

HB 617-FN-A - AS AMENDED BY THE HOUSE

6Jan2016... 2522h

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

AMENDED ANALYSIS

This bill:

- I. Regulates a law enforcement agency's use of body-worn cameras.
- II. Exempts such recordings from the wiretapping and eavesdropping statute and, under certain circumstances, from the right-to-know law.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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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 New Chapter; Body-Worn Cameras. Amend RSA by inserting after chapter 105-C the following new chapter:

CHAPTER 105-D
BODY-WORN CAMERAS

105-D:1 Definitions. In this chapter:

- I. “Body-worn camera” or “BWC” means an electronic camera system for creating, generating, sending, receiving, storing, displaying, and processing audiovisual recordings that may be worn about the person of a law enforcement officer.
- II. “Community caretaking function” means a task undertaken by a law enforcement officer in which the officer is performing an articulable act unrelated to the investigation of a crime. It includes, but is not limited to, participating in town halls or other community outreach, helping a child find his or her parents, providing death notifications, dealing with individuals asking for directions or other assistance, and performing in-home or hospital well-being checks on the sick, elderly, or persons presumed missing.
- III. “In uniform” means a law enforcement officer who is wearing any officially authorized uniform designated by a law enforcement agency, or a law enforcement officer who is visibly wearing articles of clothing, a badge, tactical gear, gun belt, a patch, or other insignia that he or she is a law enforcement officer acting in the course of his or her duties.
- IV. “Law enforcement officer” or “officer” means any person employed by a law enforcement agency.
- V. “Law enforcement agency” or “agency” means a state, county, municipality, special district, security service or police of the community college system of New Hampshire and the university system of New Hampshire, security service of the legislative or judicial branch, unit of local government police department or any other entity authorized by law to employ law enforcement officers or exercise police authority.
- VI. “Law enforcement-related encounters or activities” include, but are not limited to, traffic stops, pedestrian stops, arrests, searches, interrogations, investigations, pursuits, crowd control, traffic control, non-community caretaking interactions with an individual while on patrol, or any other instance in which the officer is enforcing the laws of the municipality, county, or state. The term does not include:
- (a) Activities when the officer is completing paperwork alone or is in the presence of another law enforcement officer or officers; or
 - (b) Community caretaking functions.
- VII. “Minor traffic offense” means a petty offense or a violation under the New Hampshire motor vehicle code or a similar provision of a municipal or local ordinance.
- VIII. “Petty offense” means conduct that constitutes a class B misdemeanor or a violation.
- IX. “Recording” means the process of capturing data or information stored on a recording medium.
- X. “Recording medium” means any recording medium for the retention and playback of recorded audio and video including, but not limited to, VHS, DVD, hard drive, cloud storage, solid state, digital, flash memory technology, or any other electronic medium.
- XI. “Subject of the recording” means any law enforcement officer or any suspect, victim, detainee, conversant, injured party, witness, or other similarly situated person who appears on the recording, and shall not include people who only incidentally appear on the recording.

105-D:2 Use of Body-Worn Cameras.

- I. This chapter shall apply to any law enforcement agency that elects to equip its law enforcement officers with body-worn cameras. All BWCs shall be operated in a manner consistent with the provisions of this chapter. Every law enforcement agency that elects to equip its officers with BWCs shall adopt policies and procedures relating to the use of BWCs and the retention and destruction of data consistent with this chapter.
- II. Officers shall only use BWCs issued by their respective law enforcement agencies. BWC equipment and all data, images, and video captured, recorded, or otherwise produced by the equipment are the property of the officer’s law enforcement agency and shall be subject to the restrictions in this chapter.

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

IV. Officers shall only use BWCs while in uniform.

V. Officers shall activate the video and audio components of BWCs and start recording upon arrival on scene of a call for service or when engaged in any law enforcement-related encounter or activity; provided, however, that in those cases set forth in subparagraphs VII(d), (e), and (h) and paragraph X in which an individual has a right not to be recorded, officers shall inform an individual of this option. If a citizen then declines to be recorded, the officer shall deactivate the audio and video functions. The officer shall document the reason why the camera was not activated in the associated police report. If exigent circumstances exist which prevent the BWC from being activated as set forth above, the device must be turned on as soon as practicable.

VI. Recordings shall be specific to an incident. Officers shall not indiscriminately record entire duties or patrols.

VII. A BWC shall not be used to record any of the following:

(a) Communications with other police personnel except to the extent such communications are incidental to a permissible recording.

(b) Encounters with police personnel or individuals whom the officer knows are acting in an undercover capacity or as confidential informants respectively, unless expressly directed to be included as part of the investigation.

(c) Intimate searches, when otherwise permitted by the agency's strip-and-body-cavity search policy, or nudity.

(d) An interview with a crime victim unless his or her express consent has been obtained before the recording is made. Any recording obtained shall be consistent with the New Hampshire attorney general's model protocol for response to adult sexual assault cases, the New Hampshire attorney general's domestic violence protocol for law enforcement, the New Hampshire attorney general's stalking protocol for law enforcement, and the New Hampshire attorney general's child abuse and neglect protocol, as applicable. This subparagraph may be waived upon approval of the head of the law enforcement agency when the parent or legal guardian is the subject of the investigation to which a juvenile is a victim or witness.

(e) Interactions with a person seeking to report a crime anonymously. In such an instance, the law enforcement officer shall, as soon as practicable, ask the person seeking to remain anonymous if the person wants the officer to use the officer's BWC. If the person responds negatively, the law enforcement officer shall deactivate the audio and video functions.

(f) While on the grounds of any public, private, or parochial elementary or secondary school, except when responding to an imminent threat to life or health or a call for service.

(g) When on break or otherwise engaged in personal activities.

(h) In any location where an individual has a reasonable expectation of privacy, such as a residence, a restroom, or a locker room.

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

IX. Except in emergency situations, officers shall inform an individual that he or she is being recorded. When notification is not made, the recording officer shall note the reason for non-notification within the associated report.

X. In locations where an individual has a reasonable expectation of privacy, such as a residence, a citizen may decline to be recorded unless the recording is being made while executing an arrest warrant, or a

warrant issued by a court, or the officer is in the location pursuant to a judicially-recognized exception to the warrant requirement. Officers shall inform an individual of this option. If a citizen then declines to be recorded, the officer shall deactivate the audio and video functions. The officer shall document the reason why the camera was not activated in the associated police report.

XI. Once activated, the BWC shall remain activated until the event is completed in order to ensure the integrity of the recording.

XII. If an officer fails to activate the BWC, fails to record the entire contact, or interrupts the recording, the officer shall document why a recording was not made, was interrupted, or was terminated as part of the associated police report.

XIII. Except as authorized in this section, no person, including without limitation officers and their supervisors, shall edit, alter, erase, delete, duplicate, copy, subject to automated analysis or analytics of any kind, including but not limited to facial recognition technology, share, display, or otherwise distribute in any manner any BWC recordings or portions thereof.

XIV. Recorded images and sound made from an agency-issued BWC shall be for law enforcement purposes only. All access to this data shall be audited to ensure that authorized users only are accessing the data for law enforcement purposes only. All access to BWC data shall be authorized by the head of the law enforcement agency and only for the purposes set forth in this chapter.

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

XVI. All recordings shall be securely stored no later than the end of each shift in conformity to the most recent security policy of the Criminal Justice Information Services (CJIS) of the criminal justice information services division of the Federal Bureau of Investigation of the United States Department of Justice. Recordings shall not be divulged or used by a law enforcement agency for any commercial or other non-law enforcement purpose. Where a law enforcement agency authorizes a third party to act as its agent in storing recordings, the agent shall not independently access, view or alter any recording, except to delete videos as required by law or agency retention policies. Neither the agency nor its agent shall subject any recording to analysis or analytics of any kind, including without limitation facial recognition technology and data mining.

XVII. Recordings made by a BWC shall be permanently destroyed by overwriting or otherwise every 180 days, except that such recording shall be retained by the law enforcement agency that employs the officer whose BWC made the recording, or an authorized agent thereof, for up to 3 years if:

(a) The recording captures images involving any of the following:

- (1) Any action by a law enforcement officer that involves the use of deadly force or restraint.
- (2) The discharge of a firearm.
- (3) Death or serious bodily injury.
- (4) An encounter that results in an arrest for a felony-level offense.
- (5) An encounter about which a complaint has been filed with the police department within 180 days after the encounter.

(b) The recording is being retained by the law enforcement agency as evidence in a civil or criminal case or as part of an internal affairs investigation or as part of an employee disciplinary investigation.

XVIII. Notwithstanding the provisions of paragraph XVII:

(a) If there is any other legal requirement for retaining the recording, including but not limited to litigation, a pending criminal case, or a valid court order, then the recording shall be retained only as long as is legally required; and

(b) The chief law enforcement officer of the agency may designate the recording as a training tool, provided that that a person's image and vehicle license plate numbers shall first be permanently deleted, distorted, or obscured. A recording so designated and prepared may be viewed solely by officers for training purposes only.

XIX. Any recording undertaken in violation 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.

2 New Subparagraph; Wiretapping and Eavesdropping; Exceptions. Amend RSA 570-A:2, II by inserting after subparagraph (l) the following new subparagraph:

(m) A law enforcement officer to make a body-worn recording pursuant to RSA 105-D.

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

X. Video and audio recordings made by a law enforcement officer using a body-worn camera pursuant to RSA 105-D except where such recordings depict any of the following:

(a) Any restraint or use of force by a law enforcement officer; provided, however, that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(b) The discharge of a firearm.

(c) An encounter that results in an arrest for a felony-level offense, provided, however, that this exemption shall not apply to recordings or portions thereof that constitute an invasion of privacy or which are otherwise exempt from disclosure.

4 Effective Date. This act shall take effect January 1, 2017.

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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.