



SB2411

Measure Title:	RELATING TO LAW ENFORCEMENT CAMERAS.
Report Title:	Body-Worn Cameras; Vehicle Cameras; Law Enforcement; Grant-in-Aid; Appropriation (\$)
Description:	Establishes requirements for body-worn cameras and vehicle cameras for county police departments. Appropriates funds as a grant-in-aid to each county for the purchase of body-worn video cameras and law enforcement vehicle cameras; provided that no funds appropriated to a county shall be expended unless matched dollar-for-dollar by the county.
Companion:	HB2108
Package:	None
Current Referral:	PSM, JDL/WAM
Introducer(s):	KEITH-AGARAN, INOUE, Gabbard, Shimabukuro

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Public Safety, Intergovernmental,
and Military Affairs

From: Cheryl Kakazu Park, Director

Date: February 9, 2016, 2:00 p.m.
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 2411
Relating to Law Enforcement Cameras

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) supports the intent of this bill to ensure that police departments have planned for public requests under the Uniform Information Practices Act (“UIPA”), chapter 92F, for recordings made by body-worn cameras. OIP wishes to clarify, however, that a police department’s adoption of a policy regarding UIPA requests for such recordings would not preempt the requirements of the UIPA, and OIP notes the need for additional staffing and operational funding to address the anticipated high volume of time-consuming video requests. OIP takes no position on the remaining provisions of this bill.

Proposed section 52D-__ (a)(4), at bill page 4 lines 6-7, requires police departments to adopt policies and establish requirements providing for “[p]ublic access, including requests made pursuant to chapter 92F.” It is likely that some body-worn camera recordings will be required to be publicly disclosed under the UIPA: for example, a recording of an incident of high public interest such as a controversial police shooting, or one where all persons depicted consented to its

disclosure. If a police department adopted a policy requiring it to withhold records for which the UIPA would require disclosure – for instance, a policy stating that all body-worn camera recordings would be confidential and not publicly disclosed – the department’s confidentiality policy would not preempt a required disclosure of those same records under the UIPA.

OIP notes that public requests for body-worn camera recordings are likely to **require case-by-case analysis** of the balance of the privacy interests of those depicted versus the public disclosure interest, similar to the issues involved when OIP considers disputes regarding disclosure of 911 recordings. OIP anticipates that UIPA requests for these recordings will be **time-consuming** both for police departments to respond to and for OIP to advise the police departments and the public and to issue decisions on appeals. OIP further anticipates a **high volume of requests and appeals** involving body-worn camera recordings. Consequently, **OIP will need additional staffing and operational funding** to address body camera issues.

Thank you for the opportunity to testify.



Committee: Committee on Public Safety, Intergovernmental and Military Affairs
Hearing Date/Time: Tuesday, February 9, 2016, 2:00 p.m.
Place: Room 229
Re: Testimony of the ACLU of Hawaii with Comments regarding S.B. 2411, Relating to Law Enforcement Cameras

Dear Chair Nishihara and Committee Members:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes with comments regarding S.B. 2411, which requires each county police department to adopt policies for the use of body-worn cameras and vehicle cameras and provides grant-in-aid for the purchase of these cameras.

While we support the use of police body-worn and vehicle cameras, we recommend that the Legislature set clear guidelines for their use to protect individual privacy and ensure consistency in law enforcement practices. As written, S.B. 2411 fails to establish clear and consistent guidance, leaving substantive policy decisions to departmental discretion. The ACLU of Hawaii respectfully requests that this Committee amend S.B. 2411 to incorporate the guidelines set out in H.B. 1738, which we believe adequately addresses these concerns.

Thank you for this opportunity to testify.

Daniel Gluck
Legal Director
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

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TO:

The Honorable Clarence Nishihara, Chair
Senate Committee on Public Safety, Intergovernmental
and Military Affairs

The Honorable Will Espero, Vice Chair
Senate Committee on Public Safety, Intergovernmental
and Military Affairs

Members of the Senate Committee on Public Safety,
Intergovernmental and Military Affairs

FROM:

Tenari Ma'afala, President
State of Hawaii Organization of Police Officers

DATE:

February 5, 2016

SUBJECT:

Testimony on S.B. No. 2411, Relating to Law Enforcement
Cameras

HEARING DATE:

Tuesday, February 9, 2016
2:00 p.m. Conference Room 229

Thank you for the opportunity to testify on this bill regarding body-worn cameras for police. The State of Hawaii Organization of Police Officers ("SHOPO") opposes this bill, in part, as to establishing requirements for use. SHOPO supports annual reporting of the costs of the body camera program and the appropriation for funding the programs in each county.

The four county police departments provide extensive training for their officers. They have developed policies and procedures for their respective departments for decades that have served the members of the department and the community well. The four county police chiefs understand the demands of police work and the standards required. Therefore they are best qualified to draft their body camera policies in conjunction with SHOPO.

In the testimony provided by SHOPO last session to this Committee on body-worn cameras, it was stated that an extensive study was conducted by the Police Executive Research Forum on body cameras, including convening a conference in 2013 with over 200 law enforcement officials, scholars, representatives from federal agencies, and other experts, for the purpose of gathering information on their experiences with body cameras. A publication resulted, entitled: "Implementing a Body-Worn Camera Program Recommendations and Lessons Learned".

Recently, the Kaua'i Police Department ("KPD") and SHOPO were able to agree on wording in KPD's new Body-Worn Camera System policy.¹ Extensive research and police experience were utilized by both parties to develop the policy. Both sides also agreed that it is going to be a work-in-progress and as implementation rolls out, changes may have to be made.

¹ The issue of whether body cameras are a subject of mandatory bargaining still remains.

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The KPD Body-Worn Camera System policy already addresses the subjects in Section 2 of this bill and much more.

Also, in Section 2, it provides as follows:

§52D- Body-worn cameras; police department policies. (a) Each county police department shall adopt policies for the use of body-worn cameras and vehicle cameras that prohibit the activation of either type of camera for non-law enforcement purposes and shall establish (Emphasis added.)

The practical implementation for the officers of what is “non-law enforcement” is difficult. Is an officer working during a tidal wave inundation or hurricane doing a “non-law enforcement” activity, or could video of this and the resulting damage tremendously assist homeowners and the counties in seeking federal assistance. Let the Hawaii Constitution and the U.S. Constitution be the guides. The officers are already bound by Hawaii’s Constitutional Right to Privacy, which is in addition to the rights the U.S. Constitution gives to citizens to be free of unreasonable searches and seizures.

Additionally, in Section 2, under “Training”, it provides “(c) The attorney general shall develop or approve a curriculum for training purposes under this section.” It is well-known that other departments from Washington, Oregon, and Nevada, amongst others, have come to Hawaii to recruit officers from the Honolulu Police Department. This is because of the excellence of their training program and staff. There has not been a need for the attorney general to teach the police what the police should do for at least the last four decades, so if the wheel is not broken, don’t fix it. That is not to say the police department cannot seek input from the attorney general’s office, if needed.

Further, under Section 2, “Prohibited Acts”, there may be instances where a video should be deleted. A strong policy would address this by providing that the officers shall not delete from any video, and that if there is a need, a request can be sent to the Chief or designee for review.

Likewise, policies would address the time periods for keeping video of incidents involving deadly force by a police officer, criminal investigations of police officers, and administrative investigations. The first two would be addressed in any policy as it could be evidence subject to a litigation hold. These have already been addressed in the first body-worn camera policy in the state.

Finally, under Section 2, “Prohibited Acts”, subsection (d) that requires all video related to administrative investigations cannot be deleted without a court order is untenable. If an officer is being investigated for courtesy while issuing a moving citation, the time, effort, and

expense of the police departments, corporation counsels and the courts to seek approval to delete a video in this matter, is better handled by implementing a time period to retain the video.

As we stated earlier, SHOPO does support annual reports on body camera program costs and funding for the county police departments for body camera programs.

Thank you for your consideration of our testimony. SHOPO opposes in part and supports in part Senate Bill 2411.

**Hawaii State Legislature
Senate Committee on
Public Safety, Intergovernmental and Military Affairs
Testimony**

Aloha Chair Nishihara, Vice Chair Espero, and other distinguished committee members

Thank you for allowing me to testify on behalf of this proposed amendment. My name is Aaron Hunger and I am a doctoral researcher at the University of Hawaii at Manoa, a former police officer in Florida and California, and a criminal justice instructor for a private college in Honolulu. I have been honored to be engaged in doctoral research involving the Honolulu Police Department, and its oversight mechanisms since 2010. Together with my teaching, I have over 24 years of police experience. Currently, I am engaged in research with the University of Hawaii at Manoa that (among other issues) seeks to understand the unique structure of the criminal justice institutions on Oahu. Based on the unique composition of local policing organizations, one of many questions being answered is what effect (if any) does the absence of critical systemic oversight mechanisms (or their dysfunctionality) produce and how often. Based on the work and research that I have been privileged to be a part of, I would support Senate Bill 2411 (LEO Body and Vehicle Cameras).

With my background in law enforcement it saddens me to admit that a percentage of the men and women who swear to uphold and defend the laws and constitution, fail to maintain their personal integrity. As a result of these personal ethical failures, officers often target their abuse against those they believe incapable of exposing their corruption (i.e. the mentally ill, sex workers, homeless, etc.) Additionally, it must be noted that police have traditionally be given the ‘benefit of the doubt’ when conflicts of ‘fact’ arise between them and the average citizen. This is problematic when considering the number of cases that have arisen with law enforcement officers in Hawaii who have been caught providing false testimony on official police documents.¹

Nationally and locally, recent CCTV, police body and vehicle dashboard camera, and private citizen cellular phone footage, have exposed abuses and a ‘culture of testi-lying’ involving policing agencies nationwide. The lessons that have resulted from this exposure show that videotape is an important tool in managing police services and improving operational and technical quality control. Additionally these videotapes have been central in allowing legislators, mayors, governors, and other external governmental checks-and-balance actors to witness (firsthand) events that may have been “mistranslated” or purposefully ‘re-narrated’ in official reports to relieve police agencies, local governments, and police actors from civil and criminal liability.

This has been the case in several high-profile incidents where police shot and killed citizens in Honolulu, Chicago, St. Louis, New York, San Francisco, and Baltimore, where video showed a very different series of events than did official police reports. Had CCTV not been present in the Honolulu Police

¹ (Daranciang, 2015) (Grube, 2014 (SM)) (Kerr, 2013) (Shikina, 2014)

Department's case involving Officer Vincent Morre, there is no doubt that the conspiracy to cover-up the crime by multiple policemen and their supervisors (subsequently uncovered by the FBI) would have succeeded. The same could be said in the cases of Honolulu Police Officers Seti Jr², and Wang³ whose beating of citizens was "justified" within police reports and internal police investigations and was set to be 'white-washed' when iPhone video surfaced that exposed a very different scene than was depicted by arresting officers. In addition to exposing corrupt police officers, video also protects those officers who do follow policy and protocol.

As reported by the Kauai Chief of Police (prior to overriding S.H.O.P.O's reform objections and obstructionist lobbying⁴) the use of videotape during a trial period justified officers' action and conduct on several occasions when citizens had complaints towards the officers' service delivery performance.⁵ Nationally, police chiefs have pointed to police-body cameras as the reasons that officer involved complaints were reduced.⁶ According to these police managers, both the police service provider using the camera, and the citizen being encountered, are "on their best behavior" as a result of understanding that their conduct is being recorded.⁷

Video tape has taught law enforcement experts that while being an important window into how police services are delivered, the videotape (itself) has become an important piece of evidence that must be safeguarded. While many departments have rushed to implement cameras on police as a method of communal accountability, police experts are now pointing to the lack of custodial guidance overlooked in many policy development strategies surrounding the video evidence itself. To ensure this does not happen, It is strongly recommended that you amend this bill to provide a mandate that the video be maintained by a custodial agent other than the department the video is collected from.

Many policing and governmental bodies have decided that the state level oversight agency (Standards and Training Board) is the best agency to handle and review police videos. Having a neutral custodian of the evidence is both judicially prudent and common sense. Based on Hawaii's unique oversight system that prevents a (non-legislatively created) Standards and Training Board from being the clearinghouse of all Law Enforcement data (including videotapes), the suggestion is to empower local County Police Commissions to maintain and review video collected from their local police agencies.

This amendment to the bill would also move towards rectifying freedom of information requests with police records that was encountered by Hawaiian investigative journalists during the Honolulu Police handling of the Darren Cachola incident.⁸ In that case the media was provided with pages of redacted information, or were told that information that would cast light on how managers reacted to the investigation would cost hundreds of thousands of dollars.⁹ The videotapes must not be allowed to be

² (Grube, 2015 (B))

³ (Grube, 2016 (BMS))

⁴ (Grube, Hawaii Police Union Asks State To Stop Kauai Body Camera Use, 2016 (SSV))

⁵ (Kawano, 2015 (KRO))

⁶ (Kawano, 2015 (CEO))

⁷ (Morales, 2015 (BCR))

⁸ (Mangieri, 2015)

⁹ (Mangieri, 2015)

made bureaucratically unavailable by police agents who are invested in what may be revealed on the requested videos.

For these reason, this bill and SB-2417 (Police Commission Policies on LEO Body Camera's) should be amended to address the custodianship of the videos, and then set as companion bills. Once amended, these are important bills that improve public trust and accountability, while simultaneously collecting scientific data and providing new oversight tools for legislators, police managers, and law enforcement quality control experts.

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