
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
19 of 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, which
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, conversant, injured
14 party, or other similarly situated person who appears on a body
15 camera recording, and shall not include individuals who only
16 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 officer's activities.

7 (b) Except as provided in subsection (d), both the audio
8 and video recording functions of the body-worn 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-worn camera shall not be
19 deactivated until the call for service or encounter has fully
20 concluded and the law enforcement officer leaves the scene.



1 (c) A law enforcement officer who is wearing a body-worn
2 camera shall notify the subjects of the video footage that the
3 subjects are being recorded by a body-worn camera as close to
4 the inception of 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-worn camera. If the occupant responds
11 affirmatively, the law enforcement officer shall
12 immediately discontinue use of the body-worn 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-worn camera. If the apparent crime victim
18 responds affirmatively, the law enforcement officer
19 shall immediately discontinue use of the body-worn
20 camera; and



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

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

14 §52D-C Prohibited acts. (a) No police officer on duty
15 shall operate a body-worn camera or vehicle camera that is not
16 issued and maintained by the applicable county police
17 department.

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

20 (1) Surreptitiously;



- 1 (2) To gather intelligence information based on First
2 Amendment protected speech, associations, or religion;
- 3 (3) To record activity that is unrelated to a response to
4 a call for service or a law enforcement or
5 investigative encounter between a law enforcement
6 officer and a member of the public; or
- 7 (4) On the grounds of any public, private, or parochial
8 elementary or secondary school, except when a law
9 enforcement officer is responding to a call for
10 service or during an enforcement encounter.
- 11 (c) No person shall tamper with, delete, or make an
12 unauthorized copy of data obtained through the use of a body-
13 worn camera or vehicle camera under this part.
- 14 (d) No person shall release a recording created with a
15 body-worn camera under this part unless the person first obtains
16 the permission of the applicable county police department and
17 state law enforcement agencies.
- 18 §52D-D Training. (a) No police officer shall use a body-
19 worn camera or vehicle camera without first being trained by the
20 applicable county police department on the proper use of the
21 body-worn camera or vehicle camera.



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

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

8 §52D-E Body-worn camera video footage; retention and
9 deletion. (a) Body-worn camera video footage shall be retained
10 by the agency that employs the law enforcement officer whose
11 camera captured the video footage, or an authorized agent
12 thereof, for one year for non-criminal cases from the date it
13 was recorded. Video footage for criminal cases shall be
14 retained for the period of the applicable criminal statute of
15 limitations. After expiration of this applicable period, the
16 video footage shall be permanently deleted.

17 (b) Notwithstanding the retention and deletion
18 requirements in subsection (a):

19 (1) Body-worn camera video footage shall be automatically
20 retained for no less than three years from the date it



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



1 or who is a subject of the video footage, if that
2 superior officer reasonably asserts the video
3 footage has evidentiary or exculpatory value;

4 (D) Any law enforcement officer, if the video footage
5 is being retained solely and exclusively for
6 police training purposes;

7 (E) Any individual who is a subject of the video
8 footage;

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

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

13 Any individual who is a subject of the video footage,
14 parent or legal guardian of a minor who is a subject
15 of the video footage, or deceased subject's next of
16 kin or legally authorized designee shall be permitted
17 to review the relevant video footage prior to
18 submitting a request pursuant to subparagraph (E),
19 (F), or (G); and

20 (3) No body-worn camera video footage documenting an
21 incident that involves the use of deadly force by a



1 police officer or that is otherwise related to an
2 administrative or criminal investigation of a police
3 officer shall be deleted or destroyed without court
4 order.

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

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

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

12 (3) Video footage that is subject to a minimum three-year
13 retention period solely and exclusively pursuant to
14 subsection (b)(2)(E), (F), or (G), if the person
15 making the request requests the video footage not be
16 made available to the public.

17 (d) Individuals depicted in, or identified by, any of the
18 following categories of video footage shall be presumed to have
19 significant privacy interests in the information contained in
20 the video footage:



- 1 (1) Video footage that is subject to a minimum three-year
- 2 retention period solely and exclusively pursuant to
- 3 subsection (b) (1) (C), if the subject of the video
- 4 footage making the complaint requests the video
- 5 footage not be made available to the public; and
- 6 (2) Video footage that is subject to a minimum three-year
- 7 retention period solely and exclusively pursuant to
- 8 subsection (b) (2) (A), (B), or (C).

9 Consistent with sections 92F-13 and 92F-14, disclosure of
 10 this video footage shall be deemed to constitute a clearly
 11 unwarranted invasion of personal privacy unless the public
 12 interest in disclosure outweighs the privacy interests of the
 13 individual.

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

20 (b) Video footage not subject to a minimum three-year
 21 retention period shall not be viewed by any immediate supervisor



1 of a law enforcement officer whose body-worn camera recorded the
2 video footage without a specific allegation of misconduct, nor
3 shall the video footage be subject to automated analysis or
4 analytics of any kind. Each law enforcement agency may set
5 policies for random auditing by the agency's respective internal
6 affairs section.

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

10 **§52D-G Violation of recording or retention requirements.**

11 (a) Should any law enforcement officer, employee, or agent fail
12 to adhere to the recording or retention requirements contained
13 in section 52D-E or intentionally interfere with a body-worn
14 camera's ability to accurately capture video footage:

- 15 (1) Appropriate disciplinary action shall be taken against
16 the individual officer, employee, or agent;
- 17 (2) A rebuttable evidentiary presumption shall be adopted
18 in favor of criminal defendants who reasonably assert
19 that exculpatory evidence was destroyed or not
20 captured; and



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

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

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

14 SECTION 4. There is appropriated out of the general
 15 revenues of the State of Hawaii the sum of \$ or so much
 16 thereof as may be necessary for fiscal year 2016-2017 for a
 17 grant-in-aid to each county for the purchase of body-worn video
 18 cameras and law enforcement vehicle cameras to be used by each
 19 county police department, to be allocated as follows:

20 \$ to the city and county of Honolulu;

21 \$ to the county of Maui;



1 \$ to the county of Hawaii; and

2 \$ to the county of Kauai;

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

6 The sum appropriated shall be expended by each county for
7 the purposes of this Act.

8 SECTION 5. Each county police department shall become
9 fully operational with respect to police body-worn and vehicle-
10 mounted cameras as soon as practicable, and in any event, not
11 later than July 1, 2018. Each county police department shall
12 commence preparation for becoming operational promptly after the
13 effective date of this Act. Such preparation shall include, but
14 not be limited to, procurement of appropriate camera equipment,
15 training of police officers and staff in the proper usage of
16 cameras, acquisition of adequate and proper storage space for
17 video footage, establishment of appropriate policies relating to
18 storage and access to video footage, and promulgation of further
19 policies and procedures not inconsistent with the purposes and
20 policies of this Act.



1 SECTION 6. Each county police department that receives a
2 grant-in-aid pursuant to section 4 of this Act, shall submit to
3 the legislature reports no later than twenty days prior to the
4 convening of the 2017, 2018, 2019, 2020, and 2021 regular
5 sessions, which shall include the costs of implementing and
6 maintaining the body-worn camera and vehicle camera program and
7 the initial and ongoing equipment, data storage, and other costs
8 of the program.

9 SECTION 7. This Act shall take effect on July 1, 2016.



Report Title:

Body-Worn Cameras; Vehicle Cameras; Law Enforcement; Grant-in-Aid; Appropriation

Description:

Establishes requirements, restrictions, and implementation timelines 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 subject to dollar-for-dollar match by the county. Requires each county receiving funds to report to the Legislature. (SB2411 HD1)

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