
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
17 an incident may be corroborated by the video or audio recording
18 obtained through the body-worn video camera or vehicle 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 and vehicle cameras may reduce complaints against law
 5 enforcement officers and allow complaints to be resolved more
 6 quickly, thus freeing up valuable resources and reducing
 7 financial losses.

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

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

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

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

21 "PART . LAW ENFORCEMENT CAMERAS



1 **§52D-A Definitions.** As used in this part:

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

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

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

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

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

17 **§52D-B Use of body-worn cameras for law enforcement**

18 **officers.** (a) While on duty, law enforcement officers shall
19 wear and use body-worn cameras and vehicle cameras only in
20 accordance with this part. Body-worn cameras shall be worn in a



1 location and manner that maximizes the camera's ability to
2 capture video footage of the officer's activities.

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

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

8 (2) At the initiation of any law enforcement or
9 investigative encounter between a law enforcement
10 officer and a member of the public;

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

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

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



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



1 the person responds affirmatively, the law enforcement
2 officer shall immediately discontinue use of the body-
3 worn camera.

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

8 §52D-C Prohibited acts. (a) No police officer on duty
9 shall operate a body-worn camera or vehicle camera that is not
10 issued and maintained by the applicable county police
11 department.

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

- 14 (1) Surreptitiously;
- 15 (2) To gather intelligence information based on First
16 Amendment protected speech, associations, or religion;
- 17 (3) To record activity that is unrelated to a response to
18 a call for service or a law enforcement or
19 investigative encounter between a law enforcement
20 officer and a member of the public; or



1 (4) On the grounds of any public, private, or parochial
2 elementary or secondary school, except when a law
3 enforcement officer is responding to a call for
4 service or during an enforcement encounter.

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

8 (d) No person shall release a recording created with a
9 body-worn camera under this part unless the person first obtains
10 the permission of the applicable county police department and
11 state law enforcement agencies.

12 §52D-D Training. (a) No police officer shall use a body-
13 worn camera or vehicle camera without first being trained by the
14 applicable county police department on the proper use of the
15 body-worn camera or vehicle camera.

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

1 (c) The department of the attorney general shall develop
2 or approve a curriculum for training programs under this
3 section.

4 §52D-E Body-worn camera video footage; retention and
5 deletion. (a) Body-worn camera video footage shall be retained
6 by the agency that employs the law enforcement officer whose
7 camera captured the video footage, or an authorized agent
8 thereof, for one year for non-criminal cases from the date it
9 was recorded. Video footage for criminal cases shall be
10 retained for the period of the applicable criminal statute of
11 limitations. After expiration of this applicable period, the
12 video footage shall be permanently deleted.

13 (b) Notwithstanding the retention and deletion
14 requirements in subsection (a):

15 (1) Body-worn camera video footage shall be automatically
16 retained for no less than three years from the date it
17 was recorded if the video footage captures images
18 involving:

19 (A) Any use of force;



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



- 1 (D) Any law enforcement officer, if the video footage
- 2 is being retained solely and exclusively for
- 3 police training purposes;
- 4 (E) Any individual who is a subject of the video
- 5 footage;
- 6 (F) Any parent or legal guardian of a minor who is a
- 7 subject of the video footage; or
- 8 (G) A deceased subject of the video footage's next of
- 9 kin or legally authorized designee.

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

- 17 (3) No body-worn camera video footage documenting an
- 18 incident that involves the use of deadly force by a
- 19 police officer or that is otherwise related to an
- 20 administrative or criminal investigation of a police



1 officer shall be deleted or destroyed without court
2 order.

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

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

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

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

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

20 **§52D-F Video footage; prohibitions on use.** (a) No law
21 enforcement officer shall review or receive an accounting of any



1 body-worn camera video footage that is subject to an automatic
2 minimum three-year retention period pursuant to section 52-E
3 (b) (1) prior to completing any required initial reports,
4 statements, and interviews regarding the recorded event.

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

13 (c) Video footage shall not be divulged or used by any law
14 enforcement agency for any commercial or other non-law
15 enforcement purpose.

16 **§52D-G Violation of recording or retention requirements.**

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



1 (1) Appropriate disciplinary action shall be taken against
2 the individual officer, employee, or agent;

3 (2) A rebuttable evidentiary presumption shall be adopted
4 in favor of criminal defendants who reasonably assert
5 that exculpatory evidence was destroyed or not
6 captured; and

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

13 (b) The disciplinary action requirement and rebuttable
14 presumptions in subsection (a) may be overcome by contrary
15 evidence or proof of exigent circumstances that made compliance
16 impossible."

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

20 SECTION 4. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2016-2017 for a
2 grant-in-aid to each county for the purchase of body-worn video
3 cameras and law enforcement vehicle cameras to be used by each
4 county police department, to be allocated as follows:

- 5 \$ to the city and county of Honolulu;
- 6 \$ to the county of Maui;
- 7 \$ to the county of Hawaii; and
- 8 \$ to the county of Kauai;

9 provided that no funds appropriated to a county under this Act
10 shall be expended unless matched dollar-for-dollar by the
11 county.

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

14 SECTION 5. Each county police department that receives a
15 grant-in-aid pursuant to section 4 of this Act, shall submit to
16 the legislature reports no later than twenty days prior to the
17 convening of the 2017, 2018, 2019, 2020, and 2021 regular
18 sessions, which shall include the costs of implementing and
19 maintaining the body-worn camera and vehicle camera program and
20 the equipment, data storage, and other costs of the program.

21 SECTION 6. This Act shall take effect on January 7, 2059.



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. Effective January 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.

