

Legislative Statement

This bill requires municipal and state police departments in Massachusetts to acquire and use body-worn cameras; sets standards for the cameras and for policies governing their use; and establishes a Law Enforcement Data Review Committee to oversee retention and analysis of data from body-worn cameras, police stops, and police surveillance.

Synopsis

- Section 1: Definition of personal audio-video recording device with reference to Massachusetts' wiretapping statute
- Section 2: Establishing Law Enforcement Data Review Committee, using language derived from Chang-Diaz/Rushing racial profiling bill from 2013-14 legislative session.
- 2(a) Committee to have not more than 13 members
 - 2(b) Committee members from participating agencies: General Court, AG's office, Sec'y of Public Safety or designee, RMV, Mass. State Police, Committee for Public Counsel Services, Mass. Police Association, Mass. Major City Chiefs Association, 2 civil liberties representatives
 - 2(c) Term limits (2 years), compensation (none), meeting schedule (quarterly), housed in Exec. Office of Public Safety and Security
 - 2(d) Powers and duties of Committee:
 - Make recommendations, Promulgate model policies, Training and best practices, Data analysis protocols, Review other reports, Support law enforcement departments in public outreach, Hold public hearings, Issue annual report on police stops, Issue triennial report on implementation of the provisions of this bill.
 - 2(e) Employment of support staff
 - 2(f) Mandating Committee access to bodycam footage; limit on redisclosure
- Section 3: Bodycam Requirements
- 3(a) General obligation to carry bodycams
 - 3(b) Applicability to MA wiretapping statute
 - Bodycam must be used in plain view
 - Must inform individual of being recorded; officer's consent deemed as given
 - Individuals (including minors) may deny consent to be recorded
 - No warrant required for bodycam use where consent is given
 - 3(c) Applicability to MA public records statute
 - Bodycams exempt from public disclosure unless requested as part of litigation
 - 3(d) Minimum Core Standards
 - Minimum specifications of bodycams
 - Minimum standards for police bodycam policies
 - o List of must-record interactions, List of by-default-not-record interactions, Training requirements, Compliance requirements, Reporting any deactivations of bodycams, Internal audit procedures, Disciplinary measures, Data storage and deletion

Text

1 Be it enacted by the Senate and House of Representatives in General Court assembled, and by
2 the authority of the same, as follows:

3
4 SECTION 1. There shall be added a new section 98H of Chapter 41 of the Massachusetts
5 General Laws, as follows:

6
7 Section 1 -- Definitions

8 (a) Definitions

- 9 (1) A "Personal audio-video recording device" is an intercepting device within the
10 meaning of 272 MGL §99, which can capture, from an officer's point of view, video
11 and audio recordings, and which is attached to an officer's clothing, helmet, or
12 sunglasses.

13
14 Section 2 – Law Enforcement Data Review Committee

- 15
16 (a) There is created a Law Enforcement Data Review Committee ('Committee'), consisting
17 of not more than 13 members, which shall independently exercise its powers, duties, and
18 responsibilities. The Committee shall have the authority to allow additional
19 participation from various groups that the Committee deems necessary for additional
20 input.
- 21 (b) The Committee shall consist of:
- 22 (1) two legislators, one member appointed by the Senate President and one member
23 appointed by the Speaker of the House;
- 24 (2) the Attorney General or designee;
- 25 (3) the Secretary of Public Safety and Security or designee, who shall serve as chair;
- 26 (4) the Registrar of Motor Vehicles or designee;
- 27 (5) the Colonel of the Massachusetts State Police or designee;
- 28 (6) the Chief Counsel of the Committee for Public Counsel Services or designee;
- 29 (7) one police officer from a municipal law enforcement agency, appointed by the
30 Massachusetts Police Association;
- 31 (8) one member of the Massachusetts Chiefs of Police Association and one member of
32 the Massachusetts Major City Chiefs Association, each selected by their respective
33 boards of directors;
- 34 (9) two members of community and/or civil rights advocacy organizations appointed by
35 the Governor; and
- 36 (10) one expert from a Massachusetts college or university with specific expertise in
37 both statistical analysis and law enforcement, appointed by the Governor.
- 38 (c) All Committee members shall serve, without compensation, for two years and until their
39 successors are appointed. Members may be reappointed for an unlimited number of
40 terms. The Committee shall meet at least quarterly. The Executive Office of Public
41 Safety and Security shall provide staff and administrative services for the Committee.
- 42 (d) The Committee shall have the following powers, duties, and responsibilities:

- 43 (1) to operate as an advisory body and make recommendations, which may be reported
44 to the Governor, the Secretary of Public Safety and Security, to the General Court,
45 to state, municipal, college or university police departments and to other law
46 enforcement entities identified as appropriate by the Committee;
- 47 (2) to promulgate model policies for law enforcement entities that are designed to
48 protect individuals' civil rights during traffic stops and other police stops;
- 49 (3) to recommend to law enforcement entities models for training on data collection and
50 analysis to engage agencies;
- 51 (4) to identify and recommend best practices for stop data collection and analysis,
52 including best practices for making use of advanced technologies, and to advise the
53 Executive Office of Public Safety and Security regarding the development of a
54 system for law enforcement entities to electronically gather, record, report and
55 dispose of information concerning motor vehicle accidents, violations, traffic stops,
56 pedestrian stops and citations;
- 57 (5) to consider and make recommendations about how to determine the baseline data
58 against which data collected pursuant to subsection (d)(4) shall be measured;
- 59 (6) to review reports compiled pursuant to subsections (d)(1) and (d)(4), and, as
60 necessary, other data or reports collected or compiled pursuant to this section, and
61 to consider and propose solutions to identify, eliminate and prevent racial profiling;
- 62 (7) to support and encourage law enforcement departments in their outreach to local
63 communities concerning a) the goals of law enforcement via traffic and pedestrian
64 stops, b) perceived racial and ethnic disparities in traffic stops and other law
65 enforcement activities, and c) strategies for monitoring and reducing such disparities
66 where found to exist;
- 67 (8) to receive comment and participation from the public at public hearings;
- 68 (9) to review reports, analyses, recommendations, and conclusions compiled using data
69 collected in connection with the implementation of Massachusetts Chapter 228 of
70 the Laws of 2000, and to consider such reports, analysis, recommendations and
71 conclusions in executing the powers, duties, and responsibilities under this
72 subsection;
- 73 (10) to issue and release to the public an annual report to the Governor, no later than
74 September 1, regarding the Committee's activities during the previous fiscal year
75 and the results of any statistical analyses conducted, which report shall also be filed
76 with the Clerks of the Senate and the House of Representatives;
- 77 (11) to issue and release to the public a triennial report in relation to the Minimum Core
78 Standards set out in Section 3(d) on or before December 1 of the required year; and
- 79 (12) to review the complaints of citizens who have exhausted administrative remedies
80 within a police department regarding the unauthorized release of audio-video
81 recordings, or the failure to release such recordings as described in Section 3(c)(2).
- 82 (e) The Committee may employ support staff to execute their statutory obligations, subject
83 to appropriation. The Committee may also employ such other staff and attorneys as it
84 determines, all of whom shall be in the unclassified service and shall receive such
85 compensation as is fixed by the Committee.

- 86 (f) The Committee shall have access to all video footage generated audio-visual recording
87 devices of each law enforcement entity, but audio-visual recordings received by the
88 Committee shall not be redisclosed to third parties except as outlined in Section 3(c)(2).
89

90 Section 3 – Requirements for Personal Audio-Video Recording Devices
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92 (a) General Obligation.

93 Each police officer in this State shall be equipped with a personal audio-video recording
94 device. Each law enforcement entity with primary enforcement authority over any
95 jurisdiction within this state must establish a plan to carry out the foregoing obligation
96 in accordance with Subsection 2 below.

97 (b) Applicability to Massachusetts wiretapping statute

98 Notwithstanding any provision of 272 MGL §99:

99 (1) All uses of an officer's personal audio-video recording device must be made in plain view of
100 the individual or individuals who are being recorded during an interaction with the officer.

101 (2) Officers using personal audio-visual recording devices must inform the individual or
102 individuals who are being recorded that the audio and visual content of the interaction
103 is being captured on film. An officer who uses a personal audio-visual recording device
104 is considered to have given his or her consent to being recorded. Within two (2)
105 months of its formation, the Committee shall draft the statement of notification to be
106 used by officers in each jurisdiction within the state.

107 (3) If an individual does not want his or her interaction with an officer captured on a
108 personal audio-video recording device, and the individual audibly denies his or her
109 consent to be recorded using the personal audio-video recording device, the officer or
110 officers interacting with the individual shall turn off their personal audio-video
111 recording device after having provided the reason for turning-off the person audio-video
112 recording device in accordance with Section 3(d)(2)(v).

113 (4) An officer will not be required to obtain a warrant to record an interaction with
114 individual who has given his or her consent to be recorded.

115 (c) Applicability to Massachusetts' public records statute

116 (1) All audio-visual recordings that are captured during an interaction between a
117 individual or individuals and an officer or officers are exempt from public disclosure
118 under 4 MGL 7(26)(a) and shall be kept confidential absent a court order.

119 (2) This exception does not apply to individuals filmed in a police interaction, and their
120 legal representatives shall have the right to inspect and copy such recordings.

121 (d) Minimum Core Standards.

122 (1) All personal audio-video recording devices in use in this State must meet the
123 following standards:

124 (i) Picture Quality/Resolution. The resolution should be at least 640 x 480 pixels.

125 (ii) Frame Rate. The frame rate should be at least 25 frames per second.

126 (iii) Battery Runtime. The camera should be equipped with a battery that permits
127 the device to record continuously for at least 3 hours. All officers should also be

- 128 equipped with a spare battery and/or a means of recharging the camera while on
129 duty.
130 (iv) Camera Focal Width. The camera must employ a wide point of view.
131 (v) Memory Specifications. At the lowest quality setting, the camera must permit at
132 least 3 hours of recording.
133 (vi) Night Visibility. The camera should have a low lux rating and/or an IR
134 illuminator for recording targets in low light.

135 Decisions as to which model or models of audio-video device to employ, and/or what
136 features in excess of these Minimum Core Standards said devices are to have, rest with
137 individual law enforcement entities.

138 (2) All programs within law enforcement entities governing or establishing rules,
139 regulations, or procedures with regard to the use of personal audio-video recording
140 devices must meet the following standards:

141 (i) Cameras must be deployed at the beginning of an interaction if police officers are
142 engaged in the following:

- 143 (A) Primary response (patrol in vehicle or during bicycle or motorcycle patrol)
- 144 (B) Self-initiated public contacts/foot patrol
- 145 (C) Emergency Response
- 146 (D) Vehicle or Site Searches
- 147 (E) SWAT
- 148 (F) Police officers engaged in taking individuals into custody
- 149 (G) Traffic stops
- 150 (H) Suspicious vehicle stops
- 151 (I) Suspicious person stops
- 152 (J) Motor-vehicle accident scenes
- 153 (K) During all interrogations of suspected criminals or persons of interest
- 154 (L) While in the process of an arrest
- 155 (M) Vehicle pursuits
- 156 (N) Crimes in progress
- 157 (O) When ordered to do by a supervisor, and
- 158 (P) Any other instance of police interaction with individuals where probable
159 cause exists that a crime is being planned or has been committed, as articulated
160 in the personal audio-video recording device policy of the law enforcement
161 entity.

162 (ii) Within the policy of the law enforcement entity, police officers may be given
163 discretion to not record in instances:

- 164 (A) Of sensitive crimes including rape and sexual assault;
- 165 (B) When an individual is fully unclothed;
- 166 (C) To protect the identity of an officer in an undercover capacity; and
- 167 (D) To protect the identity of a confidential informant.

168 Law enforcement entities shall adopt policies governing the recording of domestic violence,
169 rape and sexual assault incidents, and incidents where individuals are partially or fully
170 unclothed.

171 (iii) Training – Personal audio-video recording device training must be provided for
172 all Police Officers, Supervisors, Record Management/Evidence personnel, and all
173 other personnel who may use or otherwise be involved with police-used personal
174 audio-video recording devices.

175 (iv) Compliance:

176 (A) Malfunctions – Law enforcement entities shall set a policy regarding
177 malfunctions that shall ensure as little interruption in recording as possible. The
178 policy shall require that police officers whose personal audio-video recording
179 device fails to record shall report the malfunction to the supervisor immediately
180 at the time the device has malfunctioned.

181 (B) Upload – Law enforcement entities shall set a policy requiring that police
182 officers shall upload the data from their personal audio-video recording devices
183 each working day within two hours at the end of the officer’s shift.

184 (C) Classification – Law enforcement entities shall apply already existing policies
185 regarding traditional evidence to evidence derived from the use of personal
186 audio-video recording devices. Law enforcement entities shall require that the
187 use of the personal audio-video recording device must be included in all incident
188 reports.

189 (D) Incident Report - Law enforcement entities shall apply already existing
190 policies regarding documentation of individuals’ interactions with police and
191 additional policies as the department sees fit. An officer shall note the following
192 in his/her report: Whether audio or video evidence was gathered relating to the
193 events described in the report; Any malfunction occurring during the situation
194 that is the subject of the report; and any instances of deactivation as required by
195 section (v) below.

196 (v) Deactivation - Before a personal audio-video recording device has been turned off
197 in an instance where policy and statute require the device to record, the reason for
198 not using it must be articulated verbally on camera. If the officer is unable to
199 verbally articulate his/her reason, then the officer shall file a written report
200 expressing that reason for the off switch within two hours at the end of the officer’s
201 shift when the incident occurred or included within the written incident report
202 regularly filed describing an interaction with an individual. This verbal or written
203 articulation shall be reviewed by both the supervising officer and the Committee or
204 its designee.

205 (vi) Internal audit – Policies shall include the requirement of periodic, random
206 monitoring of video footage generated by personal audio-video recording devices by
207 each agency’s internal audit unit.

208 (vii) Disciplinary Measures – Law enforcement entities shall adopt policies that shall
209 include, but not be limited to, imposing disciplinary measures for:

210 (A) failure to wear the personal audio-video recording device while on duty;

211 (B) failure to properly maintain the personal audio-video recording device
212 during a shift;

- 213 (C) failure to keep the personal audio-video recording device on during an
- 214 interaction with an individual in accordance with this statute;
- 215 (D) failure to produce written or verbal communication for not turning on their
- 216 personal audio-video recording device or turning the personal audio-video
- 217 recording device off during an interaction with an individual as required by
- 218 the incident report requirement of this statute; and
- 219 (E) other breaches of department policies as enumerated within the department
- 220 policies.
- 221 (3) All programs within law enforcement entities governing or establishing rules,
- 222 regulations, or procedures with regard to the data storage of video and audio
- 223 recordings derived from the use of personal audio-video recording devices must
- 224 meet the following standards:
- 225 (i) All rules, regulations, procedures, or policies respecting the storage of or access
- 226 to data obtained through use of personal audio-video recording devices should be
- 227 made available in written form to all officers and staff within each law enforcement
- 228 entity.
- 229 (ii) Policies should require data to be downloaded from the personal audio-video
- 230 recording device by the end of the shift in which the camera was used, and
- 231 audio/video recordings should be appropriately tagged and stored according to the
- 232 type of event captured.
- 233 (iii) Policies should clearly require an officer's supervisor to take physical custody of
- 234 the camera and assume responsibility for downloading the data contained therein in
- 235 cases of officer-involved shootings, in-custody deaths, or other incidents involving
- 236 the officer that result in a person's bodily harm or death.
- 237 (iv) Policies should clearly state where personal audio-video recording device videos
- 238 are to be stored.
- 239 (v) Policies should specifically require the retention of the recorded data in
- 240 compliance with all relevant laws and adequately preserve evidentiary chain of
- 241 custody.
- 242 (vi) Policies should require the deletion of the recorded data after thirty (30)
- 243 calendar days if civil contact is made but no enforcement action is taken or
- 244 complaint has been filed.
- 245 (vii) Policies should include specific measures to prevent data tampering, deleting,
- 246 and copying.
- 247 (viii) Policies should clearly describe the circumstances in which supervisors will be
- 248 authorized to review an officer's footage from the personal audio-video recording
- 249 device.
- 250 (ix) Policies should include specific measures for preventing unauthorized access or
- 251 release of recorded data.
- 252 (x) Policies should specifically account for and enumerate those situations in which
- 253 data might be made available to other departments for evidentiary purposes.
- 254 (xi) Policies shall include clear and consistent protocols for releasing recorded data:
- 255 (A) externally to the public and the news media;

256 (B) for easy accessibility to lawyers and defendants;
257 (C) for easy accessibility to citizen review boards.
258 (xii) Each department's policy must be in compliance with the disclosure of public
259 records as defined by 4 MGL §7(26)(a), and must be promulgated within three (3)
260 months of the enactment of this statute.