



SB2417

Measure Title:	RELATING TO LAW ENFORCEMENT.
Report Title:	Police Officers; Body Cameras; Policies and Procedures
Description:	Requires each police commission to develop basic guidelines for the use of body cameras by police officers to be adopted as written policies for each county police department. Requires police departments using police officer worn body cameras to submit written annual reports regarding the body camera program to the police commission and requires the police commission to submit annual reports to the department of the attorney general and legislature. Requires the police departments using police officer worn body cameras to explore and apply for any available federal funding and grant moneys to assist in covering the operational costs of employing a police officer worn body camera program.
Companion:	HB2106
Package:	None
Current Referral:	PSM, JDL/WAM
Introducer(s):	KEITH-AGARAN, Dela Cruz, Gabbard, Shimabukuro



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. 2417,
Relating to Law Enforcement

Dear Chair Nishihara and Committee Members:

The American Civil Liberties Union of Hawaii ("ACLU of Hawaii") writes with comments regarding S.B. 2417, which requires each police commission to develop guidelines for the use of body-worn cameras.

While we support the use of police body-worn 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. 2417 fails to establish clear and consistent guidance, leaving substantive policy decisions to the discretion of the police commissions. The ACLU of Hawaii respectfully requests that this Committee amend S.B. 2417 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

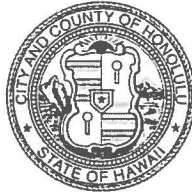
The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that 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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OUR REFERENCE

February 8, 2016

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety, Intergovernmental,
and Military Affairs
State Senate
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

Subject: Senate Bill 2417, Relating to Law Enforcement

The Honolulu Police Commission (Commission) appreciates the opportunity to provide comments on Senate Bill 2417, Relating to Law Enforcement.

The proposed measure would amend Chapter 52D, Hawaii Revised Statutes, to add a new section that, in part, would require the Commission to develop basic guidelines for the use of body cameras by officers of the Honolulu Police Department (HPD). We respectfully submit the following should this measure be moved out of committee for further consideration:

The Commission does not have the authority to develop such guidelines for HPD. The Commission's scope of authority is specifically enumerated in Section 6-1605 of the Revised Charter of the City and County of Honolulu (Charter). Such section continues on to prohibit the Commission from interfering with the administrative affairs of HPD except as otherwise provided in the Charter. The development of any guidelines, policies or rules by the Commission for HPD, including the proposed body camera guidelines, is not expressly provided for in Section 6-1605 or anywhere else in the Charter and is therefore prohibited.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to be "DWS", followed by a long horizontal line.

DANIEL W. S. LAWRENCE
Executive Officer

DWSL:ey

c: The Honorable Kirk Caldwell, Mayor
Louis M. Kealoha, Chief of Police

SHOPO



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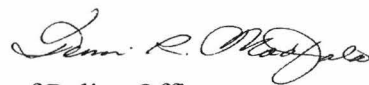
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TO: The Honorable Clarence Nishihara, Chair
Senate Committee on Public Safety, Intergovernmental
and Military Affairs

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. 2417, Relating to Law Enforcement

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.

In Section 1, subsection (a) of S.B. 2417, it provides that "The police commission of each county shall develop basic guidelines for the use of body cameras by police officers." SHOPO opposes this subsection. Additionally, subsection (b) dictates to the Honolulu Police Department what their operational policy should include.

Notably, in the 2015 session, the Department of the Attorney General submitted testimony to this Committee for House Bill 456 H.D.1 (regarding changing the Honolulu Police Commission's procedure for filing citizen complaints) opining that "Article VIII, section 2, of the Hawaii Constitution allows each political subdivision to adopt a charter for its own self-governance and, with respect to each political subdivision, a charter is superior to any statutory provision regarding its structure and organization."

The Revised Charter of Honolulu, Section 6-1606 ("RCH") specifies the police commission's powers, duties and functions. Nowhere does it task the police commission with developing guidelines or policies for the Honolulu Police Department ("HPD"). There is good reason for this. The complexity of running the operations of an organization with approximately 2,500 employees and a \$250 million budget cannot be overstated. It takes many years of experience, of many administrators, along with extensive training in policing, to develop sound policies and procedures.

Most importantly, the RCH specifies that the Police Commission members shall not "interfere in any way with the administrative affairs of the department."

The Honolulu Police Commission (“HPC”) is made up of dedicated volunteers with varied experiences and education. They are already tasked with not only hiring, and then evaluating the Police Chief annually, but must receive, consider and investigate complaints from the public; review the annual budget for HPD and make any recommendations if needed; develop and submit an annual report of the HPC’s work to the mayor and city council; and review and make suggestions on HPD’s strategic plan.

The HPC was created to take the politics out of the police department. SHOPO does not want a police department that has to sway with the political winds rather than doing what is right and best provides for the safety and protection of the community. The HPC was created just for that purpose.

The Honolulu Charter Commission, on August 5, 1957, saw fit to bring in Dr. O. W. Wilson, Dean, School of Criminology and Police Administration, University of California, to question him on the form of organization for police administration. In the minutes of this 80th Commission meeting, Dr. Wilson opined:

[T]he organization for police administration should depend on the form of city government – that the form of government is very important in that it would determine the extent to which ‘political influences’ might be brought to bear on the administration of the police function.

In his opinion, the organizational structure for police administration would not by itself assure efficient and honest administration (admittedly, the caliber of the people who administer the function would be the determining factor) but the structure should be such that unhealthy political influences could not easily reach the police department.

Honolulu Charter Commission Minutes, Jan. 1957 – June 1958, p. 430.

At the February 28, 1958 meeting of the Honolulu Charter Commission, the minutes reflect that they thought it was necessary to add wording to the Charter to prevent interference in the administrative matters of the department by the Commissioners as follows:

He felt that the laws as written do not permit the chief to be the administrator of the department free of the control of the police commission. One of the commissioners stated that the intention was that the police commission appoint the chief, make general rules and regulations and keep hands off and if it didn’t approve the chief’s actions he could be removed. A suggestion was made to add in a sentence to read: ‘The commission shall adopt rules and regulations committed to its charge and except for purpose of inquiry and the right to act as an appeals board neither the commission nor its members shall interfere with the administrative affairs of the department.’

The Commission voted in favor of this suggestion. *Id.* at pp. 489-490.

Thus, SHOPO opposes Section 1, subsections (a) and (b) of S.B. 2417 directing the HPC to create guidelines from which HPD is to develop policies and procedures, and dictating to HPD what should be included in their operational policy. As to subsections (c) and (d), we leave that to HPD and HPC to state a position. Thank you for consideration of our testimony.

**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 2417 (Commission policies on 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-2411 (Mandatory 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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