



TESTIMONY OF
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IN OPPOSITION TO Sub SB 18
KANSAS HOUSE COMMITTEE ON THE JUDICIARY

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Thank you, Chairman Barker, and members of the Committee on the Judiciary for and affording us the opportunity to provide testimony on this important issue. My name is Micah Kubic, and I serve as the executive director of the American Civil Liberties Union of Kansas, a membership organization dedicated to preserving and strengthening the constitutional liberties afforded to every resident of Kansas.

The ACLU of Kansas **opposes Sub SB 18** as currently written, because in exempting most police body camera and vehicular camera footage from the Kansas Open Records Act, the bill does not fully balance legitimate concerns about privacy with accountability. We strongly support the concept of exempting most body camera and vehicular camera footage from the Kansas Open Records Act—and provided testimony to that effect in the Senate Corrections Committee and House Corrections Committee. However, we believe that the current language of Sub SB 18 would diminish the power of cameras to promote accountability and safety.

- **The basic premise of the current version of Sub SB 18—protecting the privacy of citizens and law enforcement officers—is sound.** The overwhelming majority of the footage captured by body cameras and vehicular cameras is of mundane, routine interactions between law enforcement and members of the public. Under current law, most of these recordings would be available to the general public through the Kansas Open Records Act. Making most of these recordings subject to the open records act results in almost no benefit to the general public, while allowing for significant invasions of the privacy of individual Kansans. Cameras might record any number of deeply personal situations, which individuals would wish to remain private and in which the public's stake is minimal or non-existent.

Although the ACLU of Kansas supports the premise of Sub SB 18, the current language is overly broad and would strip body and vehicular cameras of some of their power to promote accountability for law enforcement and the public alike.

- **Sub SB 18 could undermine the interests of law enforcement officers.** Cameras are a powerful tool for protecting officers from the real phenomenon of false allegations. A recording may demonstrate that an officer is innocent of a widely publicized allegation of misconduct. If that recording is not subject to disclosure under the Open Records Act, the same public that heard the allegation will not be able to assess the evidence that would

exonerate the officer. This undermines the interests of the individual officer, and the broader interest in citizen-police relations.

- **Sub SB 18 lacks a mechanism for disclosing recordings of events that are genuinely “newsworthy” or relevant to the public interest.** As written, the bill would prevent the public and the press from accessing recordings that depict interactions in which there is a significant public interest. Body cameras have been in the news of late because of a series of police-citizen encounters across the country, with many believing that video recordings could resolve disputes over what occurred in those encounters. If Sub SB 18 were to become law, such recordings would not be available to the media or to the general public, significantly reducing their ability to ease tensions between law enforcement and the public.

Cameras are primarily intended to facilitate accountability, not just by the chain of command within law enforcement agencies but also by the public. Without access to recordings, the public cannot fill this role. Likewise, the press plays a powerful role in educating the public and promoting accountability. Coverage of law enforcement issues will suffer markedly if the free press cannot gain access to important records that document encounters between the police and the public.

In order to protect the privacy of members of the public, the recordings that should be available through the Open Records Act should be limited and rigidly defined as:

- Incidents that result in the use of force
- Incidents that result in detention or arrest
- Incidents that are directly relevant to a formal or informal complaint against a law enforcement officer

By making recordings of these events publicly available, we would ensure that genuinely newsworthy events could be assessed and discussed by the press and the public. Limiting the public disclosure requirement to these events would adequately protect individual privacy.

- **Sub SB 18 unnecessarily restricts access to recordings by subjects of those recordings.** As written, the legislation would allow even the individuals who are subjects of a recording to gain very limited access to that recording. Sub SB 18 would not afford subjects the right to a copy of the recording—only the ability to view or listen to it. In those very rare cases where misconduct might have occurred, failing to provide the subject a copy of the recording would significantly undermine the individual’s ability to hold anyone accountable.
- **Family members of individuals killed during interactions with law enforcement should have the ability to access recordings.** As written, Sub SB 18 would grant only “subjects” of recordings and guardians of subjects under the age of 18 access to the footage. In very rare cases, members of the public may be killed during an interaction with law enforcement. These incidents often result in significant subsequent tension between law enforcement and the family of the individual. Preventing family members from accessing

a recording of the interaction will only inflame the tension. In order to ameliorate such tension in these cases, family members or the estate of the deceased subject ought to have the same right of access as the subject him- or herself would.

- **Exempting recordings from the Open Records Act should be accompanied by a requirement to discard them.** In general, where information is not discoverable by the public through open records requests, it should be discarded after a mandatory period of time. This ensures that the civil liberties of individuals are protected, and that government does not begin accumulating vast repositories of information on innocent members of the public. Exempting all recordings from the Open Records Act, without requiring law enforcement to discard them after some mandatory timeframe, is the worst of both worlds.

Unless the bill is amended to address these concerns, we urge you to **oppose SB 18**.