
A BILL FOR AN ACT

RELATING TO BODY CAMERAS FOR LAW ENFORCEMENT OFFICERS.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 BODY CAMERAS FOR LAW ENFORCEMENT OFFICERS

6 § -1 Definitions. As used in this chapter, unless the
7 context requires otherwise:

8 "Law enforcement officer" means any public servant, whether
9 employed by the State or a county, vested by law with a duty to
10 maintain public order, to make arrests for offenses, or to
11 enforce the criminal laws, whether the duty extends to all
12 offenses or is limited to a specific class of offenses.

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



1 § -2 Use of body cameras for law enforcement officers.

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

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

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

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

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



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

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

- 6 (1) Prior to entering a private residence without a
7 warrant or in non-exigent circumstances, a law
8 enforcement officer shall ask the occupant if the
9 occupant wants the officer to discontinue use of the
10 officer's body camera. If the occupant responds
11 affirmatively, the law enforcement officer shall
12 immediately discontinue use of the body camera;
- 13 (2) When interacting with an apparent crime victim, a law
14 enforcement officer shall, as soon as practicable, ask
15 the apparent crime victim if the apparent crime victim
16 wants the officer to discontinue use of the officer's
17 body camera. If the apparent crime victim responds
18 affirmatively, the law enforcement officer shall
19 immediately discontinue use of the body camera; and
- 20 (3) When interacting with a person seeking to anonymously
21 report a crime or assist in an ongoing law enforcement



1 investigation, a law enforcement officer shall, as
2 soon as practicable, ask the person seeking to remain
3 anonymous if the person wants the officer to
4 discontinue use of the officer's body camera. If the
5 person responds affirmatively, the law enforcement
6 officer shall immediately discontinue use of the body
7 camera.

8 (e) All law enforcement officers' offers to discontinue
9 the use of a body camera made pursuant to subsection (d), and
10 the responses thereto, shall be recorded by the body camera
11 prior to discontinuation of use of the body camera.

12 § -3 Prohibitions. Body cameras shall not be used:

- 13 (1) Surreptitiously;
- 14 (2) To gather intelligence information based on First
15 Amendment protected speech, associations, or religion;
- 16 (3) To record activity that is unrelated to a response to
17 a call for service or a law enforcement or
18 investigative encounter between a law enforcement
19 officer and a member of the public; or
- 20 (4) On the grounds of any public, private, or parochial
21 elementary or secondary school, except when a law



1 enforcement officer is responding to an imminent
2 threat to life or health.

3 § -4 Body camera video footage; retention and deletion.

4 (a) Body camera video footage shall be retained by the agency
5 that employs the law enforcement officer whose camera captured
6 the video footage, or an authorized agent thereof, for six
7 months from the date it was recorded. After expiration of this
8 six-month period, the video footage shall be permanently
9 deleted.

10 (b) Notwithstanding the retention and deletion
11 requirements in subsection (a):

12 (1) Body camera video footage shall be automatically
13 retained for no less than three years from the date it
14 was recorded if the video footage captures images
15 involving:

- 16 (A) Any use of force;
- 17 (B) Events leading up to and including an arrest for
18 a felony-level offense, or events that constitute
19 a felony-level offense; or
- 20 (C) An encounter about which a complaint has been
21 registered by a subject of the video footage.



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

4 (A) The law enforcement officer whose body camera
5 recorded the video footage, if that officer
6 reasonably asserts the video footage has
7 evidentiary or exculpatory value;

8 (B) Any law enforcement officer who is a subject of
9 the video footage, if that officer reasonably
10 asserts the video footage has evidentiary or
11 exculpatory value;

12 (C) Any superior officer of a law enforcement officer
13 whose body camera recorded the video footage or
14 who is a subject of the video footage, if that
15 superior officer reasonably asserts the video
16 footage has evidentiary or exculpatory value;

17 (D) Any law enforcement officer, if the video footage
18 is being retained solely and exclusively for
19 police training purposes;

20 (E) Any individual who is a subject of the video
21 footage;



1 (F) Any parent or legal guardian of a minor who is a
2 subject of the video footage; or

3 (G) A deceased subject of the video footage's next of
4 kin or legally authorized designee.

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

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

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

16 (2) Video footage that is subject to a minimum three-year
17 retention period solely and exclusively pursuant to
18 subsection (b)(1)(C), if the subject of the video
19 footage making the complaint requests the video
20 footage not be made available to the public;



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

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

10 § -5 Video footage; prohibitions on use. (a) No law
11 enforcement officer shall review or receive an accounting of any
12 body camera video footage that is subject to an automatic
13 minimum three-year retention period pursuant to section -4
14 (b) (1) prior to completing any required initial reports,
15 statements, and interviews regarding the recorded event.

16 (b) Video footage not subject to a minimum three-year
17 retention period shall not be viewed by any superior officer of
18 a law enforcement officer whose body camera recorded the video
19 footage without a specific allegation of misconduct, nor shall
20 it be subject to automated analysis or analytics of any kind.



1 (c) Video footage shall not be divulged or used by any law
2 enforcement agency for any commercial or other non-law
3 enforcement purpose.

4 (d) Where a law enforcement agency authorizes a third-
5 party to act as its agent in maintaining body camera footage,
6 the agent shall not be permitted to independently access, view,
7 or alter any video footage, except to delete videos as required
8 by law or agency retention policies.

9 § -6 Violation of recording or retention requirements.

10 (a) Should any law enforcement officer, employee, or agent fail
11 to adhere to the recording or retention requirements contained
12 in this chapter or intentionally interfere with a body camera's
13 ability to accurately capture video footage:

14 (1) Appropriate disciplinary action shall be taken against
15 the individual officer, employee, or 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 § -7 Video footage; use or admissibility as evidence.

10 (a) Body camera video footage recorded in contravention of this
11 chapter or any other applicable law shall be immediately
12 destroyed and shall not be admissible as evidence in any
13 criminal or civil legal or administrative proceeding.

14 (b) Video footage retained beyond six months from the date
15 it was recorded solely and exclusively for police training
16 purposes shall not be admissible as evidence in any criminal or
17 civil legal or administrative proceeding.

18 (c) Nothing in this chapter shall be read to contravene
19 any laws governing the maintenance and destruction of evidence
20 in criminal investigations and prosecutions."



1 SECTION 2. This Act shall take effect upon its approval.

2.

INTRODUCED BY:

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H.B. NO. 1738

Report Title:

Law Enforcement; Body Cameras

Description:

Regulates the use of body cameras by law enforcement officers and body camera video footage.

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

