

Senate Judiciary Committee

Pete Mulvey 271-4063

SB 289-FN, relative to use and preservation of body-worn camera recordings in certain matters.

Hearing Date: February 4, 2025

Time Opened: 2:13 p.m.

Time Closed: 2:38 p.m.

Members of the Committee Present: Senators Gannon, Abbas and Altschiller

Members of the Committee Absent : Senators Carson and Reardon

Bill Analysis: This bill adds procedures to govern the preservation of body-worn camera footage and its use in certain proceedings.

Sponsors:

Sen. Gannon

Sen. Lang

Sen. Sullivan

Rep. Bernardy

Rep. S. Minor

Rep. Porcelli

Rep. Rice

Rep. L. Walsh

Who supports the bill: Paul Halvorsen, Steven Endres, and Roger Phillips signed in support of SB 289-FN.

Who opposes the bill: Margaret Byinos signed in opposition to SB 289-FN.

Who is neutral on the bill: Jessica King, and Marissa Chase signed in as neutral.

Summary of testimony:

Senator William Gannon

Senate District 23

- Senate Bill 289 delineated the standards for copying, sharing, and destroying body-worn camera footage.

Steven Endres and Paul Halvorsen

Merrimack County Attorney Office

- The Merrimack County Attorney's supported SB 289.
- SB 289 read similarly to SB 362 from 2024.
- RSA 105-D:2 is the comprehensive body camera statute. Language barring the copying, sharing, or alteration of footage complicated discovery in trials.

- There were privacy protections within 105-d:2; Access shall be for law enforcement purposes only, while storage compliance requirements with audits were included.
- The lack of language relevant to discovery meant that when a copy was inevitably made, none of the privacy protections of RSA 105-D:2 applied.
- SB 289 made it clear that body camera footage can be copied for administrative and criminal hearings and shall be held to the aforementioned privacy protections.
- Mr. Endres did not oppose calls to include civil litigation in SB 289.
- Mr. Halvorsen maintained that SB 289 retained the process rights, and privacy for victims and defendants alike.
- Mr. Endres added that the Rockingham, Cheshire, Belknap, Carroll, and Strafford County Attorney's supported SB 289.
- Sen. Abbas asked if adjustments to lighting for clarity in viewing would be considered alteration of footage.
- Mr. Endres clarified that body camera footage may be cut, frozen, and cropped to create exhibits. Mr. Endres warned that many programs will unnaturally adjust photos when edits such as zooms are made. Changes to lighting were covered in the proposed language although may require elaboration before a judge.
- Mr. Halvorsen pointed to lines 10-12 of SB 289 and stated that the language satisfied Sen. Abbas' concern.

Jessica King

Senior Assistant Attorney General, N.H Department of Justice

- Ms. King spoke on behalf of Attorney General John Formella.
- The clarity of SB 289 was welcomed.
- SB 289 would further accountability in policing.
- The N.H Department of Justice asked for civil litigation to be included in SB 289.
- Use of body camera footage in civil litigation could be crucial for civil rights violations and or help exonerate law enforcement in civil suits if necessary.
- Current statute permits law enforcement to retain footage for civil proceedings, although language ought to explicitly permit its use in addition to retention.
- Sen. Abbas asked if there were exceptions for destruction, where retention may be appropriate.
 - Ms. King said any footage may be retained during an investigation if necessary. Footage may be retained until the end of litigation. Local police departments have policies mandating destruction according to varying timeframes but may retain footage if requested.
- Sen. Abbas shared an instance in which a recorded confession between two parties of a larger conspiracy was destroyed – ultimately hampering the subsequent trial of the conspirator at large.
 - Ms. King said what was proposed was sufficient and believed that Sen. Abbas' issue might've been a matter of timing and notification.

Marissa Chase

Civil Plaintiffs Bar

- Ms. Chase concurred previous testimony and supported SB 289.
- Ms. Chase offered language for civil litigation's inclusion; lines eight through ten should have the terms 'civil' or 'administrative' added.

- Ms. Chase recommended the creation of section (g) on line 27 and added that it should read as “*body worn camera recordings requested for investigation in a civil matter or for civil litigation in connection to a proceeding shall be released only after the criminal matters have concluded*”.
- Evidence in a civil case did not exclusively serve to prove something happened, but sometimes the inverse as well.

Roger Phillips

Chairman, Adult Parole Board

- Mr. Phillips addressed section 3, related to criminal juvenile or administrative proceedings.
- Parole violation and revocation hearings received discovery requests for body camera recordings.
- SB 289 would be appreciated by those party to juvenile or administrative proceedings.
- To date, no one had tried to introduce body worn camera footage as evidence as parole and probation officers relied on their own testimony in lieu of footage.

Steven Endres

Solicitor, Merrimack County Attorney’s Office

- Sen. Abbas reiterated his previous question on retention.
 - Mr. Enders said there was a grey area for retention. Municipal records were held to eternal retention standards, and it was questionable whether municipal records encompassed body camera footage or not.
 - RSA 105-D:2 provided that the footage had to be destroyed within a certain time frame. There were minimum retention requirements for certain circumstances, although no maximum.
- Sen. Abbas asked if the retention policy in SB 289 was appropriate.
 - Mr. Endres affirmed that the retention policies were appropriate.

PM
Date Hearing Report completed: February 10, 2025