

SENATE
STATE OF MINNESOTA
EIGHTY-NINTH SESSION

S.F. No. 498

(SENATE AUTHORS: LATZ and Newman)

DATE	D-PG	OFFICIAL STATUS
02/02/2015	190	Introduction and first reading Referred to Judiciary
03/25/2015	1283a 1353 4868	Comm report: To pass as amended Second reading Rule 47, returned to Judiciary
03/14/2016	4977a 5016	Comm report: To pass as amended Second reading
04/21/2016	5941	Author added Newman
05/02/2016	6577a 6579	Special Order: Amended Third reading Passed
05/17/2016	7058 7058	Returned from House with amendment Senate not concur, conference committee of 3 requested
05/18/2016	7167	Senate conferees Latz; Kent; Ingebrigtsen
05/19/2016	7206	House conferees Cornish; Johnson, B., Hilstrom
05/21/2016	7358c	Conference committee report, delete everything Senate adopted CC report and repassed bill
05/22/2016	7366	Third reading House adopted SCC report and repassed bill

A bill for an act

1.1 relating to data practices; classifying portable recording system data; establishing
1.2 requirements for the destruction of data; requiring policies; imposing
1.3 requirements on vendors and providing for damage awards; amending Minnesota
1.4 Statutes 2014, section 13.82, subdivision 15, by adding subdivisions; proposing
1.5 coding for new law in Minnesota Statutes, chapter 626.
1.6

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

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

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

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

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

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

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

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

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

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

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

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

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

2.17 (c) Notwithstanding paragraph (b):

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

2.21 (2) portable recording system data that are public personnel data under section
2.22 13.43, subdivision 2, clause (5), are public; and

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

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

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

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

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

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

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

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

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

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

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

3.21 (h) If a subject of the data submits a written request to the law enforcement agency
3.22 to retain the recording beyond the applicable retention period for possible evidentiary or
3.23 exculpatory use in a future proceeding related to the circumstances under which the data
3.24 were collected, the law enforcement agency shall retain the recording for an additional
3.25 time period requested by the subject of up to 180 days and notify the requester that the
3.26 recording will then be destroyed unless a new request is made under this paragraph.

3.27 A government entity may retain the recording for as long as reasonably necessary for
3.28 possible evidentiary or exculpatory use in a future proceeding related to the incident with
3.29 respect to which the data were collected.

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

3.34 (j) A law enforcement agency using portable recording systems must arrange for
3.35 an independent triennial audit of data collected from the systems to determine whether

4.1 the data have been maintained, classified, and destroyed as required by this subdivision.
4.2 Summary data related to the results of the audit are public data.

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

4.9 **EFFECTIVE DATE.** This section is effective the day following final enactment.
4.10 Data collected before the effective date of this section must be destroyed, if required by
4.11 this section, no more than 90 days after this section becomes effective.

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

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

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

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

4.26 Sec. 4. **[626.8473] PORTABLE RECORDING SYSTEMS ADOPTION;**
4.27 **WRITTEN POLICY REQUIRED.**

4.28 Subdivision 1. **Definition.** As used in this section, "portable recording system"
4.29 means a device described in section 13.82, subdivision 32.

4.30 Subd. 2. **Public comment; approval of local governing body required.** (a) A
4.31 local law enforcement agency may not purchase or implement a portable recording system
4.32 unless the governing body with jurisdiction over the law enforcement agency has approved:

4.33 (1) purchase and implementation of the system; and

4.34 (2) the written policy required under subdivision 3.

5.1 (b) A vote to approve use of a portable recording system and the written policy
5.2 required by subdivision 3 must occur at a regularly scheduled meeting of the governing
5.3 body, following an opportunity for public comment. Notice of the meeting must be posted
5.4 at least 30 days prior to the date of the meeting.

5.5 Subd. 3. **Written policies and procedures required.** (a) The chief officer of
5.6 every state and local law enforcement agency that uses or proposes to use a portable
5.7 recording system must establish and enforce a written policy governing its use, subject to
5.8 the approval requirements in subdivision 2. In developing and adopting the policy, the
5.9 law enforcement agency must provide for public comment and input. Use of a portable
5.10 recording system without adoption of a written policy meeting the requirements of this
5.11 subdivision is prohibited. The written policy must be posted on the agency's Web site.

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

5.13 (1) the requirements of section 13.82, subdivision 32, and other data classifications,
5.14 access procedures, retention policies, and data security safeguards that, at a minimum,
5.15 meet the requirements of chapter 13 and other applicable law;

5.16 (2) procedures for testing the portable recording system to ensure adequate
5.17 functioning;

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

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

5.22 (5) circumstances under which the consent of a data subject is required prior to
5.23 recording;

5.24 (6) circumstances under which a data subject must be given notice of a recording;

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

5.27 (8) procedures for the secure storage of portable recording system data and the
5.28 creation of backup copies of the data;

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

5.32 (10) if applicable, any other standards for use contained in a uniform policy adopted
5.33 by the Minnesota Chiefs of Police Association or the Minnesota Sheriffs' Association.

5.34 **EFFECTIVE DATE.** This section is effective August 1, 2016, provided that a
5.35 law enforcement agency using a portable recording system on that date must secure the

6.1 governing body's approval of the system and the policy required under this section, no
6.2 later than January 15, 2017.

6.3 **Sec. 5. [626.8475] PORTABLE RECORDING DEVICE POLICY.**

6.4 A law enforcement agency that authorizes peace officers employed by the agency
6.5 to wear portable recording devices must allow a peace officer to review recordings from
6.6 a portable recording device before completing the officer's final report or making a
6.7 statement related to an incident.