

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
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**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committees on  
JUDICIARY AND LABOR  
and  
WAYS AND MEANS**

**Tuesday, February 28, 2017  
9:50 AM  
State Capitol, Conference Room 211**

**In consideration of  
SENATE BILL 421, SENATE DRAFT 1  
RELATING TO LAW ENFORCEMENT CAMERAS**

Senate Bill 421 Senate Draft 1 establishes requirements for body-worn cameras and vehicle cameras for law enforcement officers. **The Department of Land and Natural Resources (Department) opposes the measure but acknowledges the intent.**

The Department acknowledges the need for law enforcement to be transparent and video footage captured during certain activities may aid in establishing better accountability.

However, this measure mandates agencies to implement policies and procedures that may not be appropriate for all circumstances including, but not limited to video retention, incident recording protocols and training requirements.

Furthermore, funding for state agencies is to be expended by the Department of Public Safety, but it is not clear that funding would be provided to the Department's Division of Conservation and Resources Enforcement. The Department does not have the resources to purchase equipment, nor to hire the additional personnel that would be needed to process and archive video footage as mandated by this measure.

Thank you for the opportunity to comment on this measure.

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**KEKOA W. KALUHIWA**  
FIRST DEPUTY

**JEFFREY. T. PEARSON, P.E.**  
DEPUTY DIRECTOR - WATER

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BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
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DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
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Deputy Director  
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No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 421, SENATE DRAFT 1  
RELATING TO LAW ENFORCEMENT CAMERAS

by

Nolan P. Espinda, Director  
Department of Public Safety

Senate Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Karl Rhoads, Vice Chair

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

Tuesday, February 28, 2017; 9:50 a.m.  
State Capitol, Room 211

Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committees:

The Department of Public Safety (PSD) **opposes** Senate Bill (SB) 421, Senate Draft (SD) 1, which proposes to mandate that all law enforcement officers wear and use body-worn cameras and vehicle cameras while on duty. PSD appreciates that SB 421, SD 1 proposes a blank appropriation to PSD for the costs incurred by PSD or other state agencies relating to the purchase of body-worn video cameras and law enforcement vehicle cameras for state law enforcement officers. PSD notes that video retention and storage, in addition to the personnel required to handle this storage, redaction, and production, also carries a great financial burden on top of the purchase costs to be incurred. PSD must explore the costs per officer and vehicle, including the storage, production requests, and other related costs. Since the bill proposes that PSD is the expending agency for all state law

enforcement agencies, perhaps further research into possible cost savings related to volume purchase of units can be explored, and discussions can be had with other county police departments which have already purchased such units.

The Department continues to share the same concerns as articulated in previous testimony submitted by our law enforcement partners regarding this subject, such as asking an apparent crime victim if he/she wants the law enforcement officer to discontinue use of the camera, and statutorily providing criminal defendants and civil plaintiffs a rebuttable presumption for failure to record or retain the video which could be due to mechanical equipment malfunction.

Finally, PSD respectfully suggests that “law enforcement officer” be used consistently throughout this proposed bill for provisions that apply to both state law enforcement officers and county police officers to avoid confusion. For example, on page 7, lines 13 - 16, the proposed bill mandates that “[n]o law enforcement shall use a body-worn camera or vehicle camera without first being trained by the applicable county police department on the proper use.” This appears to mandate that state law enforcement agencies must be trained by a county police departments. As another example, on page 7, lines 10 -12, this bill mandates that “[n]o 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.”

PSD opposes SB 421, SD 1. Thank you for the opportunity to present this testimony.

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committees on Judiciary and Labor and on Ways and Means

From: Cheryl Kakazu Park, Director

Date: February 28, 2017, 9:50 a.m.  
State Capitol, Conference Room 211

Re: Testimony on S.B. No. 421, S.D. 1  
Relating to Law Enforcement Cameras

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) **supports the intent** of this bill to ensure that police departments have uniform state standards to follow in their responses to requests under the Uniform Information Practices Act (“UIPA”), chapter 92F, for recordings made by body-worn cameras, as well as standards for when to use body-worn cameras. With or without this bill, **OIP anticipates that the increased use of body-worn cameras will lead to a high volume of UIPA requests for body-worn camera footage, thus requiring additional staffing and operational funding for OIP to address these new cases.**

Regardless of whether this bill becomes law, the county police departments have been and are likely to continue to acquire and use body-worn cameras. Thus, OIP expects to be dealing in the near future with increasing numbers of appeals from the public for the resulting footage as well as requests from police departments for guidance as to their UIPA responsibilities. **This bill is helpful, in that it does set reasonable statewide standards** for when body-worn camera recordings are definitively not public under the UIPA, and thus

reduces the need for OIP to analyze and opine on those non-public records. Therefore, **OIP supports the establishment of statewide standards**, as provided by the bill.

**This bill, however, does not establish statewide standards for all body camera footage, such as those involving the use of force or a potential felony. Consequently, these remaining records not covered by this bill, which are the most controversial, would require careful analysis as to whether they would be potentially subject to the UIPA's exceptions, particularly the privacy exception.**

**Public requests for body-worn camera footage will almost certainly occur in such controversial cases and are likely to require case-by-case analysis** of the balance of the privacy interests of those depicted in videos versus the public disclosure interest. This is similar to the issues involved when OIP considers disputes regarding disclosure of 911 recordings, which in the past have required analyses of whether non-verbal sounds were so emotionally anguished as to create a significant privacy interest, whether spoken words gained a privacy interest because of the fearful or anguished tone of the person's voice, the extent to which such privacy interests were affected by a person's death (often caused by the events recorded), and where the balance lies between the identified privacy interests and the public interest in disclosure. OIP has found 911 recording decisions to **require far more attorney time** per page of transcript or per minute of recording than decisions involving records created under less emotionally fraught circumstances.

With body-worn cameras, a five-minute incident could potentially be recorded from several officers' cameras at once, which, if different cameras pick up additional information, would further **increase review time**, especially if OIP

must review both the redacted and unredacted versions of multiple videos. Additionally, the sheer volume of body camera recordings would mean that even a small proportionate number of video requests resulting in appeals to OIP could **create substantial new work for our already burdened office.**

To give you an idea of the volume of recordings experienced elsewhere, the Seattle Police Department has estimated that it would take someone nearly 330 years working eight hours each business day to view its existing 700,000 hours of dash cam video, and that it expects to generate an additional 220,000 hours of body cam footage each year. Seattle had 1,289 police officers in 2015, and 640 of them will start wearing body cameras this fall. Since its body cam pilot project in 2014, Seattle has grappled with various issues concerning the public release of police videos, and almost shelved its body camera program when a requester sought release of all videos.

Based on the experience of Seattle and other police forces around the nation, OIP anticipates that **UIPA requests for these recordings will be time-consuming both for police departments to respond to and for OIP to advise the police departments and the public and to issue decisions on appeals, especially in the first few years before precedents have emerged** on the treatment of the sort of information typically found in body-worn camera footage. Consequently, as the counties begin using body-worn cameras, **OIP will need additional staffing, equipment, and operational funding** to address anticipated requests for guidance and appeals involving body-worn camera footage, which will only add to the steady increases in new cases that OIP has already been receiving each year.

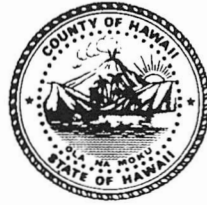
While OIP's primary concern is the question of public access to body-worn camera footage and the anticipated costs associated with it, OIP notes that there are **other costs and issues** associated with the use of body-worn cameras,

such as the costs of redaction and maintaining the footage for the required time period, which reports from other states indicate may dwarf the cost of actually acquiring the cameras; the issue of when cameras should be turned on and off, which is partially addressed by this bill; and where the videos will be retained and who will be responsible for ensuring their chain of custody.

In conclusion, **OIP supports the establishment of statewide standards** for the use of body cameras by police departments, **and requests additional resources** so that it can assist the public and the police in responding to their anticipated increases in appeals and requests for guidance concerning the disclosure of police videos.

Thank you for considering OIP's testimony.

Harry Kim  
Mayor



Paul K. Ferreira  
Police Chief

Kenneth Bugado Jr.  
Deputy Police Chief

## County of Hawai'i

### POLICE DEPARTMENT

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February 27, 2017

Senator Gilbert S. C. Keith-Agaran, Chair  
Chairman and Committee Members  
Committee on Judiciary and Labor  
Senator Jill N. Tokuda, Chair  
Chairman and Committee Members  
Committee on Ways and Means  
415 South Beretania Street, Room 308  
Honolulu, Hawai'i 96813

**Re: SENATE BILL 421, SD1 RELATING TO LAW ENFORCEMENT CAMERAS**

Dear Senators Keith-Agaran and Tokuda:

The Hawai'i Police Department supports a law enforcement camera program but strongly **opposes** Senate Bill 421, with its primary purposes being to establish requirements for body-worn cameras and vehicle cameras for county police departments; being to establish policy guidelines for the use and discontinuance of use of body-worn cameras by police officers; and to establish certain restrictions on the use of body-worn cameras by on-duty police officers.

The Hawai'i Police Department supports a camera program but given some of this legislation's onerous provisions would probably have to **delay implementation** as meeting the requirements would be beyond our current financial capabilities.

The issue of retention of the video for a three-year period of time carries with it an immense financial burden on the County Police Departments in terms of video storage capacity. Further, it would subject the County Police Departments to a **plethora of public requests for release of the videos** even with some of the Bill's limitations placed on public viewing rights. Releasing video carries an additional burden in terms of reviewing and redacting to protect legitimate privacy interests as well as copying and releasing the video. The Hawai'i County Police Department projects video retention for a one-year period of time will require an additional three employees to meet public requests for same. The manpower required for mandatory three year retention will in all probability lead to needing to hire at least double the projected manpower for complying with public requests for video footage.

We believe this legislation as written lacks a law enforcement perspective with respect to some of the stated policies and procedures. For instance, those people who will ask not to be recorded are in all probability the very ones for which a body camera is best suited for. Additionally, as written, this act seemingly requires use of body cameras by plainclothes and undercover officers. I am also unsure why officers would be mandated to use cameras but not



SENATOR GILBERT S. C. KEITH-AGARAN  
SENATOR JILL N. TOKUDA  
RE: SENATE BILL 421, SD1 RELATING TO LAW ENFORCEMENT CAMERAS  
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be allowed to utilize the video in order to assist in producing their investigative reports, as noted in the proposed language "§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 520-F (b) (1) prior to completing any required initial reports, statements, and interviews regarding the recorded event" it would appear inclusion of **this passage is aimed at assisting the defense of accused suspects** as opposed to ensuring the rights of victims.

We also are greatly concerned with the rebuttable evidence presumptions included within the Bill's proposal. The belief as to the proper or improper use and/or misuse of evidence in both criminal and civil proceedings should remain vested in the "Trier of the facts", namely the presiding judge or jury.

We would further hope, given the depth of infused policies and procedures attendant to these proposals, that any and all mandates be injected with **all necessary funding** so as not to frustrate the efforts of law enforcement in meeting statutory requirements with respect to responding to public records requests. This proposed legislation appears to be an unfunded mandate given the storage and reporting requirements that will be necessitated as a result if passed. The dollar for dollar match offered for purchase of the cameras fails to take into account the attendant video storage fees and necessary personnel who will have to be hired to oversee storage, redaction and production of the requested videos. Our County at present is hard-pressed to meet the required dollar for dollar match, more so, given the fact that additional permanent employees will need to be added.

It is for these reasons, we urge this committee to **oppose** this if not unfunded, at the very least underfunded legislative mandate that will impact all County Police Departments.

***We would ask this committee to consider passage of Senate Bill 331, which also deals with Law Enforcement Cameras.***

Sincerely,



PAUL K. FERREIRA  
POLICE CHIEF



Committee: Committee on Judiciary and Labor  
Committee on Ways and Means  
Hearing Date/Time: Tuesday, February 28, 2017, 9:50 a.m.  
Place: Room 211  
Re: Testimony of the ACLU of Hawaii in Strong Support of S.B. 421, S.D. 1, Relating to Law Enforcement Cameras

Dear Chair Keith-Agaran, Chair Tokuda, and Committee Members:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of S.B. 421, S.D. 1, which establishes requirements for body-worn cameras and vehicle cameras by county police departments, and appropriates funds as a grant-in-aid to each county for the purchase of cameras.

#### Body cameras protect police officers and the general public

Body-worn police officer cameras may reduce use-of-force and citizen complaints, and may deter bad behavior of both law enforcement officers and members of the public. A study conducted from 2012 to 2013 found an overall 60% reduction in use-of-force incidents after the body cameras were deployed (thus improving safety both for the individual officers and for the general public), and an 88% reduction in citizen complaints between the year prior to and following deployment.<sup>1</sup> Another study saw a 75% reduction in injuries to suspects at the hands of officers using body cameras.<sup>2</sup> Reducing use-of-force incidents and injuries to suspects would likely increase public trust in our officers, making law enforcement stronger. Additionally, footage captured by police office body cameras can offer exonerating evidence for officers falsely accused of misconduct and help to quickly resolve potential complaints.<sup>3</sup>

#### Body cameras are already in use

Police departments on both Maui and Kauai have begun the process of implementing body-worn cameras. Maui County has already conducted a pilot project, and Mayor Alan Arakawa announced that the Maui P.D. “should be rolling out body cameras by the end of [2016].”<sup>4</sup> Hawaii County Police Chief Paul

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<sup>1</sup> See Lindsay Miller, Jessica Toliver & Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, Community Oriented Policing Services, U.S. Dep’t of Justice at 5 (2014), available at <https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.

<sup>2</sup> See David Harris, *Study: OPD body cams help reduce complaints, injuries*, Orlando Sentinel (Oct. 9, 2015), available at <http://www.orlandosentinel.com/news/breaking-news/os-opd-body-cameras-research-20151009-story.html>.

<sup>3</sup> See Michael D. White, *Police Officer Body-Worn Cameras: Assessing the Evidence*, Community Oriented Policing Services, U.S. Dep’t of Justice (2014), at 24, available at <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>.

<sup>4</sup> *Mayor Arakawa: State of the County is “One of Perpetual Change,”* Maui Now (Mar. 15, 2016), available at <http://mauinow.com/2016/03/14/mayor-arakawa-state-of-the-county-is-one-of-perpetual-change/>; Maui

Ferreira has stated that he is interested in implementing a body camera program, and that the first course of action is to set policies.<sup>5</sup> As such, there is an urgent need for the Legislature to pass clear, uniform, state-wide guidance to ensure that law enforcement officers across the state have consistent policies when using body-worn cameras. S.B. 421 strikes the right balance between government accountability and individual privacy by setting clear guidance for the retention/deletion of footage, operation of cameras, and disclosure of footage.

#### Funding is available for the implementation of body-worn cameras

Federal funding is available for the purchase of body-worn police cameras. In 2015, the U.S. Department of Justice (“DOJ”), through its Bureau of Justice Assistance (“BJA”), announced over \$22 million in available grants to assist local and tribal law enforcement agencies in the implementation of body-worn camera programs.<sup>6</sup> Maui has received at least \$78,000 through this grant.<sup>7</sup>

#### Suggested amendments

The ACLU of Hawaii strongly supports this measure as is, but would support amendments that address the Civil Beat Law Center’s concerns by providing for the increased disclosure of footage with strong public value.

Thank you for this opportunity to testify.



Mandy Finlay  
Advocacy Coordinator  
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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mayor addresses body cameras, misspending in State of the County, KHON2 News (Mar. 14, 2016), available at <http://khon2.com/2016/03/14/maui-mayor-addresses-body-cameras-misspending-in-state-of-the-county/>.

<sup>5</sup> *New Police Chief, Deputy Chief Sworn In*, Big Island Now (January 9, 2017), available at <http://bigislandnow.com/2017/01/09/new-police-chief-deputy-chief-sworn-in/>.

<sup>6</sup> *See Body-Worn Camera Program Fact Sheet*, Bureau of Justice Statistics, U.S. Dep’t of Justice (2015), available at <https://www.bja.gov/bwc/pdfs/BWCPIP-Award-Fact-Sheet.pdf>.

<sup>7</sup> *Maui police to test body cameras on Halloween*, Honolulu Star-Advertiser (Oct. 24, 2015), available at <http://www.staradvertiser.com/breaking-news/maui-police-to-test-body-cameras-on-halloween/>.

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Senate Committee on Judiciary and Labor  
Honorable Gilbert S.C. Keith-Agaran, Chair  
Honorable Karl Rhoads, Vice Chair

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

**RE: Testimony Opposing S.B. 421 S.D. 1, Relating to Law Enforcement Cameras**  
Hearing: February 28, 2017 at 9:50 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. 421 S.D. 1. The Law Center **strongly opposes the expansive breadth of the confidentiality provision in this bill**. No other bill pending in the Legislature would do as much damage to open government in Hawai'i as S.B. 421 in its current form.

*Police video would be far less accessible under S.B. 421 S.D. 1 than under existing law.*

As currently drafted, the only video that could possibly be disclosed by a law enforcement agency is video that involves use of force or felony conduct. All other video – regardless of the circumstances – would be confidential. Existing law is far more nuanced in balancing privacy and public interests in disclosure of information that educates citizens about government operations, especially information about how police officers interact with the public. *This absolute confidentiality – proposed section 52D-E(c) – must be severely curtailed.*

Last session, the Legislature made progress toward improving the disclosure provisions in an identical bill (S.B. 2411). S.B. 2411 S.D. 2 H.D. 2 respected public access substantially better than S.B. 421 S.D. 1.<sup>1</sup> We have robust and strong protections for privacy in existing law. The Legislature should not assume that those existing

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<sup>1</sup> The H.D. 2 draft of the 2016 bill still had an inconsistency in its disclosure provisions because it made evidentiary video both exempt and subject to the privacy/public interest balancing test. Evidentiary video should be subject to the balancing test, and that appeared to be the intent of the committee that made the change.

standards are inadequate to address new technology, such as body cameras. *Public access is a critical component to the accountability of any police body camera policy.*

Under existing law, law enforcement agencies 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 personal information or an ongoing investigation. But that fact-sensitive analysis will not occur under S.B. 421 S.D. 1. Under the bill, if a video does not involve use of force or felony conduct, there is no further analysis; the record is simply not publicly accessible.

S.B. 421 appears to originate from model ACLU legislation, but *in January of this year, the ACLU revised its model legislation to expressly provide for redacted footage to protect privacy and other interests.* ACLU, A Model Act for Regulating the Use of Wearable Body Cameras by Law Enforcement § 1(l)(3) (Jan. 2017), at <https://www.aclu.org/other/model-act-regulating-use-wearable-body-cameras-law-enforcement>. As the privacy advocates at the ACLU have explained, “[i]f recordings are redacted, they should be discloseable [sic].” *E.g., ACLU, Police Body-Mounted Cameras: With Right Policies in Place, a Win for All* at 7 (March 2015), at [https://www.aclu.org/sites/default/files/assets/police\\_body-mounted\\_cameras-v2.pdf](https://www.aclu.org/sites/default/files/assets/police_body-mounted_cameras-v2.pdf). As drafted, S.B. 421 S.D. 1 has no comparable protection for the public interest.

The public interest in disclosure of police video does not end with use of force and felony conduct. There will be instances when misdemeanor conduct, arrests, or other evidentiary video by officers will have significant public interest. The public should be able to request videos (*and law enforcement agencies the leeway to disclose videos*) subject to the well-established public records standards.

Thank you again for the opportunity to testify.

# SHOPO



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Tenari R. Ma'afala

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Jesse Guirao

**MAUI CHAPTER CHAIR**

Barry Aoki

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

The Honorable Karl Rhoads, 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 27, 2017

SUBJECT: Testimony on S.B. No. 421 S.D. 1, Relating to Law Enforcement  
Cameras

DECISION: Tuesday, February 28, 2017  
MAKING: 9:50 a.m. Conference Room 211

This bill provides new laws regarding the use of body cameras, as well as regarding record retention and public access. The State of Hawaii Organization of Police Officers ("SHOPO") supports body-cameras for police. However, SHOPO opposes S.B. 421 S.D. 1 as currently drafted.

This bill creates operational policy for the county police departments. Implementation of a police body-worn camera program is new to Hawaii, with Kauai Police Department's program leading off approximately one year ago. As with any new program, tweaks and adjustments will have to be made. When operational policy is encased in law, it is very difficult and time-consuming to change. The four county Police Chiefs will not be able to respond quickly to any necessary changes.

Additionally, Hawaii Revised Statutes Chapter 92F already addresses the release of public records. The county police departments, when fielding requests for video, will undoubtedly file requests for opinions on release of video, from the Office of Information Practices when the departments want clarification.

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Further, in section 52D-B, subsection (d)(2), it provides authority to an “apparent crime victim” to require the law enforcement officer to turn off their body-camera recording. Unfortunately, sometimes upon arrival at a scene, and after investigating, the law enforcement officer will find that the “apparent crime victim” is actually the suspect. The officer may have lost valuable admissions from the “apparent crime victim” that could have been used at trial, in addition to other evidence that may have been recorded. The law can’t possibly anticipate all the circumstances that arise when police respond to cases or pick up cases while patrolling.

Finally, in section 52D-G, subsections (a)(2) and (a)(3), create a rebuttal presumption for criminal defendants and those seeking damages from the State or county, that exculpatory evidence was destroyed or not captured when the officer fails to follow the requirements in section 52D-E or intentionally interferes with a body camera’s ability to accurately capture video footage. When a battery dies suddenly on the video, won’t questions arise as to whether the battery actually died at that moment? We all know our televisions glitch in the middle of Super Bowl (which did happen this year) or our computers glitch when we have a brief or testimony due. How do you prove this happened at that moment and was not intentional? This section totally ignores the victim and the impact of the suspect’s actions on the victim. Instead suspects are given a free pass for technological difficulties which occur generally in our lives almost daily.

For these reasons, SHOPO opposes this bill. We appreciate the opportunity to provide testimony and for your consideration.



# THE SEX ABUSE TREATMENT CENTER

*A Program of Kapi'olani Medical Center for Women & Children*

*Executive Director*  
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David I. Haverly  
Linda Jameson  
Michael P. Matsumoto  
Robert H. Pantell, MD  
Joshua A. Wisch

**Date:** February 28, 2017

**To:** The Honorable Gilbert S.C. Keith-Agaran, Chair  
The Honorable Karl Rhoads, Vice Chair  
Senate Committee on Judiciary and Labor

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

**From:** Justin Murakami, Policy Research Associate  
The Sex Abuse Treatment Center  
A Program of Kapi'olani Medical Center for Women & Children

**RE:** Testimony Providing Comments on S.B. 421 S.D. 1  
Relating to Law Enforcement Cameras

**Means:** Good morning Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and members of the Senate Committees on Judiciary and Labor and on Ways and Means:

The Sex Abuse Treatment Center (SATC) recognizes the intent of S.B. 421 S.D. 1, which provides standards for the use of body-worn cameras and vehicle cameras by law enforcement in the State of Hawai'i, and for the retention and disclosure of footage. We note that the use of body-worn cameras and vehicle cameras by law enforcement officers guided by standardized policies and practices may confer numerous benefits to both police and the communities they serve. Moreover, it is our understanding that law enforcement organizations in the State of Hawai'i are already using body-worn and vehicle cameras.

However, the use of body-worn and vehicle cameras raises significant concerns with respect to its potential impact on survivors of sexual violence.

Sexual violence remains a significant and ongoing health and public safety crisis in the United States, with 43.9 percent of women and 23.4 percent of men having experienced one or more forms of sexual violence in their lifetimes. SATC serves many of these survivors of sexual violence on O'ahu. The harm caused by sexual violence to a survivor's health and wellbeing can be profound, and include both physical consequences requiring medical intervention as well as immediate and ongoing psychological effects. These consequences of sexual violence reverberate through survivors' families and communities, exacting enormous personal, social and economic costs.



The use of body-worn and vehicle cameras by law enforcement officers raises the possibility of survivors' being recorded in the moments when they are most likely to be physically and emotionally vulnerable and traumatized, including in the immediate aftermath of the violence, and in locations where they have a heightened expectation of privacy such as in their own home or in a medical facility or sexual assault center. Being filmed in a state of personal, emotional, and medical crisis, as well as the existence of that video footage and the potential for its disclosure, can be sources of revictimization and trauma for a survivor, and violate their rights to privacy and confidentiality.

In an effort to reduce the potential negative impacts of using body-worn and vehicle cameras in situations where survivors of sexual violence may be captured on film, we respectfully ask that the Committees please adopt the following amendments to S.B. 421 S.D. 1.

- The law should distinguish between situations where a law enforcement officer expects to interact with a sexual assault survivor prior to the commencement of activating a body-worn camera, such as in an arranged meeting or interview, and situations where a body-worn camera has already been activated and an interaction with a crime victim is incidental, such as in the course of an enforcement action. Where possible, consent should be obtained before activating a camera with respect to a crime victim, rather than capturing footage first and then subsequently asking if filming should continue.

Therefore, we ask that Section 2 of the bill, in the proposed H.R.S. Sec. 52D-B providing exceptions for the use of cameras by law enforcement, subsection (2) on page 5, be amended to provide:

(2) When interacting with an apparent crime victim, a law enforcement officer shall, if possible, obtain consent from the apparent crime victim before filming them. If a body-worn camera has already been activated, a law enforcement officer shall, as soon as practicable, ask the apparent crime victim if the apparent crime victim wants the law enforcement officer to discontinue use of the law enforcement officer's body-worn camera. If the apparent crime victim responds affirmatively, the law enforcement officer shall immediately discontinue the use of the body worn camera; and

- We ask that the following language, previously included in S.B. 331, please be added to Section 2 of the bill, in the proposed H.R.S. Sec. 52D-B providing exceptions for the use of cameras by law enforcement on page 6 following line 9:
  - (f) Officers are not required to activate and record investigative or enforcement encounters in patient care areas of a hospital, sexual assault center, or other health care facilities.
- We note that the ACLU's current Model Act provides language that would allow for limited modification of video footage to protect the identity of crime victims.

We therefore respectfully ask that the Committees amend Section 2 of the bill, in the proposed H.R.S. Sec. 52D-E stating retention standards for video footage, to provide the following at line 20:

(d) Whenever doing so is necessary to protect privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person, including the tone of the person's voice, provided the redaction does not interfere with a viewer's ability to fully, completely and accurately comprehend the events captured on the video footage. When redaction is performed on video footage, an unedited, original version of the video footage shall be retained.

- As noted by the National Alliance to End Sexual Violence, a national leader and authority on issues of sexual violence, in their current position statement concerning body-worn cameras, "any law . . . that is enacted should contain provisions that clearly highlight that recordings involving crime victims are not a public record and cannot be provided to the media, particularly in light of the increase in footage from body worn cameras that will contain identifiable information of victims. Under no circumstances should the media, or any private citizen, be permitted to obtain this information via a public records request without the consent of the sexual assault victim depicted in the recording."

Therefore, we respectfully ask that the Committees please amend Section 2 of the bill, in the proposed H.R.S. Sec. 52D-C, concerning the release of footage created with a body-worn camera, to add the following to subsection (d) at line 12:

No person shall release a recording created with a body-worn camera under this part showing a crime victim without the written consent of the crime victim.

We also ask that the Committees please amend Section 2 of the bill, in the proposed H.R.S. Sec. 52D-E(c), concerning exemptions from the requirements of H.R.S. Chapter 92F (Uniform Information Practices Act), to add the following at line 20:

(5) Video footage showing a crime victim from whom written consent for disclosure has not been obtained.

We also ask that the Committees please amend Section 2 of the bill, in the proposed H.R.S. Sec. 52D-F providing restrictions on the use and divulgement of video footage, to add the following to subsection (c) at line 15:

Video footage showing a crime victim or apparent crime victim shall not be divulged without the written consent of the crime victim.

By recognizing that survivors of sexual violence in Hawai'i retain important, protected rights to privacy and confidentiality, adoption of these suggested amendments will allow for standardization of statewide practices for the use of body-worn and vehicle cameras by law enforcement officers while simultaneously ensuring that survivors will be spared further unnecessary and undeserved trauma.

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**SB421**

Submitted on: 2/24/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Ashley de Coligny   | Individual          | Support                   | No                        |

Comments: Dear Chair Keith-Agaran, Chair Tokuda, Members of the Committees: I write in strong support of S.B. 421, S.D. 1, which promotes government transparency while protecting individual privacy. Cameras help ensure that officers who break the law are held accountable, and they protect police by exonerating officers wrongfully accused of misconduct. I support S.B. 421, S.D. 1, and respectfully ask that the Committees approve this measure.

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**SB421**

Submitted on: 2/25/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Barbara Best        | Individual          | Support                   | No                        |

Comments: I write in strong support of S.B. 421, S.D. 1, which promotes government transparency while protecting individual privacy. Cameras help ensure that officers who break the law are held accountable, and they protect police by exonerating officers wrongfully accused of misconduct. I support S.B. 421, S.D. 1, and respectfully ask that the Committees approve this measure.

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**SB421**

Submitted on: 2/26/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
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| Barbara L. George   | Individual          | Support                   | No                        |

Comments: SUPPORT

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Aloha Chair Keith-Agaran, Vice Chair Rhodes, Chair Tokuda and Vice Chair Dela Cruz and committee members

I am a senior citizen and a resident of House District 19 and Senate District 9. Though I'm a member of several senior organizations, I am submitting this testimony as an individual.

I'm testifying in strong support of SB421, SD1 requiring body worn cameras and vehicle cameras in county police departments.

The number of deaths of unarmed individuals at the hand of police invoke outrage and sadness.

The cameras improve police transparency and accountability and can avoid adverse incidents.

Please support SB421, SD1 to require these cameras for our police.

Thank you for the opportunity to testify.

Barbara J. Service

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**SB421**

Submitted on: 2/25/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Flinn Curren        | Individual          | Comments Only             | No                        |

Comments: Police body cameras are needed to protect police personnel as well as the general public.

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I whole heartedly support this bill, and hope that it will be passed into law as quickly as humanely possible. I also hope that in future not only will camera/video equipment be enforced but also record what is said. Not only for threats or aggression against police officers, but on comments police officers have made to me in the past, for example like these few “don’t call us unless there’s blood”; “I can’t understand you” (both for written and verbal communication); “I can drive here blindfolded”; “if you want to file a police report, you have to call 911 and another police officer will give you one”; “move if you don’t like it” when claims of harassment and threats are being made (this prior to officers not doing anything over the bathroom monitoring or perverted comments complaint I made) etc. Same with some of the phone calls to the department where I’m called the “parking lady”, “it’s not illegal to claim to be a police officer” or ‘if you want to talk to the chief, send an email”. (And yes, this was filed with the police commission, but they dropped it, claiming they couldn’t contact me, though I was “recorded” by an investigator who was able to contact me) As I feel if a police officer is not being disrespected, he shouldn’t be disrespecting the victim or caller, and none should be giving out my information to a party, I’m claiming isn’t the person I know who lives there. (occurred during an incident when a family exited the home, but were not the tenants I know live at the home, whom the officer was referring to – claiming they are...another issue I brought up as if I’m saying that’s not the person, felt the officer should have asked for the other party’s ID to prove they were – not for me to see, but at least to get the right party present when an issue involving them is in question...) Because the video footage and the recording can’t lie, and can help settle matters quickly and efficiently.

I’m also glad that this bill covers areas where the video might be used for non-business type occurrences that could/would/might occur, and hope there are safe guards in place also for tampering or deleted items. For example a video that might ‘accidentally’ be deleted or for the ‘deleting before anyone they don’t want to share the tape with sees or copying of video...I’m also hoping that the front desk of departments, for when people go into the precinct to speak with an officer will have cameras as well...

Karin Nomura

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**SB421**

Submitted on: 2/25/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Kim Coco Iwamoto    | Individual          | Support                   | No                        |

Comments: Please accept this testimony in STRONG SUPPORT of SB421, relating to law enforcement cameras. The guidelines included in this bill mirror best practices that have been field tested in other jurisdictions. There is sufficient public funding to pay for the equipment. Finally, the recorded content may assist law enforcement officers in their own defense of fraudulent claims of excessive force

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**Date:** Monday, February 27, 2017 1:36:42 AM

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**SB421**

Submitted on: 2/27/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
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| Kinikalela          | Individual          | Support                   | No                        |

Comments:

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**SB421**

Submitted on: 2/26/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Maria Pena          | Individual          | Support                   | No                        |

Comments: Dear Chair Keith-Agaran, Chair Tokuda, Members of the Committees: I write in strong support of S.B. 421, S.D. 1, which promotes government transparency while protecting individual privacy. Cameras help ensure that officers who break the law are held accountable, and they protect police by exonerating officers wrongfully accused of misconduct. I support S.B. 421, S.D. 1, and respectfully ask that the Committees approve this measure.

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**Date:** Saturday, February 25, 2017 6:43:27 AM

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**SB421**

Submitted on: 2/25/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Mike Dickerson      | Individual          | Support                   | No                        |

Comments: Dear Senate Committee Members, I urge the committee and Legislature to pass this Legislation, it will be an unquestionable tool in proving quilt or innocents in many far too many cases of conflicting testimony.

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**Date:** Friday, February 24, 2017 5:53:55 PM

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**SB421**

Submitted on: 2/24/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Nancy Davlantes     | Individual          | Support                   | No                        |

Comments: I am supporting S.B. 421, S.D. 1, because it would promote government transparency while protecting individual privacy. Cameras help ensure that officers who break the law are held accountable, and they protect police by exonerating officers wrongfully accused of misconduct. Please support S.B. 421, S.D. 1, and approve this measure. Mahalo for considering my testimony.

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**SB421**

Submitted on: 2/25/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Nathan Leo Braulick | Individual          | Support                   | No                        |

Comments: Dear Chair Keith-Agaran, Chair Tokuda, Members of the Committees: I write in strong support of S.B. 421, S.D. 1, which promotes government transparency while protecting individual privacy. Cameras help ensure that officers who break the law are held accountable, and they protect police by exonerating officers wrongfully accused of misconduct. To be sure, the complex problems affecting policing and race relations in Hawai'i and nationwide will not be solved by pinning a small camera to an officer's uniform. However, police body cameras do have the potential to move us in the right direction. With a strong policy framework, police body cameras offer improved police transparency and accountability and can reduce adverse incidents. I support S.B. 421, S.D. 1, and respectfully ask that the Committees approve this measure. Sincerely, Nathan Leo Braulick 96816

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**SB421**

Submitted on: 2/24/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Patricia Blair      | Individual          | Support                   | No                        |

Comments:

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**Capt. T. J. Davies, Jr. (Ret.)**  
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24 February 2017

To: Committee on Judiciary & Labor, Sen. Gilbert Keith-Agaran, Chair, Sen. Karl Rhoads, Vice Chair  
Committee On Ways And Means, Sen. Jill Tokuda, Chair, Sen. Donovan Dela Cruz, Vice Chair

Date: Tuesday, February 28, 2017, 9:50 a.m., Room 211

Re: **S.B. 421, S.D. 1**, RELATING TO LAW ENFORCEMENT CAMERAS, Body-worn Cameras.

Chairs Keith-Agaran & Tokuda, Vice Chair Rhoads & Dela Cruz and members of the committee:

My name is T. J. Davies Jr. I am 82 years old, retired and live in Kakaako. I am writing in STRONG SUPPORT of **S.B. 421, S.D. 1**, Relating to Law Enforcement Cameras, Body-worn Cameras, which promotes government transparency while protecting individual privacy. Cameras help ensure that officers who break the law are held accountable, and they protect police by exonerating officers wrongfully accused of misconduct.

Since the shooting of Michael Brown in Ferguson, Mo., on Aug. 9, 2014, many communities **including here in Hawaii** have witnessed a string of deaths involving unarmed people at the hands of police. The names and locations of these tragedies invoke powerful feelings of outrage and sadness.

Eric Garner of Staten Island, N.Y. Walter Scott of North Charleston, S.C. Freddy Gray of Baltimore, Md. **And there was Sheldon Haleck, who died on March 16, 2015, in front of Iolani Palace.**

These incidents -- many of which were brought to light after being caught on camera -- sparked national calls for a quick and tangible response. It was upon that basis that a national movement toward equipping police officers with wearable body cameras began.

The complex problems affecting policing and race relations in Hawaii and nationwide will not be solved by pinning a small camera to an officer's uniform. However, police body cameras do have the potential to move us in the right direction. With a strong policy framework, police body cameras offer improved police transparency and accountability and can reduce adverse incidents.

I support **S.B. 421, S.D. 1**, and respectfully ask that the Committees approve this measure.

T. J. Davies Jr., Volunteer  
Treasurer, AARP Chapter 60 Honolulu  
Treasurer, Kokua Council for Senior Citizens of Hawaii Education Fund  
Director, Hawaii Alliance for Retired Americans  
Kakaako (District 26 / Senate District 12)

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**SB421**

Submitted on: 2/24/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Victor K. Ramos     | Individual          | Oppose                    | No                        |

Comments: With respect, you all, our esteemed Legislature, do not know the depth of what you are talking about. Law Enforcement jurisdictions in Hawaii are working, fast and furious, to implement their various BWC Programs. The "buy in" is already present.

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