

JAN 20 2017

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 and vehicle cameras as a means to
4 protect civilians and law enforcement officers. A body-worn
5 video camera worn by a law enforcement officer acts as a third-
6 party, independent witness in disputes by clarifying testimony
7 obtained in the field. Vehicle cameras are video cameras that
8 are typically mounted on a vehicle's dashboard.

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



1 an incident may be corroborated by the video or audio recording
2 obtained through the body-worn video camera or vehicle camera.

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

10 The legislature also finds that the use of body-worn video
11 cameras and vehicle cameras can assist law enforcement agencies
12 with training, assessment, and disciplinary decisions.

13 Accordingly, the purpose of this Act is to promote
14 transparency, accountability, and protection for law enforcement
15 officers and civilians by:

- 16 (1) Establishing requirements for the use of body-worn
17 cameras and vehicle cameras; and
18 (2) Appropriating funds to each county for the purchase of
19 body-worn cameras and vehicle cameras.



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

4 "PART . LAW ENFORCEMENT CAMERAS

5 §52D-A Definitions. As used in this part:

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

- 7 (1) Capable of recording video and audio or transmitting
8 video and audio to be recorded remotely; and
9 (2) Worn on the person of a law enforcement officer, and
10 shall include being attached to the law enforcement
11 officer's clothing or worn as glasses.

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

17 "Vehicle camera" means a recording device that is:

- 18 (1) Capable of recording video or audio or transmitting
19 video or audio to be recorded remotely; and
20 (2) Mounted in or on a law enforcement vehicle.



1 §52D-B Use of body-worn cameras for law enforcement

2 **officers.** (a) While on duty, law enforcement officers shall
3 wear and use body-worn cameras and vehicle cameras only in
4 accordance with this part. Body-worn cameras shall be worn in a
5 location and manner that maximizes the camera's ability to
6 capture video footage of the law enforcement officer's
7 activities.

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

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

13 (2) At the initiation of any law enforcement or
14 investigative encounter between a law enforcement
15 officer and a member of the public;

16 provided that when an immediate threat to the law enforcement
17 officer's life or safety makes activating the camera impossible
18 or dangerous, the law enforcement officer shall activate the
19 camera at the first reasonable opportunity to do so. The body-
20 worn camera shall not be deactivated until the call for service



1 or encounter has fully concluded and the law enforcement officer
2 leaves the scene.

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

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

8 (1) Prior to entering a private residence without a
9 warrant or in non-exigent circumstances, a law
10 enforcement officer shall ask the occupant if the
11 occupant wants the law enforcement officer to
12 discontinue use of the law enforcement officer's body-
13 worn camera. If the occupant responds affirmatively,
14 the law enforcement officer shall immediately
15 discontinue use of the body-worn camera;

16 (2) When interacting with an apparent crime victim, a law
17 enforcement officer shall, as soon as practicable, ask
18 the apparent crime victim if the apparent crime victim
19 wants the law enforcement officer to discontinue use
20 of the law enforcement officer's body-worn camera. If
21 the apparent crime victim responds affirmatively, the



1 law enforcement officer shall immediately discontinue
2 use of the body-worn camera; and

3 (3) When interacting with a person seeking to anonymously
4 report a crime or assist in an ongoing law enforcement
5 investigation, a law enforcement officer shall, as
6 soon as practicable, ask the person seeking to remain
7 anonymous if the person wants the law enforcement
8 officer to discontinue use of the body-worn camera.

9 If the person responds affirmatively, the law
10 enforcement officer shall immediately discontinue use
11 of the body-worn camera.

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

16 **§52D-C Prohibited acts.** (a) No police officer on duty
17 shall operate a body-worn camera or vehicle camera that is not
18 issued and maintained by the applicable county police
19 department.

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



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

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

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

19 **§52D-D Training.** (a) No law enforcement officer shall
20 use a body-worn camera or vehicle camera without first being



1 trained by the applicable county police department on the proper
2 use of the body-worn camera or vehicle camera.

3 (b) No law enforcement personnel shall come into contact
4 with data obtained from the use of a body-worn camera or vehicle
5 camera without first being trained by the applicable county
6 police department on the proper handling of the data.

7 (c) The department of the attorney general shall develop
8 or approve a curriculum for training programs under this
9 section.

10 **§52D-E Body-worn camera video footage; retention and**
11 **deletion.** (a) Body-worn camera video footage shall be retained
12 by the agency that employs the law enforcement officer whose
13 camera captured the video footage, or an authorized agent
14 thereof, for one year for non-criminal cases from the date it
15 was recorded. Video footage for criminal cases shall be
16 retained for the period of the applicable criminal statute of
17 limitations. After expiration of this applicable period, the
18 video footage shall be permanently deleted.

19 (b) Notwithstanding the retention and deletion
20 requirements in subsection (a):



- 1 (1) Body-worn camera video footage shall be automatically
2 retained for no less than three years from the date it
3 was recorded if the video footage captures images
4 involving:
- 5 (A) Any use of force;
 - 6 (B) Events leading up to and including an arrest for
7 a felony-level offense, or events that constitute
8 a felony-level offense; or
 - 9 (C) An encounter about which a complaint has been
10 registered by a subject of the video footage;
- 11 (2) Body-worn camera video footage shall be retained for
12 no less than three years from the date it was recorded
13 if the longer retention period is requested by:
- 14 (A) The law enforcement officer whose body-worn
15 camera recorded the video footage, if that
16 officer reasonably asserts the video footage has
17 evidentiary or exculpatory value;
 - 18 (B) Any law enforcement officer who is a subject of
19 the video footage, if that officer reasonably
20 asserts the video footage has evidentiary or
21 exculpatory value;



- 1 (C) Any superior officer of a law enforcement officer
2 whose body-worn camera recorded the video footage
3 or who is a subject of the video footage, if that
4 superior officer reasonably asserts the video
5 footage has evidentiary or exculpatory value;
- 6 (D) Any law enforcement officer, if the video footage
7 is being retained solely and exclusively for
8 police training purposes;
- 9 (E) Any individual who is a subject of the video
10 footage;
- 11 (F) Any parent or legal guardian of a minor who is a
12 subject of the video footage; or
- 13 (G) A deceased subject of the video footage's next of
14 kin or legally authorized designee.
- 15 Any individual who is a subject of the video footage,
16 parent or legal guardian of a minor who is a subject
17 of the video footage, or deceased subject's next of
18 kin or legally authorized designee shall be permitted
19 to review the relevant video footage prior to
20 submitting a request pursuant to subparagraph (E),
21 (F), or (G); and



1 (3) No body-worn camera video footage documenting an
2 incident that involves the use of deadly force by a
3 law enforcement officer or that is otherwise related
4 to an administrative or criminal investigation of a
5 law enforcement officer shall be deleted or destroyed
6 without court order.

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

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

11 (2) Video footage that is subject to a minimum three-year
12 retention period solely and exclusively pursuant to
13 subsection (b)(1)(C), if the subject of the video
14 footage making the complaint requests the video
15 footage not be made available to the public;

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

19 (4) Video footage that is subject to a minimum three-year
20 retention period solely and exclusively pursuant to
21 subsection (b)(2)(E), (F), or (G), if the person



1 making the request requests the video footage not be
2 made available to the public.

3 **§52D-F Video footage; prohibitions on use.** (a) No law
4 enforcement officer shall review or receive an accounting of any
5 body-worn camera video footage that is subject to an automatic
6 minimum three-year retention period pursuant to section 52-E
7 (b) (1) prior to completing any required initial reports,
8 statements, and interviews regarding the recorded event.

9 (b) Video footage not subject to a minimum three-year
10 retention period shall not be viewed by any immediate supervisor
11 of a law enforcement officer whose body-worn camera recorded the
12 video footage without a specific allegation of misconduct, nor
13 shall the video footage be subject to automated analysis or
14 analytics of any kind. Each law enforcement agency may set
15 policies for random auditing by the agency's respective internal
16 affairs section.

17 (c) Video footage shall not be divulged or used by any law
18 enforcement agency for any commercial or other non-law
19 enforcement purpose.

20 **§52D-G Violation of recording or retention requirements.**

21 (a) If any law enforcement officer, employee, or agent fails to



1 adhere to the recording or retention requirements in section
2 52D-E or intentionally interferes with a body-worn camera's
3 ability to accurately capture video footage:

4 (1) Appropriate disciplinary action shall be taken against
5 the individual law enforcement officer, employee, or
6 agent;

7 (2) A rebuttable evidentiary presumption shall be adopted
8 in favor of criminal defendants who reasonably assert
9 that exculpatory evidence was destroyed or not
10 captured; and

11 (3) A rebuttable evidentiary presumption shall be adopted
12 on behalf of civil plaintiffs who reasonably assert
13 that evidence supporting their claim was destroyed or
14 not captured in a civil suit against the State, a
15 county, a state or county agency, or a law enforcement
16 officer for damages based on officer misconduct.

17 (b) The disciplinary action requirement and rebuttable
18 presumptions in subsection (a) may be overcome by contrary
19 evidence or proof of exigent circumstances that made compliance
20 impossible."



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

4 SECTION 4. There is appropriated out of the general
5 revenues of the State of Hawaii the sum of \$ or so
6 much thereof as may be necessary for fiscal year 2017-2018 for a
7 grant in aid to each county for the purchase of body-worn video
8 cameras and law enforcement vehicle cameras to be used by each
9 county police department to be allocated as follows:

10 \$ to the city and county of Honolulu;

11 \$ to the county of Maui;

12 \$ to the county of Hawaii; and

13 \$ to the county of Kauai;

14 provided that no funds appropriated to a county under this Act
15 shall be expended unless matched dollar-for-dollar by the
16 county.

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

19 SECTION 5. Each county police department that receives a
20 grant-in-aid pursuant to section 4 of this Act, shall submit to
21 the legislature reports no later than twenty days prior to the



1 convening of the regular sessions of 2018 through 2022, which
 2 shall include the costs of implementing and maintaining the
 3 body-worn camera and vehicle camera program and the equipment,
 4 data storage, and other costs of the program.

5 SECTION 6. This Act shall take effect on January 1, 2018.
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INTRODUCED BY:

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S.B. NO. 421

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. Establishes policy guidelines for the use and discontinuance of use of body-worn cameras by police officers. Establishes certain restrictions on the use of body-worn cameras by on-duty police 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 and law enforcement vehicle 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 and vehicle camera program to the legislature. Takes effect on 1/1/2018.

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

