

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Public Safety, Intergovernmental,
and Military Affairs

From: Cheryl Kakazu Park, Director

Date: February 2, 2017, 1:15 p.m.
State Capitol, Conference Room 229

Re: Testimony on S.B. No. 421
Relating to Police Reports

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 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 the opportunity to testify.

TESTIMONY OF THE HAWAI`I POLICE DEPARTMENT

SENATE BILL 421

RELATING TO LAW ENFORCEMENT CAMERAS

BEFORE THE COMMITTEE ON FINANCE

DATE : Thursday, February 2, 2017

TIME : 1:15 P.M.

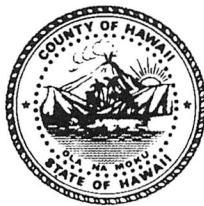
PLACE : Conference Room 229
State Capitol
415 South Beretania Street

PERSON TESTIFYING:

Police Chief Paul K. Ferreira
Hawai`i Police Department
County of Hawai`i

(Written Testimony Only)

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 1, 2017

Senator Clarence K. Nishihara, Chair
Chairman and Committee Members
Committee on Public Safety, Intergovernmental and Military Affairs
415 South Beretania Street, Room 308
Honolulu, Hawai'i 96813

Re: SENATE BILL 421 RELATING TO LAW ENFORCEMENT CAMERAS

Dear Senator Nishihara:

The Hawai'i Police Department supports a law enforcement camera program but **opposes** Senate Bill 421, with its primary purpose 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; 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, County Police Departments 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 review, 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.

SENATOR CLARENCE K. NISHIHARA, CHAIR
RE: SENATE BILL 421 RELATING TO LAW ENFORCEMENT CAMERAS
FEBRUARY 1, 2017
PAGE 2

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 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 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 Public Safety, Intergovernmental and Military Affairs
Hearing Date/Time: Thursday, February 2, 2017, 1:15 p.m.
Place: Room 229
Re: Testimony of the ACLU of Hawaii in Strong Support of S.B. 421, Relating to Law Enforcement Cameras

Dear Chair Nishihara and Committee Members:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of S.B. 421, 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.¹ Another study saw a 75% reduction in injuries to suspects at the hands of officers using body cameras.² 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.³

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

¹ 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>.

² 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>.

³ 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>.

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P.D. “should be rolling out body cameras by the end of [2016].”⁴ Hawaii County Police Chief Paul Ferreira has stated that he is interested in implementing a body camera program, and that the first course of action is to set policies.⁵ 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.⁶ Maui has received at least \$78,000 through this grant.⁷

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.

⁴ *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 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/>.

⁵ *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/>.

⁶ *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>.

⁷ *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/>.

THE CIVIL BEAT
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Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Honorable Clarence K. Nishihara, Chair
Honorable Glenn Wakai, Vice Chair

RE: Testimony Opposing S.B. 421, Relating to Law Enforcement Cameras
Hearing: February 2, 2017 at 1:15 p.m.

Dear Chair and Members of the Committee:

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. The Law Center **strongly opposes the expansive breadth of the confidentiality provision in this bill.** S.B. 331 – also being heard today – provides a better starting point for disclosure of police body camera footage.

Body camera footage only provides police accountability if the footage is publicly accessible. *Body camera video would be far less accessible under S.B. 421 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. *This absolute confidentiality – proposed section 52D-E(c) – must be severely curtailed.*¹

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. Under S.B. 421, if a video does not involve use of force or felony conduct, there is no further analysis; the record is simply not publicly accessible.

Even leading privacy advocates have stated that privacy interests are protected by such redactions. *E.g., ACLU, Police Body-Mounted Cameras: With Right Policies in Place, a Win for All* at 7 (March 2015) (“If recordings are redacted, they should be discloseable [sic].”),

¹ The Law Center does not object to absolute confidentiality (as currently provided in S.B. 421) for *non-evidentiary* video – *i.e.*, video categorized in subsection (a) and (b)(2)(D)-(G) of proposed § 52D-E.

at https://www.aclu.org/sites/default/files/assets/police_body-mounted_cameras-v2.pdf. This month, the ACLU revised its model legislation (an earlier version of which appears to be the basis for this bill) 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>. S.B. 421 has no comparable protection for the public interest.

The Law Center is not advocating for mandatory disclosure of any category of video. Even use of force and felony conduct footage 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 law enforcement agencies the leeway to disclose videos) subject to the well-established public records standards.

Lastly, based on concerns raised in response to bills last session, please note that the costs for law enforcement agencies to redact body camera video frequently are overstated. Digital-tracking technology provides agencies the ability to mark an individual for obscurity throughout a video with minimal effort. *E.g.*, Axon, *The Future of FOIA: Find, Redact, Deliver*, at <http://www.axon.io/webinar/follow-up-redaction> (presentation by TASER International's technology unit regarding the ease of using its automated video redaction tool for Evidence.com, a digital evidence management platform); Yale Law School Media Freedom & Information Access Clinic, *Police Body Cam Footage: Just Another Public Record* at 23 (December 2015) (describing other automated blurring tools available at little or no cost).² Thus, the technology exists to redact body camera videos when necessary to protect personal privacy.

Thank you again for the opportunity to testify.

² http://isp.yale.edu/sites/default/files/publications/police_body_camera_footage_just_another_public_record.pdf.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 1, 2017 9:22 AM
To: PSMTestimony
Cc: smorita1@twc.com
Subject: *Submitted testimony for SB421 on Feb 2, 2017 13:15PM*

SB421

Submitted on: 2/1/2017

Testimony for PSM on Feb 2, 2017 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Stirling Morita	Hawaii Chapter Society of Professional Journalists	Support	No

Comments:

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TESTIMONY
THE LIBERTARIAN PARTY OF HAWAII
c/o 1658 Liholiho St #205
Honolulu, HI 96822

January 30 2017

RE: SB 421 to be heard Thursday February 2, in Room 229 at 1:15 PM

To the members of the Senate Committee on Public Safety

We **support** this measure and hope it can be quickly implemented. Police are a potential danger to the community and the community a potential danger to the police. Having video records of interactions can go a long way to address problems.

Signed:

A handwritten signature in black ink, appearing to read 'Tracy Ryan', written in a cursive style.

Tracy Ryan, Chair

SHOPO



PRESIDENT

Tenari R. Ma'afala

VICE PRESIDENT

Malcolm Lutu

TREASURER

James "Kimo" Smith

SECRETARY

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Robert Cavaco

HAWAII CHAPTER CHAIR

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KAUAI CHAPTER CHAIR

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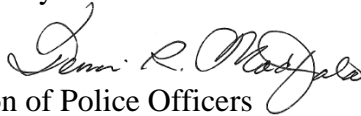
MAUI CHAPTER CHAIR

Barry Aoki

TO: The Honorable Clarence K. Nishihara, Chair
Senate Committee on Public Safety, Intergovernmental, and
Military Affairs

The Honorable Glenn Wakai, Vice-Chair
Senate Committee on Public Safety, Intergovernmental, and
Military Affairs

Members of the Senate Committee on Public Safety,
Intergovernmental, and Military Affairs

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

DATE: February 1, 2017

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

HEARING: Thursday, February 2, 2017
1:15 p.m. Conference Room 229

Thank you for the opportunity to provide testimony on this bill regarding police body-camera rules. The State of Hawaii Organization of Police Officers ("SHOPO") supports body-cameras for police. SHOPO provides comments for S.B. 421.

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.

In section 52D-G, subsection (a)(2) and (a)(3), creates 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 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? SHOPO comments that this section should be deleted.

We appreciate your consideration of SHOPO's comments.

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My name is Maile Murphy. I am the Civil Rights Committee Chairperson of the Hawaii chapter of the Young Progressives Demanding Action. We have close to 1,000 members statewide and it is on their behalf that I am testifying today.

In addition, I personally am a resident of congressional district 18 and senate district 8.

The YPDA, like the majority of Americans, is strongly in favor of police worn body cameras. In 2015, a national Cato/YouGov poll found that 92% of people surveyed were in favor of police wearing body cameras. In addition 55% of respondents were willing to pay increased taxes to equip local police. It is not even remotely under debate whether or not this is something that the people want.

The question that remains, then, is how this will impact our men and women in blue. A year-long study regarding body cameras was performed on the Orlando Police Department by the University of South Florida between 2014 and 2015. This study found that police officers who wear body cameras had a 53% less chance to be involved in use of force incidents, otherwise known as "response to force". In addition, civilian complaints against those officers wearing body cameras dropped by 65%. A majority of officers surveyed after the conclusion of the study indicated that they would be in favor of their force adopting body worn cameras for all front-line officers. A full 25% of officers surveyed confirmed that wearing body cameras impacted their behavior on the job with 30-40% of officers agreeing that body worn cameras also led to a trend of "de-escalated" confrontations between themselves and citizens in the community. Two thirds of officers indicated that they would want to continue wearing body cameras; "[These officers] reported agreement that [body worn cameras] are capable of improving their evidence collection and their recollection of events, minimizing errors in their reports, and that reviewing [body worn camera] video after an incident would help them become a better officer, identify ways to improve interactions with citizens, and identify issues in general that they may need to improve on."

On behalf of the YPDA, I would like to thank you for taking the time to listen to this testimony and once again would strongly urge you to vote in favor of SB421 as it is currently written. Mahalo.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 1, 2017 1:26 PM
To: PSMTestimony
Cc: annsfreed@gmail.com
Subject: Submitted testimony for SB421 on Feb 2, 2017 13:15PM

SB421

Submitted on: 2/1/2017

Testimony for PSM on Feb 2, 2017 13:15PM in Conference Room 229

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

Comments: Aloha Chair Nishihara and members, As an advocate for women who has seen far too much violence against women in our state and in my lifetime, I support body cameras for police. It protects both police and victims. I believe this measure could do much to restore public confidence in our police. Mahalo, Ann S. Freed

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

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