
A BILL FOR AN ACT

RELATING TO POLICE.

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

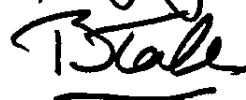
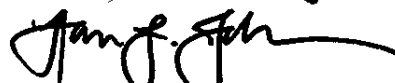
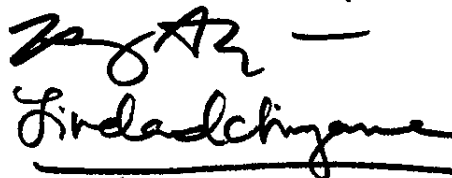
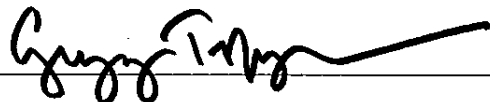
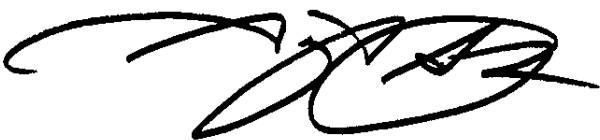
1 SECTION 1. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so
3 much thereof as may be necessary for fiscal year 2015-2016 and
4 the same sum or so much thereof as may be necessary for fiscal
5 year 2016-2017 for a grant-in-aid to the city and county of
6 Honolulu for the purchase of wearable body camera technology for
7 use by officers of the Honolulu police department.

8 The sums appropriated shall be expended by the city and
9 county of Honolulu for the purposes of this Act.

10 SECTION 2. This Act shall take effect on July 1, 2015.

11

INTRODUCED BY:



H.B. NO. 365

Report Title:

HPD; Body Cameras; Appropriation; Grant-in-aid

Description:

Appropriates moneys as a grant-in-aid to the city and county of Honolulu to purchase body cameras for their police officers.

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



POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

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DEPUTY CHIEFS

AL-TS

OUR REFERENCE

February 12, 2015

The Honorable Gregg Takayama, Chair
and Members
Committee on Public Safety
Hawaii State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Takayama and Members:

SUBJECT: House Bill 365, Relating to Police

I am Andrew Lum, Major of the Information Technology Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 365, Relating to Police.

The HPD is interested in developing a body camera program and supports the funding made available through this legislation. Other agencies that use the body cameras have seen a dramatic decrease in citizen complaints and use of force situations by officers. Cost savings in the areas of decreased litigation and unfounded complaint investigations were also seen as a benefit of this technology.

It is for these reasons that the HPD supports House Bill No. 365.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Lum".

Andrew Lum, Major
Information Technology Division

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoha".

Louis M. Kealoha
Chief of Police

SHOPO



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Tenari R. Ma'afala

VICE PRESIDENT
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TREASURER
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TO: The Honorable Gregg Takayama, Chair
House Committee on Public Safety

The Honorable Kyle T. Yamashita, Vice Chair
House Committee on Public Safety

Members of the House Committee on Public Safety

FROM: Tenari Ma'afala, President 
State of Hawaii Organization of Police Officers

DATE: February 10, 2015

SUBJECT: Testimony on H.B. No. 365, Relating to Police

HEARING DATE: Thursday, February 12, 2015
9:00 a.m. Conference Room 309

Thank you for the opportunity to testify on this bill regarding funding for body cameras for police officers. The State of Hawaii Organization of Police Officers ("SHOPO") supports this bill with comments.

SHOPO recognizes the benefits of body cameras for police. However, after review of the Police Executive Research Forum study described below, the implementation and utilization of body cameras requires at a minimum:

- a. planning;
- b. training and annual recall training for police officers;
- c. budgeting for long-term funding (primarily for video storage);
- d. contracting for storage, access to video, as well as security;
- e. orientation for the courts, prosecutors, and corporation counsel;
- f. researching legal and staffing implications for Hawaii Revised Statutes 92F requests for video
- g. engaging and educating the community;
- h. seeking input from the community.

The Police Executive Research Forum, with support from the U.S. Department of Justice Office of Community Oriented Policing Services, conducted an extensive study on body cameras, including convening a conference in 2013 with over 200 law enforcement officials, scholars, representatives from federal agencies, and other experts, for the purpose of gathering information on their experiences with body cameras. A publication resulted, entitled: "Implementing a Body-Worn Camera Program Recommendations and Lessons Learned" and can be found on the internet.

Therefore many issues will need to be carefully researched and addressed. Three of these issues are discussed in small part below.

First, as you know, Hawaii's Constitution, Article 1 Section 6 provides in relevant part: "The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest." Also, Article 7 provides in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures **and invasions of privacy shall not be violated.**" (Emphasis added.)

Thus, Hawaii police officers face a much more complex level of decision-making on whether their video cameras can be on in a member of the community's house, whether it be to quell a domestic argument or just answer questions on how to deal with a difficult teenager. Prosecutors, Corporation Counsel, and others will have to be engaged to address these issues before any implementation of a program.

Second, body camera video may be considered government records, subject to the Hawaii Revised Statutes ("HRS") 92F open records law. Any budget for a body camera program would have to include funding for sufficient staffing to respond to HRS 92F requests. Furthermore, each video would have to be carefully reviewed, even if eight hours long, to redact any parts subject to individuals' right to privacy. This may have to be a legal counsel position, as costly lawsuits could result from the improper release of video. Notably, an article in the American Bar Association Journal noted that Seattle police had to shut their program down because of the cost of responding to public record requests.

Third, body camera video is like cell phones. It is not the cost of the phone that is expensive, it is the cost of the monthly plan. Likewise, with body camera video, many jurisdictions have found that the cost of storage is expensive. The Police Executive Research Forum noted that the New Orleans Police Department deployed 350 cameras, and the cost of \$1.2 million for five years was mostly for data storage. A Hawaii News Now article interviewed a representative of the Honolulu Police Department that said it would cost roughly \$300,000 for cameras and \$100,000 to \$300,000 per year for video storage.

Additionally, there may be concerns about video data being stored in outside vendor servers ("the cloud") which could be in any country in the world, versus at the individual police departments. As we know with a cell phone plan, once you sign up for the plan, you are a captive audience that must pay dearly for any changes or cancellations.

In summary, SHOPO is very interested in the body camera program, and at the same time is very concerned that the program be developed carefully and thoughtfully so that our citizens' privacy interests are addressed, budgeting is adequate for the long-term, and all the stakeholders have input. Thank you for your consideration in this matter.



Committee: Committee on Public Safety
Hearing Date/Time: Thursday, February 12, 2015, 9:00 a.m.
Place: Room 309
Re: Testimony of the ACLU of Hawaii in **Support of H.B. 365**, Relating to Police

Dear Chair Takayama and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in **support of H.B. 365**, which provides a grant-in-aid for the purchase of police body cameras.

While we support the use of police body cameras, we recommend that the Legislature set clear guidelines for their use to protect individual privacy and ensure consistency in law enforcement practices. A policy memorandum from the ACLU is attached hereto (and is available at <https://www.aclu.org/technology-and-liberty/police-body-mounted-cameras-right-policies-place-win-all>). (Additional recommendations are also available here: [http://www.aclu-il.org/statement-regarding-use-of-body-cameras-by-police/.](http://www.aclu-il.org/statement-regarding-use-of-body-cameras-by-police/))

Thank you for this opportunity to testify.

Daniel M. Gluck
Legal Director
ACLU of Hawaii

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for 50 years.

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Police Body-Mounted Cameras: With Right Policies in Place, a Win For All

By Jay Stanley, ACLU Senior Policy Analyst
October, 2013

Introduction¹

When a New York judge [found](#) that the NYPD's stop and frisk tactics violated the constitutional rights of New Yorkers, one of the remedies she ordered was for the department to begin testing wearable police cameras, sparking [debate](#) and discussion of the technology there.

These "on-officer recording systems" (also called "body cams" or "cop cams") are small, pager-sized cameras that clip on to an officer's uniform or sunglasses or are worn as a headset, and record audio and video of the officer's interactions with the public. We have heard reports of police body cameras being deployed in numerous cities, and one prominent manufacturer [told NBC](#) that it had sold them to "hundreds of departments."

The ACLU has commented on police body cameras in the media [several times](#) over the years (and in [stories](#) surrounding the stop and frisk ruling), but the ACLU's views on this technology are a little more complicated than can be conveyed through quotes in a news story.

Although we generally take a dim view of the proliferation of surveillance cameras in American life, police on-body cameras are different because of their potential to serve as a check against the abuse of power by police officers. Historically, there was no documentary evidence of most encounters between police officers and the public, and due to the volatile nature of those encounters, this often resulted in radically divergent accounts of incidents. Cameras have the potential to be a win-win, helping protect the public against police misconduct, and at the same time helping protect police against false accusations of abuse.

We're against pervasive government surveillance, but when cameras primarily serve the function of allowing public monitoring of the government instead of the other way around, we generally regard that as a good thing. While we have opposed government video surveillance of public places, for example, we have supported the installation of video cameras on police car dashboards, in prisons, and during interrogations.

At the same time, body cameras have more of a potential to invade privacy than those deployments. Police officers enter people's homes and encounter bystanders, suspects, and victims in a wide variety of sometimes stressful and extreme situations.

For the ACLU, the challenge of on-officer cameras is the tension between their potential to invade privacy and their strong benefit in promoting police accountability. Overall, we think they can be a win-win—but *only* if they are deployed within a framework of strong policies to ensure

¹ The author would like to thank Doug Klunder of the ACLU of Washington, who did much of the thinking behind the analysis set forth in this paper; Scott Greenwood of Ohio; and his colleagues at the national office, for their valuable feedback and advice.

they protect the public without becoming yet another system for routine surveillance of the public, and maintain public confidence in the integrity of those privacy protections. Without such a framework, their accountability benefits would not exceed their privacy risks.

On-officer cameras are a significant technology that implicates important, if sometimes conflicting, values. We will have to watch carefully to see how they are deployed and what their effects are over time, but in this paper we outline our current thinking about and recommendations for the technology. These recommendations are subject to change.

Control over recordings

Perhaps most importantly, policies and technology must be designed to ensure that police cannot “edit on the fly” — i.e., choose which encounters to record with limitless discretion. If police are free to turn the cameras on and off as they please, the cameras’ role in providing a check and balance against police power will shrink and they will no longer become a net benefit.

The primary question is how that should be implemented.

Purely from an accountability perspective, the ideal policy for body-worn cameras would be for continuous recording throughout a police officer’s shift, eliminating any possibility that an officer could evade the recording of abuses committed on duty. Of course, just as body cameras can invade the privacy of many innocent citizens, continuous deployment would similarly impinge on police officers when they are sitting in a station house or patrol car shooting the breeze — getting to know each other as humans, discussing precinct politics, etc. We have some [sympathy](#) for police on this; continuous recording might feel as stressful and oppressive in those situations as it would for any employee subject to constant recording by their supervisor. True, police officers with their extraordinary powers are not regular employees, and in theory officers’ privacy, like citizens’, could be protected by appropriate policies (as outlined below) that ensure that 99% of video would be deleted in relatively short order without ever being reviewed. But on a psychological level, such assurances are rarely enough. There is also the danger that the technology would be misused by police supervisors against whistleblowers or union activists — for example, by scrutinizing video records to find minor violations to use against an officer.

If the cameras do not record continuously, that would place them under officer control, which would create the danger that they could be manipulated by some officers, undermining their core purpose of detecting police misconduct. This has sometimes been an issue with patrol car “dashcams” — for example, in the case of two Seattle men who filed a claim for excessive force and wrongful arrest. Parts of the arrest were captured by a dashcam, but parts that should have been captured were [mysteriously missing](#). And with body cams, two Oakland police officers were [disciplined](#) after one of the officers’ cameras was turned off during an incident.

The balance that needs to be struck is to ensure that officers can’t manipulate the video record, while also ensuring that officers are not subjected to a relentless regime of surveillance without any opportunity for shelter from constant monitoring.

One possibility is that some form of effective automated trigger could be developed that would allow for minimization of recording while capturing any fraught encounters — based, for example, on detection of raised voices, types of movement, etc. When it comes to dashcams,

the devices are often configured to record whenever a car's siren or lights are activated, which provides a rough and somewhat (though not entirely) non-discretionary measure of when a police officer is engaged in an encounter that is likely to be a problem. That policy is not applicable to body cams, however, since there is no equivalent to flashing lights. And it's not clear that any artificial intelligence system in the foreseeable future will be smart enough to reliably detect encounters that should be recorded. In any case, it is not an option with today's technology.

If a police department is to place its cameras under officer control, then it must put in place tightly effective means of limiting officers' ability to choose which encounters to record. That can only take the form of a department-wide policy that mandates that police turn on recording during every interaction with the public.

And this requirement must have some teeth associated with it — not only a risk of disciplinary action but also perhaps an exclusionary rule for any evidence obtained in an unrecorded encounter (for police who have been issued the cameras, unless there is an exigency to justify the failure to record). Another means of enforcement might be to stipulate that in any instance in which an officer wearing a camera is accused of misconduct, a failure to record that incident would create an evidentiary presumption against the officer.

Limiting the threat to privacy from cop cams

Most of the discussion around police recording has focused on its oversight potential. But that is only one of the significant interests implicated by recording. Equally important are the privacy interests and fair trial rights of individuals who are recorded. Ideally there would be a way to minimize data collection to only what was reasonably needed, but there's currently no technological way to do so.

Police body cameras mean that many instances of entirely innocent behavior (on the part of both officers and the public) will be recorded, with significant privacy implications. Perhaps most troubling is that some recordings will be made inside people's homes, whenever police enter — including in instances of consensual entry (e.g., responding to a burglary call, voluntarily participating in an investigation) and such things as domestic violence calls. In the case of dashcams, we have also seen video of particular incidents released for no important public reason, and instead serving only to embarrass individuals. Examples have included [DUI stops of celebrities](#) and ordinary individuals whose [troubled](#) and/or [intoxicated](#) behavior has been widely circulated and now immortalized online. The potential for such merely embarrassing and titillating releases of video is significantly increased by body cams.

Therefore it is vital that any deployment of these cameras be accompanied by good privacy policies so that the benefits of the technology are not outweighed by invasions of privacy. The core elements of such a policy follow.

Notice to citizens

Most privacy protections will have to come from restrictions on subsequent retention and use of the recordings. There are, however, a couple of things that can be done at the point of recording.

- 1) Recording should be limited to uniformed officers and marked vehicles, so people know what to expect. An exception should be made for SWAT raids and similar planned uses of force when they involve non-uniformed officers.
- 2) Officers should be required, wherever practicable, to notify people that they are being recorded (similar to existing law for dashcams in some states such as Washington). One possibility departments might consider is for officers to wear an easily visible pin or sticker saying “lapel camera in operation” or words to that effect.
- 3) Although if the preceding policies are properly followed it should not be possible, it is especially important that the cameras not be used to surreptitiously gather intelligence information based on First Amendment protected speech, associations, or religion.

Recording in the home

Because of the uniquely intrusive nature of police recordings made inside private homes, officers should be required to be especially sure to provide clear notice of a camera when entering a home, except in circumstances such as an emergency or a raid. Departments might also consider a policy under which officers ask residents whether they wish for a camera to be turned off before they enter a home in non-exigent circumstances. (Citizen requests for cameras to be turned off should themselves be recorded to document such requests.) Cameras should never be turned off in SWAT raids and similar police actions.

Retention

Data should be retained no longer than necessary for the purpose for which it was collected. For the vast majority of police encounters with the public, there is no reason to preserve video evidence, and those recordings therefore should be deleted relatively quickly.

- Retention periods should be measured in weeks not years, and video should be deleted after that period unless a recording has been flagged. Once a recording has been flagged, it would then switch to a longer retention schedule (such as the three-year period currently in effect in Washington State).
- These policies should be posted online on the department’s website, so that people who have encounters with police know how long they have to file a complaint or request access to footage.
- Flagging should occur automatically for any incident:
 - involving a use of force;
 - that leads to detention or arrest; or
 - where either a formal or informal complaint has been registered.
- Any subject of a recording should be able to flag a recording, even if not filing a complaint or opening an investigation.
- The police department (including internal investigations and supervisors) and third parties should also be able to flag an incident if they have some basis to believe police misconduct has occurred or have reasonable suspicion that the video contains evidence of a crime. We do not want the police or gadflies to be able to routinely flag all recordings in order to circumvent the retention limit.
- If any useful evidence is obtained during an authorized use of a recording (see below), the recording would then be retained in the same manner as any other evidence gathered during an investigation.

- Back-end systems to manage video data must be configured to retain the data, delete it after the retention period expires, prevent deletion by individual officers, and provide an unimpeachable audit trail to protect chain of custody, just as with any evidence.

Use of Recordings

The ACLU supports the use of cop cams for the purpose of police accountability and oversight. It's vital that this technology not become a backdoor for any kind of systematic surveillance or tracking of the public. Since the records will be made, police departments need to be subject to strong rules around how they are used. The use of recordings should be allowed only in internal and external investigations of misconduct, and where the police have reasonable suspicion that a recording contains evidence of a crime. Otherwise, there is no reason that stored footage should even be reviewed by a human being before its retention period ends and it is permanently deleted.

Subject Access

People recorded by cop cams should have access to, and the right to make copies of, those recordings, for however long the government maintains copies of them. That should also apply to disclosure to a third party if the subject consents, or to criminal defense lawyers seeking relevant evidence.

Public Disclosure

When should the public have access to cop cam videos held by the authorities? Public disclosure of government records can be a tricky issue pitting two important values against each other: the need for government oversight and openness, and privacy. Those values must be carefully balanced by policymakers. One way to do that is to attempt to minimize invasiveness when possible:

- Public disclosure of any recording should be allowed with the consent of the subjects, as discussed above.
- Redaction of video records should be used when feasible — blurring or blacking out of portions of video and/or distortion of audio to obscure the identity of subjects. If recordings are redacted, they should be discloseable.
- Unredacted, unflagged recordings should not be publicly disclosed without consent of the subject. These are recordings where there is no indication of police misconduct or evidence of a crime, so the public oversight value is low. States may need to examine how such a policy interacts with their state open records laws.
- Flagged recordings are those for which there is the highest likelihood of misconduct, and thus the ones where public oversight is most needed. Redaction of disclosed recordings is preferred, but when that is not feasible, unredacted flagged recordings should be publicly discloseable, because in such cases the need for oversight outweighs the privacy interests at stake.

Good technological controls

It is important that close attention be paid to the systems that handle the video data generated by these cameras.

- Systems should be architected to ensure that segments of video cannot be destroyed. A recent case in Maryland illustrates the problem: surveillance video of an incident in

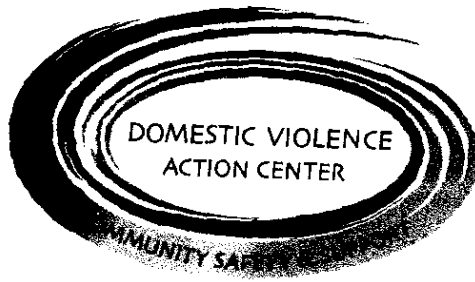
which [officers](#) were accused of beating a student disappeared (the incident was also filmed by a bystander). An officer or department that has engaged in abuse or other wrongdoing will have a strong incentive to destroy evidence of that wrongdoing, so technology systems should be designed to prevent any tampering with such video.

- In addition, all access to video records should be automatically recorded with immutable audit logs.
- Systems should ensure that data retention and destruction schedules are properly maintained.
- It is also important for systems be architected to ensure that video is only accessed when permitted according to the policies we've described above, and that rogue copies cannot be made. Officers should not be able to, for example, pass around video of a drunk city council member, or video generated by an officer responding to a call in a topless bar, or video of a citizen providing information on a local street gang.

It is vital that public confidence in the integrity of body camera privacy protections be maintained. We don't want crime victims to be afraid to call for help because of fears that video of their officer interactions will become public or reach the wrong party. Confidence can only be created if good policies are put in place and backed up by good technology.

As the devices are adopted by police forces around the nation, studies should be done to measure their impact. Only very limited [studies](#) have been done so far. Are domestic violence victims hesitating to call the police for help by the prospect of having a camera-wearing police officer in their home, or are they otherwise affected? Are privacy abuses of the technology happening, and if so what kind and how often?

Although fitting police forces with cameras will generate an enormous amount of video footage and raises many tricky issues, if the recording, retention, access, use, and technology policies that we outline above are followed, very little of that footage will ever be viewed or retained, and at the same time those cameras will provide an important protection against police abuse. We will be monitoring the impact of cameras closely, and if good policies and practices do not become standard, or the technology has negative side effects we have failed to anticipate, we will have to reevaluate our position on police body cameras.



LATE

TO: Chair Gregg Takayama
Vice Chair Kyle Yamashita
Members of the Committee

FR: Nanci Kreidman, M.A

RE: HB 365 Support

Thank you for scheduling this Bill for Hearing and consideration. It could be an important improvement to law enforcement response to domestic violence.

This testimony is provided to express strong support of HB 365. There have been challenges to effective police response and encounters between survivors and law enforcement are sometimes compromised by the difficulty inherent in the circumstances or the behavior of police, or the survivor.

Documentation of police enforcement and collection of factual information at domestic violence calls is very important for accountability. It can make the difference in a trial or sentencing of an abuser. It may assist with prosecution when survivors recant their experience due to fear or doubt.

With digital imagery the criminal case can be strengthened, as it is apparent what witnesses were present, whether children were present and what, if any disturbance was evident at the scene. With body cameras police officers can capture the demeanor of witnesses and the early statements made before there has been time to reflect on the consequences of the police intervention. With body cameras, we can get a complete statement from a complainant.

There has been demonstrated improvement in police response in communities that have employed the use of digital cameras. Complaints have dropped and police have been protected because their good work is evident to all.

Thank you for your continuing efforts to make improvements to our system in the interests of families suffering the harm of abuse.

yamashita1-Marianne

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 10, 2015 9:05 AM
To: pbstestimony
Cc: wusstig@gmail.com
Subject: *Submitted testimony for HB365 on Feb 12, 2015 09:00AM*

HB365

Submitted on: 2/10/2015

Testimony for PBS on Feb 12, 2015 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Kenny Wusstig	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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