

HB 617-FN-A - AS INTRODUCED

2015 SESSION

15-0028
04/03

HOUSE BILL **617-FN-A**

AN ACT requiring state police to wear a camera when interacting with the public.

SPONSORS: Rep. Tasker, Rock 2; Rep. Fromuth, Hills 7; Rep. Kellogg, Rock 14; Rep. Theberge, Coos 3; Rep. LeBrun, Hills 32; Rep. Cushing, Rock 21; Rep. G. Johnsen, Ches 7; Rep. Ratzki, Merr 1; Rep. Spillane, Rock 2; Rep. Zaricki, Hills 6; Sen. Reagan, Dist 17; Sen. Cataldo, Dist 6; Sen. Avard, Dist 12

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill:

I. Requires state police to use a body-worn camera to record all law enforcement interactions with the public.

II. Exempts such recordings from the right-to-know law and from the wiretapping and eavesdropping statute.

III. Makes an appropriation to the division of state police for the purpose of purchasing and maintaining body-worn cameras.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT requiring state police to wear a camera when interacting with the public.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; State Police; Camera Required. Amend RSA 106-B by inserting after section 8
2 the following new section:

3 106-B:8-a Body-Worn Camera Required. Each uniformed law enforcement officer of the division
4 of state police shall wear an operating body-worn camera (BWC) with a microphone for audio capture
5 in a manner consistent with the following requirements:

6 I. Officers shall use BWCs issued by the division of state police only. The BWC equipment
7 and all data, images, and video captured, recorded, or otherwise produced by the equipment shall be
8 the property of the division of state police.

9 II. Officers who are assigned BWCs shall successfully complete an agency-approved training
10 program to ensure proper use and operations.

11 III. Officers shall use BWCs only while in uniform.

12 IV. Officers shall inspect and test their BWCs prior to each shift in order to verify proper
13 functioning and shall notify their supervisor of any problems.

14 V. Officers shall activate the video and audio components of BWC to start recording at the
15 commencement of any and all law enforcement and police service contacts with citizens.

16 VI. Recordings shall be incident specific. Officers shall not indiscriminately record entire
17 duties or patrols.

18 VII. The BWC shall not be used to record:

19 (a) Communications with other police personnel;

20 (b) Encounters with undercover officers or confidential informants unless expressly
21 directed to be included as part of the investigation;

22 (c) Intimate searches when otherwise permitted by the division's strip-and-body-cavity
23 search policy;

24 (d) An interview with a sexual assault victim unless his or her express consent has been
25 obtained before the recording is made and such a recording would be consistent with the
26 New Hampshire attorney general's model protocol for Response to Adult Sexual Assault Cases and
27 the New Hampshire attorney general's Child Abuse and Neglect Protocol, as applicable. This
28 subparagraph may be waived upon approval of the director of state police when the parent or legal
29 guardian is the subject of the investigation to which the juvenile is a victim or witness;

30 (e) When on break or otherwise engaged in personal activities;

31 (f) In any location where an individual has a reasonable expectation of privacy, such as a

1 residence, a restroom, or a locker room; or

2 (g) In any instance when it is believed that an explosive device may be present and
3 electrostatic interference from the BWC may trigger the device.

4 VIII. Officers shall inform individuals that they are being recorded. When notification is not
5 made, the recording officer shall note the reason for non-notification within the associated report.

6 IX. In locations where an individual has a reasonable expectation of privacy, such as a
7 residence, a citizen may decline to be recorded unless the recording is being made pursuant to an
8 arrest, or in accordance with a warrant issued by a court and signed by a judge, or pursuant to a
9 judicially-recognized exception to the warrant requirement. Officers shall inform an individual of
10 this option. If a citizen then declines to be recorded, the officer shall deactivate the camera's audio
11 and video functions. The officer shall document the reason why the camera was deactivated in the
12 associated police report.

13 X. Once activated, the BWC shall remain activated until the event is completed in order to
14 ensure the integrity of the recording, unless the provisions of paragraph IX apply.

15 XI. If an officer fails to activate the BWC, fails to record the entire contact, or interrupts the
16 recording, the officer shall document why a recording was not made, was interrupted, or was
17 terminated as part of the associated police report. If an officer fails to record the entire contact
18 without a legal or other sufficient justification, a grand jury, civil or criminal court, or administrative
19 tribunal shall draw reasonable negative evidentiary inferences against the officer.

20 XII. Except as authorized in this section, officers shall not edit, alter, erase, delete,
21 duplicate, copy, share, display, or otherwise distribute in any manner any BWC recordings. In the
22 event an officer edits, alters, erases, or deletes a BWC recording without a legal or other sufficient
23 justification, a grand jury, civil or criminal court, or administrative tribunal shall draw reasonable
24 negative evidentiary inferences against the officer.

25 XIII. Recorded images and sound made from an agency-issued BWC shall be for law
26 enforcement purposes only. All access to this information shall be audited to ensure that only
27 authorized users are accessing the data for law enforcement purposes. All access to BWC data shall
28 be authorized by the director of state police and only for the purposes set forth herein.

29 XIV. If an officer is suspected of wrongdoing or involved in an officer-involved shooting or
30 other serious use of force, the agency may limit or restrict an officer from viewing the video file.

31 XV.(a) A member of the public whose image or voice has been recorded by a BWC may
32 request and shall, within 5 business days and upon payment of the cost of the recording, receive a
33 copy of the recording.

34 (b) A BWC recording that has not been destroyed in accordance with paragraph XVII
35 shall be available through the discovery process as part of pretrial preparation in a relevant civil or
36 criminal proceeding, filed in a New Hampshire court.

37 (c) Recorded images and sound made from a BWC under this section shall not be

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1 accessible pursuant to RSA 91-A.

2 XVI. All recorded images and sounds shall be downloaded in the form of a file to a secure
3 storage device not connected either to the Internet or to any off-site storage facility no later than the
4 end of each shift. Access to such files shall be password-protected. Each file shall contain
5 information related to the date, BWC identifier, and assigned officer.

6 XVII. Unless being retained as evidence in a civil or criminal case or as part of an internal
7 affairs investigation, recordings made by a BWC shall be destroyed or overwritten every 14 days.

8 XVIII. In capital murder prosecutions, recordings shall be retained until an order for
9 destruction has been issued by the court having final jurisdiction of the case.

10 XIX. This section shall apply to any law enforcement agency that elects to equip its law
11 enforcement officers with body-worn cameras, provided that any reference to the division of state
12 police shall mean a state, municipal, or county law enforcement agency, a security service of the
13 community college system of New Hampshire, the university of New Hampshire police, or a security
14 service of the legislative or judicial branch.

15 2 New Subparagraph; Wiretapping; Permissible Uses. Amend RSA 570-A:2, II by inserting after
16 subparagraph (l) the following new subparagraph:

17 (m) A uniformed law enforcement officer of the division of state police to make a body-
18 worn camera recording in compliance with RSA 106-B:8-a.

19 3 New Paragraph; Access to Governmental Records, Exemptions. Amend RSA 91-A:5 by
20 inserting after paragraph IX the following new paragraph:

21 X. Video and audio recordings made by a uniformed law enforcement officer using a body-
22 worn camera pursuant to RSA 106-B:8-a.

23 4 Appropriation. The sum of \$500,000 for the fiscal year ending June 30, 2016 is hereby
24 appropriated to the department of safety, division of state police, for the purpose of purchasing,
25 maintaining, and repairing body-worn cameras, and related equipment and services as provided in
26 RSA 106-B:8-a. This appropriation shall be in addition to any other funds appropriated to the
27 department of safety, division of state police. The governor is authorized to draw a warrant for said
28 sum out of any money in the treasury not otherwise appropriated.

29 5 Effective Date. This act shall take effect January 1, 2016.

LBAO
15-0028
01/26/15

HB 617-FN-A - FISCAL NOTE

AN ACT requiring state police to wear a camera when interacting with the public.

FISCAL IMPACT:

The Office of Legislative Budget Assistant is unable to complete a fiscal note for this bill, **as introduced**, as it is awaiting information from the Judicial Branch and New Hampshire Association of Counties, who were contacted on 01/07/15 and the Department of Justice, who was contacted on 01/21/15. When completed, the fiscal note will be forwarded to the House Clerk's Office.