public office denies a request to release a restricted portion of a body-worn camera or dashboard camera recording, the bill allows any person to file a mandamus action pursuant to the Public Records Law or a complaint with the clerk of the Court of Claims, requesting the court to order the release of all or portions of the recording. If the court considering the request determines that the filing articulates by clear and convincing evidence that the public interest in the recording substantially outweighs privacy interests and other interests asserted to deny release, the court must order the public office to release the recording.⁹

Public school infrastructure records

The bill specifies that an infrastructure record of a public school is not a public record subject to mandatory release or disclosure under the Public Records Law. Current law, unchanged by the bill, defines "infrastructure record" as any record that discloses the configuration of critical systems, including communication, computer, electrical, mechanical, ventilation, water, and plumbing systems, security codes, or the infrastructure or structural configuration of a building. The term also includes a risk assessment of infrastructure performed by a law enforcement agency. It does not mean a simple floor plan that discloses only the spatial relationship of components of the building.¹⁰

⁸ R.C. 149.43(H)(1).

⁹ R.C. 149.43(H)(2).

¹⁰ R.C. 149.433(A) and (B)(2).



Protection orders

Continuing law provides mechanisms for the issuance of the types of protection orders as follows: juvenile court protection order, criminal stalking protection order involving a person other than a family or household member, criminal domestic violence temporary protection order involving a family or household member, civil stalking protection order involving any person, and civil domestic violence protection order (or consent agreement) involving a family or household member or person in a dating relationship. The bill makes the following changes to those mechanisms.

Juvenile court protection order

The bill provides that if a juvenile court issues an order against a person under 18 years of age, other than an ex parte order, that refuses to grant a protection order, the court, on its own motion, must order that the ex parte order and all of the records pertaining to the ex parte order be sealed, instead of expunged under current law, after either of the following occurs as changed by the bill from current law below:¹¹

(1) No party has exercised the right to appeal pursuant to Rule 4 of the Rules of Appellate Procedure.

(2) All appellate rights have been exhausted.

Under current law, the expungement is made after either of the following occurs:¹²

(1) The period of the notice of appeal from the order that refuses to grant a protection order has expired.

(2) The order that refuses to grant the protection order is appealed and an appellate court to which the last appeal of that order is taken affirms the order.

Criminal stalking protection order involving a person other than a family or household member; criminal domestic violence temporary protection order involving a family or household member

The bill eliminates from the provision in the current laws on criminal stalking protection orders involving a person other than a family or household member and criminal domestic violence temporary protection orders involving a family or household member that provides that if at a hearing to determine whether an ex parte

¹¹ R.C. 2151.34(G)(2).

¹² Current R.C. 2151.34(G)(2).



order issued by the court should remain in effect, modified, or revoked, the court determines that the ex parte order should be revoked, the court, on its own motion, must order that the revoked ex parte order and all of the records pertaining to that order be expunged.¹³

Civil stalking protection order involving any person; civil domestic violence protection order (or consent agreement) involving a family or household member or person in a dating relationship

The bill provides if the court issues an order, other than an ex parte order, that refuses to grant a civil stalking protection order involving any person or a civil domestic violence protection order (or consent agreement) involving a family or household member or a person in a dating relationship, whichever is applicable, the court, on its own motion, must order that the ex parte order and all of the records pertaining to the ex parte order be sealed, instead of expunged under current law, after either of the following occurs as changed by the bill from current law below:¹⁴

(1) No party has exercised the right to appeal pursuant to Rule 4 of the Rules of Appellate Procedure.

(2) All appellate rights have been exhausted.

Under current law, the expungement is made after either of the following occurs:¹⁵

(1) The period of the notice of appeal from the order that refuses to grant a protection order has expired.

(2) The order that refuses to grant the protection order is appealed and an appellate court to which the last appeal of that order is taken affirms the order.

Elimination of definition of "expunge"

Conforming to the above changes in the laws on protection orders, the bill eliminates the current definition of "expunge" in those laws, which is to destroy, delete, and erase a record, as appropriate for the record's physical or electronic form or characteristic, so that the record is permanently irretrievable.¹⁶

¹³ R.C. 2903.213(D)(2)(b) and R.C. 2919.26(D)(2)(b), both repealed.

¹⁴ R.C. 2903.214(G)(2) and R.C. 3113.31(G)(2).

¹⁵ Current R.C. 2903.213(G)(2) and R.C. 3113.31(G)(2).

¹⁶ R.C. 2151.34(A)(10), 2903.213(J)(3), 2903.214(A)(8), 2919.26(K)(4), and 3113.31(A)(10).

Record sealing and expungement pilot program

The amendment bill eliminates a record sealing and expungement pilot program that was established in the main operating budget of the 132nd General Assembly to operate through September 29, 2018.¹⁷ The pilot program was to create a procedure to remove sealed or expunged criminal records from databases, websites, and publications following the court's issuance of an order to seal or expunge. The pilot procedure involved sending notices of the court orders sealing or expunging records to a qualified third party selected by the Attorney General, and the third party notifying data repositories, websites, and publications to remove the records. The person applying to have records sealed or expunged was required to pay a fee for notifying the third party, but was allowed to opt out.¹⁸

HISTORY

ACTION	DATE
Introduced	11-21-17
Reported, H. Gov't Accountability & Oversight	05-22-18
Passed House (94-0)	06-27-18
Reported, S. Gov't Oversight & Reform	12-06-18

H0425-RS-132.docx/ts

¹⁷ Am. Sub. H.B. 49 of the 132nd General Assembly.

¹⁸ R.C. 109.38, 109.381, 2953.32, 2953.37, 2953.38, and 2953.53.

