
A BILL FOR AN ACT

RELATING TO LAW ENFORCEMENT CAMERAS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that an increasing number
2 of states are addressing the issue of law enforcement agencies'
3 use of body-worn video cameras as a means to protect civilians
4 and law enforcement officers. A body-worn video camera worn by
5 a law enforcement officer acts as a third-party, independent
6 witness in disputes by clarifying testimony obtained in the
7 field.

8 The legislature further finds that people who are aware
9 that they are being videotaped are more inclined to alter their
10 behavior, as they know that they will likely be held accountable
11 for their actions. In light of the recent incidents involving
12 law enforcement officers and the alleged use of unnecessary
13 force, body-worn video cameras can provide law enforcement
14 officers and civilians the security of knowing that a law
15 enforcement officer's or civilian's statements about an incident
16 may be corroborated by the video or audio recording obtained
17 through the body-worn video camera.



1 Law enforcement agencies in this country spend
 2 approximately \$2,000,000,000 annually investigating complaints
 3 against law enforcement officers. The use of body-worn video
 4 cameras may reduce complaints against law enforcement officers
 5 and allow complaints to be resolved more quickly, thus freeing
 6 up valuable resources and reducing financial losses.

7 The legislature also finds that the use of body-worn video
 8 cameras can assist law enforcement agencies with training,
 9 assessment, and disciplinary decisions.

10 Accordingly, the purpose of this Act is to promote
 11 transparency, accountability, and protection for law enforcement
 12 officers and civilians by:

- 13 (1) Establishing requirements for the use of body-worn
 14 cameras; and
- 15 (2) Appropriating funds to each county for the purchase of
 16 body-worn cameras.

17 SECTION 2. Chapter 52D, Hawaii Revised Statutes, is
 18 amended by adding a new part to be appropriately designated and
 19 to read as follows:

20 **"PART . LAW ENFORCEMENT CAMERAS**

21 **§52D-A Definitions.** As used in this part:



1 "Body-worn camera" means a recording device that is:

2 (1) Capable of recording video and audio or transmitting
3 video and audio to be recorded remotely; and

4 (2) Worn on the person of a law enforcement officer, and
5 shall include being attached to the law enforcement
6 officer's clothing or worn as glasses.

7 "Subject of the video footage" means any law enforcement
8 officer or any suspect, victim, detainee, person engaged in a
9 conversation, injured party, or other similarly situated person
10 who appears on a body camera recording, and shall not include
11 individuals who only incidentally appear on a recording.

12 **§52D-B Use of body-worn cameras for law enforcement**

13 **officers.** (a) While on duty, law enforcement officers shall
14 wear and use body-worn cameras only in accordance with this
15 part. Body-worn cameras shall be worn in a location and manner
16 that maximizes the camera's ability to capture video footage of
17 the law enforcement officer's activities.

18 (b) Except as provided in subsection (d), both the audio
19 and video recording functions of the body-worn camera shall be
20 activated:



1 (1) Whenever a law enforcement officer responds to a call
2 for service; and

3 (2) At the initiation of any law enforcement or
4 investigative encounter between a law enforcement
5 officer and a member of the public;

6 provided that when an immediate threat to the law enforcement
7 officer's life or safety makes activating the camera impossible
8 or dangerous, the law enforcement officer shall activate the
9 camera at the first reasonable opportunity to do so. The body-
10 worn camera shall not be deactivated until the call for service
11 or encounter has fully concluded and the law enforcement officer
12 leaves the scene.

13 (c) A law enforcement officer who is wearing a body-worn
14 camera shall notify the subjects of the video footage that the
15 subjects are being recorded by a body-worn camera as close to
16 the inception of the encounter as is reasonably possible.

17 (d) Notwithstanding the requirements of subsection (b):

18 (1) Prior to entering a private residence without a
19 warrant or in non-exigent circumstances, a law
20 enforcement officer shall ask the occupant if the
21 occupant wants the law enforcement officer to



1 discontinue use of the law enforcement officer's body-
2 worn camera. If the occupant responds affirmatively,
3 the law enforcement officer shall immediately
4 discontinue use of the body-worn camera;

5 (2) When interacting with an apparent crime victim, a law
6 enforcement officer shall, as soon as practicable, ask
7 the apparent crime victim if the apparent crime victim
8 wants the law enforcement officer to discontinue use
9 of the law enforcement officer's body-worn camera. If
10 the apparent crime victim responds affirmatively, the
11 law enforcement officer shall immediately discontinue
12 use of the body-worn camera; and

13 (3) When interacting with a person seeking to anonymously
14 report a crime or assist in an ongoing law enforcement
15 investigation, a law enforcement officer shall, as
16 soon as practicable, ask the person seeking to remain
17 anonymous if the person wants the law enforcement
18 officer to discontinue use of the body-worn camera.
19 If the person responds affirmatively, the law
20 enforcement officer shall immediately discontinue use
21 of the body-worn camera.



1 (e) All law enforcement officers' offers to discontinue
2 the use of a body-worn camera made pursuant to subsection (d),
3 and the responses thereto, shall be recorded by the body-worn
4 camera prior to discontinuation of use of the body-worn camera.

5 **§52D-C Prohibited acts.** (a) No police officer on duty
6 shall operate a body-worn camera that is not issued and
7 maintained by the applicable county police department.

8 (b) No police officer on duty shall use a body-worn
9 camera:

- 10 (1) Surreptitiously;
- 11 (2) To gather intelligence information for the exercise of
12 a privilege protected by the First Amendment of the
13 Constitution of the United States;
- 14 (3) To record activity that is unrelated to a response to
15 a call for service or unrelated to a law enforcement
16 or investigative encounter between a law enforcement
17 officer and a member of the public; or
- 18 (4) On the grounds of any public, private, or parochial
19 elementary or secondary school, except when a law
20 enforcement officer is responding to a call for
21 service or during an enforcement encounter.



1 (c) No person shall tamper with, delete, or make an
2 unauthorized copy of data obtained through the use of a body-
3 worn camera under this part.

4 (d) No person shall release a recording created with a
5 body-worn camera under this part unless the person first obtains
6 the permission of the applicable county police department.

7 **§52D-D Training.** (a) No law enforcement officer shall
8 use a body-worn camera without first being trained by the
9 applicable county police department on the proper use of the
10 body-worn camera.

11 (b) No law enforcement personnel shall come into contact
12 with data obtained from the use of a body-worn camera without
13 first being trained by the applicable county police department
14 on the proper handling of the data.

15 (c) The department of the attorney general shall develop
16 or approve a curriculum for training programs under this
17 section.

18 **§52D-E Body-worn camera video footage; retention and**
19 **deletion.** (a) Body-worn camera video footage shall be retained
20 by the agency that employs the law enforcement officer whose
21 camera captured the video footage, or an authorized agent



1 thereof, for one year for non-criminal cases from the date it
2 was recorded. Video footage for criminal cases shall be
3 retained for the period of the applicable criminal statute of
4 limitations. After expiration of this applicable period, the
5 video footage shall be permanently deleted.

6 (b) Notwithstanding the retention and deletion
7 requirements in subsection (a):

8 (1) Body-worn camera video footage shall be automatically
9 retained for no less than three years from the date it
10 was recorded if the video footage captures images
11 involving:

12 (A) Any use of force;

13 (B) Events leading up to and including an arrest for
14 a felony-level offense, or events that constitute
15 a felony-level offense; or

16 (C) An encounter about which a complaint has been
17 registered by a subject of the video footage;

18 (2) Body-worn camera video footage shall be retained for
19 no less than three years from the date it was recorded
20 if the longer retention period is requested by:



- 1 (A) The law enforcement officer whose body-worn
2 camera recorded the video footage, if that
3 officer reasonably asserts the video footage has
4 evidentiary or exculpatory value;
- 5 (B) Any law enforcement officer who is a subject of
6 the video footage, if that officer reasonably
7 asserts the video footage has evidentiary or
8 exculpatory value;
- 9 (C) Any superior officer of a law enforcement officer
10 whose body-worn camera recorded the video footage
11 or who is a subject of the video footage, if that
12 superior officer reasonably asserts the video
13 footage has evidentiary or exculpatory value;
- 14 (D) Any law enforcement officer, if the video footage
15 is being retained solely and exclusively for
16 police training purposes;
- 17 (E) Any individual who is a subject of the video
18 footage;
- 19 (F) Any parent or legal guardian of a minor who is a
20 subject of the video footage; or



1 (G) The next of kin or legally authorized designee of
2 a deceased subject of the video footage.

3 Any individual who is a subject of the video footage,
4 parent or legal guardian of a minor who is a subject
5 of the video footage, or next of kin or legally
6 authorized designee of a deceased subject of the video
7 footage shall be permitted to review the relevant
8 video footage prior to submitting a request pursuant
9 to subparagraph (E), (F), or (G); and

10 (3) No body-worn camera video footage documenting an
11 incident that involves the use of deadly force by a
12 law enforcement officer or that is otherwise related
13 to an administrative or criminal investigation of a
14 law enforcement officer shall be deleted or destroyed
15 without court order.

16 (c) The following video footage shall be exempt from the
17 public inspection requirements of chapter 92F:

18 (1) Video footage not subject to a minimum three-year
19 retention period pursuant to subsection (b);

20 (2) Video footage that is subject to a minimum three-year
21 retention period solely and exclusively pursuant to



1 subsection (b)(1)(C), if the subject of the video
2 footage making the complaint requests the video
3 footage not be made available to the public;

4 (3) Video footage that is subject to a minimum three-year
5 retention period solely and exclusively pursuant to
6 subsection (b)(2)(A), (B), (C), or (D); and

7 (4) Video footage that is subject to a minimum three-year
8 retention period solely and exclusively pursuant to
9 subsection (b)(2)(E), (F), or (G), if the person
10 making the request requests the video footage not be
11 made available to the public.

12 **§52D-F Video footage; prohibitions on use.** (a) No law
13 enforcement officer shall review or receive an accounting of any
14 body-worn camera video footage that is subject to an automatic
15 minimum three-year retention period pursuant to section 52D-E
16 (b)(1) prior to completing any required initial reports,
17 statements, and interviews regarding the recorded event.

18 (b) Video footage not subject to a minimum three-year
19 retention period shall not be viewed by any immediate supervisor
20 of a law enforcement officer whose body-worn camera recorded the
21 video footage without a specific allegation of misconduct, nor



1 shall the video footage be subject to automated analysis or
2 analytics of any kind. Each law enforcement agency may set
3 policies for random auditing by the agency's respective internal
4 affairs section.

5 (c) Video footage shall not be divulged or used by any law
6 enforcement agency for any commercial or other non-law
7 enforcement purpose.

8 **§52D-G Violation of recording or retention requirements.**

9 (a) If any law enforcement officer, employee, or agent fails to
10 adhere to the recording or retention requirements in section
11 52D-E or intentionally interferes with a body-worn camera's
12 ability to accurately capture video footage:

13 (1) Appropriate disciplinary action shall be taken against
14 the individual law enforcement officer, employee, or
15 agent;

16 (2) A rebuttable evidentiary presumption shall be adopted
17 in favor of criminal defendants who reasonably assert
18 that exculpatory evidence was destroyed or not
19 captured; and

20 (3) A rebuttable evidentiary presumption shall be adopted
21 on behalf of civil plaintiffs who reasonably assert



1 that evidence supporting their claim was destroyed or
2 not captured in a civil suit against the State, a
3 county, a state or county agency, or a law enforcement
4 officer for damages based on officer misconduct.

5 (b) The disciplinary action requirement and rebuttable
6 presumptions in subsection (a) may be overcome by contrary
7 evidence or proof of exigent circumstances that made compliance
8 impossible."

9 SECTION 3. Chapter 52D, Hawaii Revised Statutes, is
10 amended by designating sections 52D-1 to 52D-16 as "Part I.
11 General Provisions".

12 SECTION 4. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$ or so
14 much thereof as may be necessary for fiscal year 2017-2018 for a
15 grant in aid to each county for the purchase of body-worn video
16 cameras to be used by each county police department to be
17 allocated as follows:

- 18 \$ to the city and county of Honolulu;
- 19 \$ to the county of Maui;
- 20 \$ to the county of Hawaii; and
- 21 \$ to the county of Kauai;



1 provided that no funds appropriated to a county under this Act
2 shall be expended unless matched dollar-for-dollar by the
3 county.

4 The sums appropriated shall be expended by each county for
5 the purposes of this Act.

6 SECTION 5. Each county police department that receives a
7 grant-in-aid pursuant to section 4 of this Act shall submit to
8 the legislature reports no later than twenty days prior to the
9 convening of the regular sessions of 2018 through 2022, which
10 shall include the costs of implementing and maintaining the
11 body-worn camera program and the equipment, data storage, and
12 other costs of the program.

13 SECTION 6. This Act shall take effect on January 7, 2059;
14 provided that section 4 of this Act shall take effect on July 1,
15 2017.

16



Report Title:

Body-worn Cameras; Law Enforcement; Grant-in-Aid; Appropriation

Description:

Establishes requirements for body-worn cameras for law enforcement officers. Establishes policy guidelines for the use and discontinuance of use of body-worn cameras by law enforcement officers. Establishes certain restrictions on the use of body-worn cameras by on-duty law enforcement officers. Adds retention and deletion requirements for body-worn camera footage. Prohibits certain uses of body-worn camera video footage. Establishes violations of recording and retention requirements. Appropriates funds as a grant-in-aid to each county for the purchase of body-worn video cameras; provided that no funds appropriated to a county shall be expended unless matched dollar-for-dollar by the county. Requires the county police departments to report costs of implementing and maintaining the body-worn camera program to the legislature. Takes effect on 1/7/2059. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

