A BILL FOR AN ACT

RELATING TO BODY CAMERAS FOR LAW ENFORCEMENT OFFICERS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

SECTION 1. The Hawaii Revised Statutes is amended by
adding a new chapter to be appropriately designated and to read
as follows:

"CHAPTER

BODY CAMERAS FOR LAW ENFORCEMENT OFFICERS

§ -1 Definitions. As used in this chapter, unless the
context requires otherwise:

"Law enforcement officer" means any public servant, whether
employed by the State or a county, vested by law with a duty to
maintain public order, to make arrests for offenses, or to
enforce the criminal laws, whether the duty extends to all
offenses or is limited to a specific class of offenses.

"Subject of the video footage" means any law enforcement
officer or any suspect, victim, detainee, conversant, injured
party, or other similarly situated person who appears on a body
camera recording, and shall not include individuals who only
incidentally appear on a recording.
§ 2 Use of body cameras for law enforcement officers.

(a) While on duty, law enforcement officers shall wear and use body cameras only in accordance with this chapter. Body cameras shall be worn in a location and manner that maximizes the camera's ability to capture video footage of the officer's activities.

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

1. Whenever a law enforcement officer responds to a call for service; and
2. At the initiation of any law enforcement or investigative encounter between a law enforcement officer and a member of the public; provided that when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity to do so. The body camera shall not be deactivated until the call for service or encounter has fully concluded and the law enforcement officer leaves the scene.
(c) A law enforcement officer who is wearing a body camera shall notify the subjects of the video footage that the subjects are being recorded by a body camera as close to the inception of the encounter as is reasonably possible.

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

(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 camera. If the occupant responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera;

(2) 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 camera. If the apparent crime victim responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera; and

(3) When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement
investigation, a law enforcement officer shall, as soon as practicable, ask the person seeking to remain anonymous if the person wants the officer to discontinue use of the officer's body camera. If the person responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera.

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

§ -3 Prohibitions. Body cameras shall not be used:

(1) Surreptitiously;

(2) To gather intelligence information based on First Amendment protected speech, associations, or religion;

(3) To record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a law enforcement officer and a member of the public; or

(4) 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.
§ 4 Body camera video footage; retention and deletion.
(a) Body 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.
(b) Notwithstanding the retention and deletion
requirements in subsection (a):
(1) Body camera video footage shall be automatically
retained for no less than three years from the date it
was recorded if the video footage captures images
involving:
(A) Any use of force;
(B) Events leading up to and including an arrest for
a felony-level offense, or events that constitute
a felony-level offense; or
(C) An encounter about which a complaint has been
registered by a subject of the video footage.
(2) Body camera video footage shall be retained for no
less than three years from the date it was recorded if
the longer retention period is requested by:

(A) The law enforcement officer whose body camera
     recorded the video footage, if that officer
     reasonably asserts the video footage has
     evidentiary or exculpatory value;

(B) Any law enforcement officer who is a subject of
     the video footage, if that officer reasonably
     asserts the video footage has evidentiary or
     exculpatory value;

(C) Any superior officer of a law enforcement officer
     whose body camera recorded the video footage or
     who is a subject of the video footage, if that
     superior officer reasonably asserts the video
     footage has evidentiary or exculpatory value;

(D) Any law enforcement officer, if the video footage
     is being retained solely and exclusively for
     police training purposes;

(E) Any individual who is a subject of the video
    footage;
(F) Any parent or legal guardian of a minor who is a subject of the video footage; or

(G) A deceased subject of the video footage's next of kin or legally authorized designee.

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

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

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

(2) Video footage that is subject to a minimum three-year retention period solely and exclusively pursuant to subsection (b)(1)(C), if the subject of the video footage making the complaint requests the video footage not be made available to the public;
(3) Video footage that is subject to a minimum three-year retention period solely and exclusively pursuant to subsection (b)(2)(A), (b)(2)(B), (b)(2)(C), or (b)(2)(D); and

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

§ 5 Video footage; prohibitions on use. (a) No law enforcement officer shall review or receive an accounting of any body camera video footage that is subject to an automatic minimum three-year retention period pursuant to section 4(b)(1) prior to completing any required initial reports, statements, and interviews regarding the recorded event.

(b) Video footage not subject to a minimum three-year retention period shall not be viewed by any superior officer of a law enforcement officer whose body camera recorded the video footage without a specific allegation of misconduct, nor shall it be subject to automated analysis or analytics of any kind.
(c) Video footage shall not be divulged or used by any law
enforcement agency for any commercial or other non-law
enforcement purpose.

(d) Where a law enforcement agency authorizes a third-
party to act as its agent in maintaining body camera footage,
the agent shall not be permitted to independently access, view,
or alter any video footage, except to delete videos as required
by law or agency retention policies.

§ -6 Violation of recording or retention requirements.

(a) Should any law enforcement officer, employee, or agent fail
to adhere to the recording or retention requirements contained
in this chapter or intentionally interfere with a body camera's
ability to accurately capture video footage:

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

(2) 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.

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

§ 7.7 Video footage; use or admissibility as evidence.

(a) Body camera video footage recorded in contravention of this
chapter or any other applicable law shall be immediately
destroyed and shall not be admissible as evidence in any
criminal or civil legal or administrative proceeding.

(b) Video footage retained beyond six months from the date
it was recorded solely and exclusively for police training
purposes shall not be admissible as evidence in any criminal or
civil legal or administrative proceeding.

(c) Nothing in this chapter shall be read to contravene
any laws governing the maintenance and destruction of evidence
in criminal investigations and prosecutions."
SECTION 2. This Act shall take effect upon its approval.

INTRODUCED BY: [Signature]
Report Title: Law Enforcement; Body Cameras

Description: Regulates the use of body cameras by law enforcement officers and body camera video footage.

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