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TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
Senate Committee on Judiciary and Labor


The Honorable Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

Members of the Senate Committee on Judiciary and Labor

The Honorable Jill N. Tokuda, Chair
Senate Committee on Ways and Means

The Honorable Donovan M. Dela Cruz, Vice Chair
Senate Committee on Ways and Means

Members of the Senate Committee on Ways and Means

FROM: Darryl D. Perry, Chief of Police
Kaua'i Police Department 

DATE: February 22, 2016

SUBJECT: Testimony on S.B. No. 2411, Relating to Law Enforcement Cameras

DECISION Wednesday, February 24, 2016
MAKING: 10:00 a.m. Conference room 211

Thank you for the opportunity to testify on this bill regarding body-worn cameras for law enforcement. The Kaua'i Police Department is **opposed** to this bill, in part, as to establishing requirements for use and is in support of funding as outlined on page 13 section 4 of the bill.

The Kaua'i Police Department has conducted extensive research in the formulation of our policies, procedures and body-worn camera program. We have researched and implemented best practices based on recommendations from nationally recognized organizations such as the International Association of Chiefs of Police, the National Institute of Justice, the Bureau of Justice Assistance, The Institute for the Prevention of In-custody Deaths, Inc., Department of Justice and the Police Executive Research Forum. We have also reviewed numerous law

enforcement agency policies such as the Los Angeles Police Department, Rialto Police Department in California and Greenville Police Department in South Carolina.

We believe that the bill, in its current form, will be detrimental to law enforcement body-worn camera programs in Hawai'i and will negatively affect law enforcement operations, court proceedings and place an undue financial burden on agencies mandated to have body-worn cameras. The sum of funds appropriated will not be sufficient to meet the need for additional personnel or overtime expenditures due to the composition and requirements of the bill in its current state.

We would like to call to your attention to the following sections for review and respectfully suggest changes in an effort to improve the bill.

Page 3, 52D-A Definitions section (2) line 5:

“Worn on the person of a police officer, and shall include being attached to the police officer’s clothing or worn as glasses.”

We suggest changing “police officer” to “law enforcement officer” to be consistent with the rest of the bill. We also suggest adding the definition of law enforcement officer and include the Department of Land and Natural Resources and Department of Public Safety, State Sheriffs in the definition.

Page 4 section (c), line 17:

“A law enforcement officer who is wearing a body-worn camera shall notify the subjects of the video footage that the subjects are being recorded by a body-worn camera as close to the inception of the encounter as is reasonably possible.”

The language in this section makes it mandatory to notify subjects being recorded. There may be instances such as sudden attacks or volatile situations where an officer may not be able to or forget to notify because of the intensity of the situation. We suggest changing this language to:

“officers are encouraged to inform individuals that they are being recorded whenever possible.”

Page 5 section (1), line 1:

“Prior to entering a private residence without a warrant or in non-exigent circumstances, a law enforcement officer shall ask the occupant if the occupant wants the officer to discontinue use of the officer’s body-worn camera. If the occupant responds affirmatively, the law enforcement

officer shall immediately discontinue use of the body-worn camera.”

This section presents concerns in cases where officers are lawfully within a residence without a warrant or in non-exigent circumstances. One example is family abuse cases. The suspect and victim in many cases are located within a residence. Many times the crime scene is inside the residence. Capturing of video and audio footage of the initial physical and emotional state of the victim and suspect can be invaluable evidence for the prosecution of cases. These situations can also be very volatile and lead to the need for use of force. Capturing of use of force situations within a residence would be critical to ensuring that the proper level of force was used and is helpful in protecting both the officer and the suspect to which force was used on. Mandating the turning off of the camera at the occupants request nullifies the effectiveness of the camera. We suggest the following change:

“Officers are not required to obtain consent from members of the public when the officer is lawfully in an area where the recording takes place.”

Page 5, section (2), line 8:

“When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, ask the apparent crime victim if the apparent crime victim wants the officer to discontinue use of the officer’s body-worn camera. If the apparent crime victim responds affirmatively, the law enforcement officer shall immediately discontinue use of the body-worn camera.”

There are many situations where capturing the statement and physical and emotional state of a crime victim is critical to building a successful criminal case. Placing the responsibility on the officer to ask the crime victim if it’s ok to film will more than likely nullify the effectiveness of having a camera. We suggest the following change in language:

“Officers are not required to activate and record investigative or enforcement encounters with the public when:

- a. A witness or victim refuses to provide a statement if recorded and the encounter is non-confrontational.
- b. In the officer’s judgment, a recording would interfere with his or her ability to conduct an investigation, or may be inappropriate because of the victim’s or witnesses’ emotional state, age, or other sensitive circumstance (i.e. victim of rape, incest, or other form of sexual assault.).

- c. Situations where the recording would risk the safety of confidential information, citizen informant(s), or undercover officer(s).
- d. In-patient care areas of a hospital, rape treatment center, or other healthcare facility unless an enforcement action is taking place in these areas.
- e. Situations where tactical planning, peer-to-peer discussion, and/or non-law enforcement discussion are occurring.
- f. Judges chambers and courtrooms unless an enforcement action is being taken.

Page 7 (4), line 1:

“On the grounds of any public, private, or parochial elementary or secondary school, except when a law enforcement officer is responding to an imminent threat to life or health.”

We suggest changing “imminent threat of life or health” to:

“responding to a call for service or during an enforcement encounter.”

There may be situations where law enforcement is called to public, private, or parochial elementary or secondary schools that may not rise to the level of a threat of life or health where recordation of an encounter could be beneficial. An example could be a disorderly individual at the school or an individual trespassing. Neither of these situations would rise to the level of a threat to life or health; however there could possibly be a confrontation with a disorderly subject or a subject trespassing on school property that should be capture on video.

Page 7 (d), line 8:

“No person shall release a recording created with a body-worn camera under this part unless the person first obtains the permission of the applicable county police department.”

State law enforcement agencies are not listed and it appears that this section only governs county police departments. Suggest changing to:

“county police departments and state law enforcement agencies.”

Page 8, line 1:

“§52D-E Body-worn camera video footage; retention and deletion. (a) Body-worn camera video footage shall be retained by the agency that employs the law enforcement officer whose camera captured the video footage, or an authorized agent thereof, for six months from the date it was recorded. After expiration of this six-month period, the video footage shall be permanently deleted.”

The Kaua‘i Police Department has concerns regarding the six month retention period of video footage. Complaints of misconduct against officers, based on the collective bargaining agreement, may be made up to a year from the incident. In its current state, law enforcement agencies would have to delete footage in six months, leaving six more months where a complaint of misconduct could be filed against an officer and the agency will no longer have footage to either exonerate the officer or hold the officer accountable. Furthermore we ask that consideration be given in serious cases such as Murder for an extended period of retention time as these types of cases may take longer than three years to adjudicate. We suggest that the language be changed to “statute of limitations” for each case and in non-criminal cases that the video be retained for no more than one year. We offer the following example:

- a. Uncategorized (1 year)
- b. Felony Cases (statute of limitations)
- c. Misdemeanor Cases (statute of limitations)
- d. Petty Misdemeanor Cases (statutes of limitation)
- e. Miscellaneous Cases (1 year)
- f. Critical Incidents (statute of limitation)
- g. Pursuits (3 years)
- h. Traffic Stops (1 year)
- i. Training (1 year)
- j. Use of Force (3 years)
- k. Citizen Complaints (1 year)
- l. Litigation Holds (until case is completed and appeal periods have expired).

We also recommend deletion of sections (E), (F) & (G). Should there be a legal need to retain the video; a litigation hold should be presented to the law enforcement agency. Furthermore permitting any individual or parent or legal guardian of a minor or deceased subject’s next of kin or legally authorized designees to view videos in criminal cases, prior to trial, could affect the prosecution of cases. There are long established procedures for the discovery of evidence that should be followed in all criminal cases. Furthermore, allowing individuals to view their video footage outside of the Uniformed Information Practices Act will be cumbersome and costly for agencies.

Page 10, (3), line 12:

“No body-worn camera video footage documenting an incident that involves the use of deadly force by a police officer or that is otherwise related to an administrative or criminal investigation of a police officer shall be deleted or destroyed without a court order.”

The Kaua‘i Police Department’s Policy covers the retention of body-worn camera footage based on established statutes of limitation. Requiring a court order to delete any body camera footage, especially in administrative investigations, is untenable and adds a level of bureaucracy that unnecessarily increases expense to law enforcement agencies. We suggest the deletion of this section.

Page 11, line 14:

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

Not allowing officers to view videos prior to writing reports in all use of force situations or any felony arrest or event does a disservice to the community and the accuracy of police report writing. We suggest changing this section to say:

“Officers shall not be allowed to view video footage where the officer is suspected of misconduct, the commission of a criminal act, or is involved in an incident considered by the department to be a Critical Incident including Use of Force incidents where death or serious bodily injury occurred.”

Page 11 section (b), line 20

“Video footage not subject to a minimum three-year retention period shall not be view by any superior officer of a law enforcement officer whose body-worn camera recorded the video footage without a specific allegation of misconduct, nor shall the video footage be subject to automatic analysis or analytics of any kind.”

The language in this section is too restrictive. We suggest that “superior officer” be changed to “immediate supervisor” and that the section allow for random auditing by the internal affairs section of each agency. Without the ability to audit there is no way to ensure that the

cameras are being used properly. It also takes away from the department's ability to view footage that may be useful as a training tool to improve our services to the community.

Page 12 section (2), line 15:

“A rebuttable evidentiary presumption shall be adopted in favor of criminal defendants who reasonably assert that exculpatory evidence was destroyed or not captured; and (3) A rebuttable evidentiary presumption shall be adopted on behalf of civil plaintiffs who reasonably assert that evidence supporting their claim was destroyed or not captured in a civil suit against the State, a county, a state or county agency, or a law enforcement officer for damages based on officer misconduct.”

We recommend that this section be deleted in its entirety. There will be many instances where body camera footage may not capture evidence. A body camera is a piece of equipment that is subject to malfunctions. Officers, being human, may at times, without nefarious intentions, forget to activate the camera. Giving defendants and plaintiffs rebuttable evidentiary presumption does not balance the scales of justice nor take into account mechanical or human error factors.

Attached to our testimony is the Kaua'i Police Department's General Order 41.17 Body-Worn Camera System. As stated, we have done extensive research in the development of our policy and the implementation of our body-worn camera system program. We have worked with the State of Hawai'i Organization of Police Officers on acceptable language within the policy and they have agreed to the current language contained within our policy.

With the exception of the financial support from the State, we believe that the bill, in its current state, would be detrimental operationally and financially to law enforcement agencies and therefore we **oppose** in most part and support in some part Senate Bill 2411. Again, thank you for the opportunity to testify.



KAUA'I POLICE DEPARTMENT



GENERAL ORDER

NUMBER 41.17	INDEX Body-Worn Camera System (BWCS)	NEW
ISSUE DATE 12/11/2015	CALEA STANDARDS	REVISED DATE 2/19/2016

I. PURPOSE:

- A. This policy is intended to provide officers with instructions on the use of the Body-Worn Camera System (BWCS) so that officers may record their activities and contacts with the public in accordance with the law.
- B. The use of the BWCS provides documentary evidence for criminal investigations, internal or administrative investigations, and civil litigation. Officers shall utilize this device in accordance with the provisions in this general order to maximize the effectiveness of the audio/visual files to achieve operational objectives and to ensure evidence integrity.
- C. The BWCS also provides additional information regarding investigative or enforcement contact with members of the public. BWCS recordings however, provide a limited perspective of the encounter and must be considered with all other available evidence, such as witness statements, officer interviews, forensic analysis, and documentary evidence.

II. DEFINITIONS:

- A. Body Worn Camera System (BWCS) - A portable audio/video recording system worn and used by Officers to document police related incidents and activities.
- B. File - For the purpose of this document, the term "file" refers to all sounds, images, and associated metadata.

III. POLICY:

- A. It is the policy of the Kaua'i Police Department (KPD) that officers activate the BWCS at times when in the performance of his/ her official duties, where the recordings are consistent with this policy and the law.
- B. It is KPD policy that all department issued BWCS shall be of a make, model, and capability approved by the Chief of Police or designee prior to issuance, purchase, and use.
- C. This policy does not govern the use of surreptitious recording devices used in undercover operations.

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IV. PROCEDURES:

A. Administration

The Kauai Police department has adopted the use of the BWCS to accomplish several objectives. The primary objectives are as follows:

1. Assist officers with the accuracy of completing reports and testimony in legal proceedings.
2. Allow for accurate documentation of police to public contacts during arrests and critical incidents.
3. Assist in resolving complaints against officers including false allegations by members of the public.
4. Enhance the Department's ability to review arrests based on probable cause, officer and suspect interrogations, evidence for investigations and prosecutorial purposes.
5. Provide additional information for officer evaluation and training for continuous improvement.
6. Allow for documenting a crime or accident scenes or other event that includes the confiscation and documentation of evidence or contraband.
7. Promote accountability.

B. BWCS Equipment:

1. The BWCS equipment will consist of a body-mounted camera with a built-in microphone and a controller. The BWCS video and audio recordings are stored digitally on the BWCS camera and can be viewed on an approved handheld viewing device or an authorized computer.
2. The BWCS is equipped with a pre-event buffering feature that records video without audio. When an officer turns the device on it will record 30 seconds prior to activation.

C. Training:

1. Officer's who are assigned a BWCS must complete a Department approved and/or provided training program to ensure proper use and operation of the BWCS. Additionally, the training program shall cover updated information on what a reasonable expectation of privacy is in regards to BWCS, and current case law examples, if any. Training may also be required at periodic intervals to ensure the continued effective use of operation and performance, and to incorporate changes, updates, or other revisions in policy and equipment.

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D. When and how to use the BWCS:

1. There are many situations where the use of the BWCS is appropriate. This policy is not intended to describe every possible circumstance. In addition to the required conditions, officers may activate the system any time they feel its use would be appropriate and/or valuable to document an incident, subject to the limitations in section E and G.
2. Unless it is unsafe or impractical to do so, or mechanical issues that impede the use of the device are present, officers shall make every attempt to activate their BWCS prior to making contact.
3. When activation is required: Officers shall activate the BWCS to record all encounters with the public prior to contact except as provided in section IV.G. Exceptions to Recordings. This includes but is not limited to:
 - a. Dispatched calls for service.
 - b. Vehicle Stops.
 - c. Field Interviews.
 - d. Code 3 responses, including vehicle pursuits regardless of whether the vehicle is equipped with in-car video equipment.
 - e. Foot pursuits.
 - f. Searches.
 - g. Arrests.
 - h. Use of Force.
 - i. In-Custody Transports.
 - j. Witness and victim interviews except as specified below (Privacy Concerns).
 - k. Crowd control.
 - l. Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recordings.

E. Privacy Concerns:

1. Officers are not required to obtain consent from members of the public when the officer is

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lawfully in the area where the recording takes place. However, whenever possible officers are encouraged to inform individuals that they are being recorded.

F. Recording of the Entire Contact:

1. The BWCS shall remain activated until the event or investigation has ended in order to ensure the integrity of the recording unless an exception from section IV. G applies.
2. If an officer terminates the recording pursuant to section IV. G, the officer shall verbally state on camera the reason for the termination. If the event or the investigation activity resumes, the officer shall activate the BWCS and continue recording.
3. If an officer fails to activate the BWCS, fails to record the entire contact, interrupts the recording, or terminates the recording, the officer shall document the reasons for non-activation; interruption; termination; or interruption on KPD form BWCS 01.
4. KPD BWCS 01 form is not required when the recording is stopped due to the end of a -public contact.
5. Officers shall not intentionally block or impede the audio or visual recording during an event or investigation.
6. The public shall not be allowed to review the recordings at the scene.

G. Exceptions to Recordings:

1. Officers are not required to activate and record investigative or enforcement encounters with the public when:
 - a. A witness or victim refuses to provide a statement if recorded and the encounter is non-confrontational.
 - b. In the officer's judgment, a recording would interfere with his or her ability to conduct an investigation, or may be inappropriate because of the victim's or the witnesses' emotional state, age, or other sensitive circumstance (victim of rape, incest, or other form of sexual assault).
 - c. Situations where the recording would risk the safety of confidential information, citizen informant(s), or undercover officer(s).
 - d. In-patient care areas of a hospital, rape treatment center, or other healthcare facility unless an enforcement action is taking place in these areas.

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- e. Situations where tactical planning, peer-to-peer discussions, and/or non-law enforcement discussions are occurring.

H. Operational/Functionality Procedures for BWCS Use:

1. BWCS equipment is issued primarily to uniformed personnel as authorized by KPD. Officers who are assigned BWCS equipment must use the equipment unless otherwise authorized by supervisory personnel.
2. Officers shall use only BWCS issued by the KPD. The BWCS equipment and all data, images, video and metadata captured, recorded, or otherwise produced by the equipment is the sole property of KPD.
3. BWCS equipment is the responsibility of individual officers and will be used with reasonable-care to ensure proper functioning. Equipment malfunctions shall be brought to the attention of the officer's supervisor as soon as possible so that a replacement unit may be procured. Refer to Section VII, Subsection B.
4. Officers shall inspect and test the BWCS prior to each shift in order to verify the equipment is properly charged and functioning. Officers shall notify their supervisor of any problem using form BWCS 01.
5. BWCS that are lost or stolen shall be reported to their immediate supervisor immediately using BWCS 01.
6. Officer's shall not attempt to make any repairs to the BWCS.
7. Officers shall position the camera outside of their uniform, facing forward and parallel on the collar, head mount, or glasses, to facilitate optimum recording field of view. The controller shall be mounted on either the chest loop of the officer's uniform or within one of the two shirt pockets. Other mounting options must be approved by the Chief of Police or his designee.
8. Officers are encouraged to inform their supervisors of any recordings that could be of value for training purposes using form BWCS 01.
9. Officers shall note within their written report when recordings were made during the incident in question. However, BWCS recordings are not a replacement for written reports.
10. Officers should continue to prepare reports in the same manner as prior to the implementation of this BWCS. Officers should not substitute "refer to video" for a detailed and thorough report. Officers are not required to use exact quotes, but may represent statements in their report as a summary of what is contained in the statement/video, such as, "In summary the victim related"

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Once video of evidentiary value is captured officers shall identify the audio/video file by:

- a. When assigned, noting the KPD Report Number or CAD number in the Case ID Field.
- b. Enter a title. The title should include sufficient information to identify the file, such as Offense, Suspect Name, and Location etc.
- c. Select the appropriate category(s).
- d. The information may be entered via approved handheld device, MDT, or KPD computer work station via Evidence.com website.

V. RESTRICTIONS ON USE OF THE BWCS OR ITS DATA:

BWCS shall be used only in conjunction with official law enforcement duties.

A. BWCS shall not be used to record:

1. Communications with other police personnel without the permission of the Chief of Police, except under exigent circumstances to include in-progress or hot pursuit circumstances.
2. Encounters with undercover officers or confidential informants.
3. When on break or otherwise engaged in personal activities.
4. In any location where individuals have reasonable expectation of privacy, such as a restroom or locker room, unless the recording is being made pursuant to an on-going investigation, arrest, or search.

B. Violations/Unauthorized Use:

1. It shall be deemed a violation of this policy for a supervisor to review recordings for the sole purpose of searching for violations of department policy or law not related to a specific complaint or incident.
2. Unauthorized use, duplication, and/or distribution of BWCS files are prohibited. Officers shall not make copies of any BWCS files for their personnel use and are prohibited from using a recording device such as a phone camera or secondary video camera to record BWCS files.
3. All recorded media images and audio from the BWCS are property of KPD and shall not be copied, released or disseminated in any form or manner outside the parameters of this policy without the express written consent of the Chief of Police, via KPD form BWCS 01.

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4. Officers shall use only the BWCS issued and approved by KPD for official police duties. The wearing of any other personal video recorder for the any purpose is not authorized without permission of the Chief of Police.

VI. STORAGE / ACCESSING OF FILES:

Access to the data from the BWCS is permitted on a right to know, need to know basis. Officers authorized under this policy may review audio/visual files according to the provision of this policy.

A. Storing of Files:

1. Files shall be securely downloaded periodically and no later than the end of each shift to Evidence.com through the docking station to ensure storage capacity is not exceeded and or to view uploaded audio/video. Each file shall contain information related to the date, BWCS identifier, and assigned Officer.
2. Audits of BWCS files shall be initiated by the system administrator to ensure only authorized users are accessing the data for legitimate and authorized purposes.
3. Files shall be secured in accordance with state records retention laws, and no longer than the useful purposes of training, investigations, and prosecution; including the appeal process.
4. If any officer is suspected of committing a violation of the Kaua'i Police Department's Standards of Conduct, committing a criminal act or is involved in an incident which falls under KPD'S Critical Incident protocol including Use of Force incidents where death or serious bodily injury occurred, officers shall not review the file without authorization from the Chief of Police or his designee. Refer to Section VI, Subsection B, 1c.

B. Accessing of Files

1. Once uploaded to Evidence.com, Officers may review the audio/video data as it relates to:
 - a. Their involvement in an incident for the purpose of completing a criminal investigation and preparing official reports.
 - b. Preparing for courtroom testimony or for courtroom presentation.
 - c. Providing a statement pursuant to an administrative inquiry, **except** for Critical Incidents or Use of Force Incidents where death or serious bodily injury occurred. Officers shall not review the file without authorization from the Chief of Police or his designee. Refer to Section IV, Subsection H, 10.
2. Officers shall not edit, alter, erase, duplicate, copy, share or otherwise distribute in any manner BWCS recordings without prior written authorization and approval of the Chief of Police or

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designee.

3. Prior to uploading a video to Evidence.com, Officers may review the audio/video data as it relates to:
 - a. Exigent circumstances, such as an officer being injured and to obtain identifying suspect information or other pertinent information.
 - b. Reviewing for report writing in the field (except as stated in B.1.c. above)
4. Evidence.com automatically date/time stamps and records each access by officer name.

VII. SUPERVISOR / ADMINISTRATOR RESPONSIBILITIES:

A. Supervisor Responsibilities:

1. Supervisory personnel shall ensure that officers equipped with BWCS devices utilize them in accordance with policy and procedures defined in this General Order.
2. The Office of Professional Standards will randomly review BWCS recordings periodically to ensure the equipment is working properly, that officers are using the devices appropriately and in accordance with policy, and to identify any areas in which additional training or guidance is required.
3. When critical incident(s) occurs, the on-scene supervisor, when safe and practical, shall retrieve the BWCS from the involved officer(s) at the scene. The supervisor will be responsible for assuring the camera is docked and videos are uploaded to Evidence.com.

B. System Administrator Responsibilities: the System Administrators are designated by the Chief of Police and have oversight responsibilities to include but not limited to, the following:

1. Operations and user administration of the system.
2. System evaluation.
3. Training.
4. Policy and procedure review and evaluation.
5. Coordinating with IT regarding system related issues.
6. Ensuring BWCS files of evidentiary value are secure and retained per this policy.
7. Ensuring BWCS files are reviewed and released in accordance with federal, state, local statutes,

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and KPD's retention policy.

C. BWCS File Requests

1. Any Departmental request shall be completed by the system administrator with the approval of the Chief of Police via KPD form BWCS 01.
2. All other requests, including media inquiries, for a copy of a BWCS file shall be accepted and processed in accordance with federal, state, local statutes and Departmental policy (public records act. etc.) as set forth in the General Order covering public records requests for body worn camera videos.
3. Copying Procedures:
 - a. Other than as provided in this General Order, no member of this Department shall download or copy any video from the Evidence.com onto any computer, device, drive, CD, DVD or any other format without the express consent of the Chief of the Police.
4. Investigators Conducting Criminal or Internal Investigations Shall:
 - a. Advise the System Administrator to restrict access/public disclosure of the BWCS video file in criminal or internal investigations, when necessary, via KPD form BWCS 01.
 - b. Document the reasons for access by entering the related KPD or IA Case Number on the BWCS "Notes" filed prior to viewing.
 - c. Review the file to determine whether the BWCS video file is of evidentiary value and process in accordance with established procedures.
 - d. Investigators shall notify the System Administrator to remove the access restriction when the investigation is closed.
5. BWCS Video Files Accessed for Training:
 - a. A BWCS video file may be utilized as a training tool for officers, specific units, and the Department as a whole. A recommendation to utilize a BWCS video file for such purposes may come from any source via KPD Form BWCS 01.
 - b. A person recommending utilization of a BWCS video file for training purposes shall submit the recommendation through the Chain of Command to the Chief of Police or his designee via KPD form BWCS 01.
 - c. If an involved officer or employee objects to the showing of a recording, his/her objection will be submitted to the Chief of Police or his designee to determine if the Officers'

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objection outweighs the training value.

- d. After a meeting with the affected Officer and his/her or chosen representative, the Chief of Police or designee shall review the recommendations and determine how best to utilize the BWCS video file considering the identity of the person(s) involved, sensitivity of the incident, and the benefit of utilizing the file versus other means. In a situation where the officer or employee objects because of concerns over embarrassment, the Chief of Police or designee will give strong consideration in not using the video for training purposes.

VIII. CATEGORY AND RETENTION:

A. Retention:

1. Officers utilizing the BWCS shall identify each file by category. In the event a file is taken that does not fall into a listed category and has no apparent evidentiary or administrative value, the officer may leave the file as uncategorized.
2. Categories and Retention Periods
 - a. Uncategorized (1 year)
 - b. Felony Cases (statute of limitations)
 - c. Misdemeanor Cases (statute of limitations)
 - d. Petty Misdemeanor Cases (statute of limitations)
 - e. Miscellaneous Cases (1 year)
 - f. Critical Incidents (statute of limitations)
 - g. Pursuits (3 years)
 - h. Traffic Stops (1 year)
 - i. Training (1 year)
 - j. Use of Force (3 years)
 - k. Citizen Complaints (1 years)
 - l. Litigation holds (until case is completed and appeal periods have expired)
3. Requests for Deletion of Accidental Recording: In the event of an accidental activation of the

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BWCS where the resulting recording is of no investigative or evidentiary value, the recording Officer may request that the file be deleted by submitting an email request with sufficient information to locate the file to the Patrol Services Bureau District Commander or designee who shall review the file, approve or deny the request, and forward to the System Administrator for action, via KPD form BWCS 01.

B. Repair Procedures:

1. Officers shall immediately report any recognized problems with the BWCS to their immediate supervisor via KPD form BWCS 01.
2. Upon notification, the supervisor shall forward the identified issue or malfunction to the System Administrator or designee.
3. The System Administrator or designee will report unresolved deficiencies to TASER International via web based support at <http://www.taser.com/support/contact-us> by completing the required information on-line and describing the issue or defect in detail within the "Message" window provided.
4. The System Administrator shall provide the serial number of the unit needing service or repair and identify the unit as a TASER Axon Flex body worn camera or battery pack as appropriate. A TASER representative will contact the KPD BWCS System Administrator for resolution.

OFFICERS OF THE KAUA'I POLICE DEPARTMENT SHALL ADHERE TO THE PROVISIONS OF THIS DIRECTIVE.

APPROVED AS TO FORM AND LEGALITY

<u>SIGNED</u>	<u>12/11/2015</u>
Nicholas R. COURSON	Date
Deputy County Attorney	

APPROVED:

<u>SIGNED</u>	<u>12/11/2015</u>
Darryl D. PERRY	Date
Chief of Police	

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Body-worn Camera System (BWCS)



KAUA'I POLICE DEPARTMENT



BODY WORN CAMERA SYSTEM (BWCS) REQUEST

KPD FORM NUMBER BWCS 01	INDEX Body-Worn Cameras System Request Form	NEW
ISSUE DATE 9/17/2014	Section(s) Completed:	REVISED DATE
INSTRUCTIONS	<ol style="list-style-type: none"> 1. Complete Section "A" for Access or Restriction to Evidence.com 2. Complete Section "B" for failing to record an event, disruption of recording 3. Complete Section "C" to request a digital reproduction service request 4. Complete Section "D" to request a Deletion of Accidental Recordings 5. Complete Section "E" to report damage(s), request for repair(s), replacement request to the BWCS 6. Send completed form to the Evidence.com system administrator 	
SECTION A: EVIDENCE.COM ACCESS		
Select One of the following options:	Security Access To:	Security Access From:
Employee Number:	Employee Name:	Title:
Employee Badge #:	Effective Date:	Requesting Supervisor Approval:
Department Head Signature:		Division:
Date/Time:		Date/Time: /
COMMENTS (Explain Reason for Access Request):		
System Administrator Use Only		
Date/Time Completed:	Completed by:	
SECTION B: FAILING TO RECORD AN EVENT OR DISRUPTION OF RECORDING		
Employee Number:	Employee Name:	Title:
Supervisor Approval:	Date/Time: /	
Report Number:	Offense:	
COMMENTS (Explain Reason for Failing to Record an Event or Disruption of Recording):		
Department Head Signature:		Date:
SECTION C: DIGITAL REPRODUCTION REQUEST		
To:	From:	Date/Time: 2/23/2016 / 9:40 AM
Approving Supervisor Approval:	Date/Time: /	
Request digitized copies for the purpose of:		
Identifying Number:	Offense:	

GENERAL ORDER 41.17

Body-worn Camera System (BWCS)

COMMENTS (Explain Reason for Reproduction Request):			
System Administrator Use Only			
Date/Time Completed:		Completed by:	
Records Use Only:			
Date/Time Completed:		Completed by:	
SECTION D: DELETION OF ACCIDENTAL RECORDING			
To: Officer Of Professional Services, System Administrator			
Employee Number:	Employee Name:	Title:	Division:
Requesting Supervisor Approval:		Date/Time: /	
Identifying Number:		Offense:	
COMMENTS (Explain Reason for Deletion Request):			
Department Head Signature:		Date:	
System Administrator Use Only			
Date/Time Completed:		Completed by:	
SECTION E: REPORT OF DAMAGE/REPAIR and or REPLACEMENT REQUEST			
Select the appropriate action(s) check all that apply:			
<input type="checkbox"/> Report Damage(s) <input type="checkbox"/> Request Repair (s) <input type="checkbox"/> Request a Replacement			
BWCS:			
Make:		Model:	Serial No:
Employee Number:	Employee Name:	Title:	Division:
Employee Badge #:	Effective Date:	Requesting Supervisor Approval:	Date/Time: /
COMMENTS (Describe Damages):			
COMMENTS (Explain Request for Repair/Replacement):			
Department Head Signature:		Date/Time:	
System Administrator Use Only			
Date/Time TASER International Contacted:		TASER Contact:	
Date/Time BWCS Sent for Repair:			

GENERAL ORDER 41.17

Body-worn Camera System (BWCS)

Comments:		
Date/Time Completed:	Completed by:	
BWCS: Issued New / Re-Issued		
Make:	Model:	Serial No:
BWCS Date/Time Completed:	Completed by:	

SHOPO



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TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
Senate Committee on Judiciary and Labor

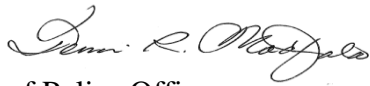
The Honorable Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

Members of the Senate Committee on Judiciary
and Labor

The Honorable Jill N. Tokuda, Chair
Senate Committee on Ways and Means

The Honorable Donovan M. Dela Cruz, Vice Chair
Senate Committee on Ways and Means

Members of the Senate Committee on Ways
and Means

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

DATE: February 22, 2016

SUBJECT: Testimony on S.B. No. 2411, Relating to Law Enforcement
Cameras

DECISION: Wednesday, February 24, 2016
MAKING: 10:00 a.m. Conference Room 211

Thank you for the opportunity to provide testimony on this bill regarding body-worn cameras for police. The State of Hawaii Organization of Police Officers ("SHOPO") opposes this bill, in part, as to establishing requirements for use. SHOPO supports annual reporting of the costs of the body camera program and the appropriation for funding the programs in each county.

The four county police departments provide extensive training for their officers. They have developed policies and procedures for their respective departments for decades that have served the members of the department and the community well. The four county police chiefs understand the demands of police work and the standards required. Therefore they are best qualified to draft their body camera policies in conjunction with SHOPO.

In the testimony provided by SHOPO last session to this Committee on body-worn cameras, it was stated that an extensive study was conducted by the Police Executive Research Forum 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".

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Recently, the Kaua'i Police Department ("KPD") and SHOPO were able to agree on wording in KPD's new Body-Worn Camera System policy.¹ Extensive research and police experience were utilized by both parties to develop the policy. Both sides also agreed that it is going to be a work-in-progress and as implementation rolls out, changes may have to be made.

The KPD Body-Worn Camera System policy already addresses the subjects in Section 2 of this bill and much more.

Also, in Section 2, it provides as follows:

§52D- Body-worn cameras; police department policies. (a) Each county police department shall adopt policies for the use of body-worn cameras and vehicle cameras that prohibit the activation of either type of camera for non-law enforcement purposes and shall establish (Emphasis added.)

The practical implementation for the officers of what is "non-law enforcement" is difficult. Is an officer working during a tidal wave inundation or hurricane doing a "non-law enforcement" activity, or could video of this and the resulting damage tremendously assist homeowners and the counties in seeking federal assistance. Let the Hawaii Constitution and the U.S. Constitution be the guides. The officers are already bound by Hawaii's Constitutional Right to Privacy, which is in addition to the rights the U.S. Constitution gives to citizens to be free of unreasonable searches and seizures.

Additionally, in Section 2, under "Training", it provides "(c) The attorney general shall develop or approve a curriculum for training purposes under this section." It is well-known that other departments from Washington, Oregon, and Nevada, amongst others, have come to Hawaii to recruit officers from the Honolulu Police Department. This is because of the excellence of their training program and staff. There has not been a need for the attorney general to teach the police what the police should do for at least the last four decades, so if the wheel is not broken, don't fix it. That is not to say the police department cannot seek input from the attorney general's office, if needed.

Further, under Section 2, "Prohibited Acts", there may be instances where a video should be deleted. A strong policy would address this by providing that the officers shall not delete from any video, and that if there is a need, a request can be sent to the Chief or designee for review.

Likewise, policies would address the time periods for keeping video of incidents involving deadly force by a police officer, criminal investigations of police officers, and administrative investigations. The first two would be addressed in any policy as it could be

¹ The issue of whether body cameras are a subject of mandatory bargaining still remains.

evidence subject to a litigation hold. These have already been addressed in the first body-worn camera policy in the state.

Finally, under Section 2, “Prohibited Acts”, subsection (d) that requires all video related to administrative investigations cannot be deleted without a court order is untenable. If an officer is being investigated for courtesy while issuing a moving citation, the time, effort, and expense of the police departments, corporation counsels and the courts to seek approval to delete a video in this matter, is better handled by implementing a time period to retain the video.

As we stated earlier, SHOPO does support annual reports on body camera program costs and funding for the county police departments for body camera programs.

Thank you for your consideration of our testimony. SHOPO opposes in part and supports in part Senate Bill 2411.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Judiciary and Labor
Honorable Gilbert S.C. Keith-Agaran, Chair
Honorable Maile S.L. Shimabukuro, Vice Chair

Senate Committee on Ways and Means
Honorable Jill N. Tokuda, Chair
Honorable Donovan M. Dela Cruz, Vice Chair

RE: Testimony Supporting S.B. 2411, Relating to Law Enforcement Cameras
Hearing: February 24, 2016 at 10:00 a.m.

Dear Chairs and Members of the Committees:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony on S.B. 2872. The Law Center **opposes the expansive breadth of the confidentiality provision in this bill.**

S.B. 2411 only provides police accountability if footage is publicly accessible. *Body camera video would be far less accessible under S.B. 2411 than under existing law.* As currently drafted, the only video that could possibly be disclosed by a police department is video that involves use of force or felony conduct. All other video – regardless of the circumstances – would be confidential.

Under existing law, police departments are authorized to withhold videos based on privacy concerns or frustration of a legitimate government function. HRS § 92F-13(1) & (3). These existing public records exemptions examine each video on a case-by-case basis to determine whether disclosure is appropriate. Departments may obscure faces or redact audio – depending on the circumstances – to protect an individual’s identity or an ongoing investigation. But that fact-sensitive analysis will not occur under S.B. 2411. Under S.B. 2411, if a video does not involve use of force or felony conduct, there is no further analysis; the record is simply not publicly accessible.

The Law Center is not advocating for mandatory disclosure of any category of video. Even use of force and felony conduct videos should be subject to case-by-case analysis because each police encounter is unique. There will be instances, however, when misdemeanor conduct, arrests, or other evidentiary video by officers will have significant public interest. The public should be able to request videos (and the police

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Page 2

departments the leeway to disclose videos) subject to the well-established public records standards.¹

Thank you again for the opportunity to testify.

¹ The Law Center does not object to absolute confidentiality (as currently provided in S.B. 2411) for *non-evidentiary* video — *i.e.*, video categorized in subsection (a) and (b)(2)(D)-(G) of proposed § 52D-E.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: [REDACTED]
Subject: Submitted testimony for SB2411 on Feb 24, 2016 10:00AM
Date: Monday, February 22, 2016 10:43:22 PM

SB2411

Submitted on: 2/22/2016

Testimony for JDL/WAM on Feb 24, 2016 10:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Individual	Support	No

Comments: Aloha Chairs, Vice Chairs and Committee members. Although I have not previously testified on this bill, I am now in support. Body cameras used in other jurisdictions have been shown to reduce both misconduct and complaints against police officers. One would think that law enforcement in this state would be embracing this bill. Sadly - not the case. Please pass the bill. It's a win/win for all concerned. Ann S. Freed Mililani Resident

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Subject: *Submitted testimony for SB2411 on Feb 24, 2016 10:00AM*
Date: Monday, February 22, 2016 3:50:33 PM

SB2411

Submitted on: 2/22/2016

Testimony for JDL/WAM on Feb 24, 2016 10:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

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Subject: Submitted testimony for SB2411 on Feb 24, 2016 10:00AM
Date: Monday, February 22, 2016 5:32:05 PM
Attachments: [SB2411 SD1.docx](#)

SB2411

Submitted on: 2/22/2016

Testimony for JDL/WAM on Feb 24, 2016 10:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Karin Nomura	Individual	Support	No

Comments: I hope that every police officer has a body cam, and that it will also allow for voice recording and that it carries over to various parts of the agency. For the protection of both the citizens and the Honolulu Police Department.

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I fully support the movement for body cameras on police officers and on their vehicles – with what I hope will include sound as well – for both the protection of police officers and civilians alike. As after 8 years of dealing with police officers, who have told me “don’t call unless there’s blood”; “be brave, just go over there” – as in deal with it yourself, don’t call us; “if you want to file a police report, call 911 again, and someone will be sent out to take your statement, as I can only help you with what was originally called in” (3 uniformed police officers standing in front of me); “warning you – stop going to the Mayor, FBI...” with the whole “it’s just a trickle down effect”; “fill out your own reports”; etc. As this has plagued me since I moved here. With after hour shouts, from those claiming to be police officers and my neighbor’s home being a cross between the “this is the Honolulu Police Department” to various other agency’s – which I’ve contacted the police department to notify them, but was told that it’s not “illegal” to claim to be a “police officer” or that’s their “personal” even though they’re out here shouting “person of interest”/“get a warrant”/“we’re police family”/“get a court order”/with a very large interest in the defecation/urination of “her” – seemingly me. With after a formal – tried taking care of this without going to the PSO for years, prior to contacting a number of agencies as well – claim being dropped, and shouts of “prove it” or “proof is in the pudding”. Which would have been elevated simply with the body cams, hopefully GPS tracking of police vehicles, and hopefully eventually a means for capturing sound as well – so when officers come by and say “I can’t understand you” (even to me) or bypass us to speak to the person we called the police for, and come back to us, to say “nothing we can do about this”, that it’s recorded and what they “can’t do nothing about” is really about.

With hopefully protecting the police when they have to take down a non-cooperative party, with negative results – as I don’t believe that an officer should be held accountable/liable during a shoot out; hostile party, who refuses repeated attempts from a uniformed police officer, and suffers negative results from a tazer gun/pepper spray; or incidents of this nature. But when I have to hear “join the police force, than you can get away with stuff like this”...or go through what I’ve been going through for the past 8 years, I believe the police force needs to be monitored, and that it’s the lack of monitoring that has deteriorated my faith in the legal system as a whole now.

Not to mention, I hope that in future, what responses I receive from the main department transfers to actions by the officers arriving here, as I believe having body cams, with hopefully voice recording, will ensure compliance of. Also hope that they have voice recordings of the phone calls placed to 911 as in the “is it a small firework or a big firework” or “are they illegal fireworks” (even had one dispatcher tell me to leave messages on the website – which I started doing after calls to stop fireworks that were going on every 2-5 minutes never ended; saw one patrol car go by as fireworks went up even, and still not more than a minute, and fireworks were going on, and I was asking for assistance with the issue from before Thanksgiving, for a call of non-stop fireworks in my area or the refusal to even dispatch a police officer to my location.

From: mailinglist@capitol.hawaii.gov
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Subject: Submitted testimony for SB2411 on Feb 24, 2016 10:00AM
Date: Tuesday, February 23, 2016 10:06:00 AM

SB2411

Submitted on: 2/23/2016

Testimony for JDL/WAM on Feb 24, 2016 10:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Michael M. Contrades	Kauai Police Department	Oppose	No

Comments: Senate Bill No. 2411, in its current draft, will be detrimental to law enforcement body-worn camera programs in Hawai'i and will negatively affect law enforcement operations, court proceedings and place an undue financial burden on agencies mandated to have body-worn cameras. The sum of funds appropriated will not be sufficient to meet the need for additional personnel or overtime expenditures due to the composition and requirements of the bill in its current state. It may also cause the Kaua'i Police Department to discontinue the use of body-worn cameras due to the existing language within the bill.

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Subject: Submitted testimony for SB2411 on Feb 24, 2016 10:00AM
Date: Tuesday, February 23, 2016 9:51:38 AM

SB2411

Submitted on: 2/23/2016

Testimony for JDL/WAM on Feb 24, 2016 10:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Rosa	Individual	Oppose	No

Comments: This bill is not written well and not conceivable to follow. This appears to be another "knee jerk" response by our elected officials.

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Subject: Submitted testimony for SB2411 on Feb 24, 2016 10:00AM
Date: Tuesday, February 23, 2016 11:00:09 AM

SB2411

Submitted on: 2/23/2016

Testimony for JDL/WAM on Feb 24, 2016 10:00AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Rob Gausepohl	Individual	Oppose	No

Comments: Aloha and thank you for this opportunity. I strongly believe that an appropriately applied Body Worn Camera System (BWCS) will be extremely beneficial to hold officers accountable, as evidence in criminal complaints both incrementing the guilty and exonerating the innocent, help to protect police officers from false complaints and deter negative interactions from officers and citizens. However, SB 2411 will not be beneficial towards the above mentioned and justice in general. This bill would encourage Police Departments that have a BWCS to eliminate the program and other Police Departments to not initiate a program. Much more research needs to be done to have an effective and comprehensive policy to manage a BWCS.

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