

LEGISLATIVE COMMITTEE MINUTES

HB1492

Bill as Introduced

HB 1492 - AS INTRODUCED

2016 SESSION

16-2608
08/04

HOUSE BILL

1492

AN ACT

regarding individual privacy when law enforcement agencies use body-worn cameras.

SPONSORS:

Rep. Kurk, Hills. 2

COMMITTEE:

Criminal Justice and Public Safety

ANALYSIS

This bill defines body-worn cameras (BWCs) and regulates when such cameras and their images can be used.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Sixteen

AN ACT regarding individual privacy when law enforcement agencies use body-worn cameras.

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

1 1 New Section; Body-Worn Cameras. Amend RSA 106-B by inserting after section 8 the
2 following new section

3 106-B:8-a Body-Worn Cameras.

4 I. Definitions. In this section:

5 (a) "Body-worn camera" or "BWC" means an electronic camera system for creating,
6 generating, sending, receiving, storing, displaying, and processing audiovisual recordings that may
7 be worn about the person of a law enforcement officer.

8 (b) "Community caretaking function" means a task undertaken by a law enforcement
9 officer in which the officer is performing an articulable act unrelated to the investigation of a crime.
10 It includes, but is not limited to, participating in town halls or other community outreach, helping a
11 child find his or her parents, providing death notifications, dealing with individuals asking for
12 directions or other assistance, and performing in-home or hospital well-being checks on the sick,
13 elderly, or persons presumed missing.

14 (c) "In uniform" means a law enforcement officer who is wearing an officially authorized
15 uniform designated by a law enforcement agency, or a law enforcement officer who is visibly
16 wearing articles of clothing, a badge, tactical gear, gun belt, a patch, or other insignia that he or she
17 is a law enforcement officer acting in the course of his or her duties.

18 (d) "Law enforcement officer" or "officer" means any person employed by a state, county,
19 municipality, special district, a security service of the community college system of New Hampshire
20 or the university system of New Hampshire, or a security service of the legislative or judicial
21 branch, or any other entity authorized by law to employ peace officers or exercise police authority
22 and which is primarily responsible for the prevention or detection of crime and the enforcement of
23 the laws of this state.

24 (e) "Law enforcement agency" or "agency" means a state, county, municipality, special
25 district, security service of the community college system of New Hampshire or the university
26 system of New Hampshire, security service of the legislative or judicial branch, unit of local
27 government police department or any other entity authorized by law to employ law enforcement
28 officers or exercise police authority.

29 (f) "Law enforcement-related encounters or activities" include, but are not limited to,
30 traffic stops, pedestrian stops, arrests, searches, interrogations, investigations, pursuits, crowd

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1 control, traffic control, non-community caretaking interactions with an individual while on patrol,
2 or any other instance in which the officer is enforcing the laws of the municipality, county, or state.
3 The term shall not include (1) activities when the officer is completing paperwork alone or is in the
4 presence of another law enforcement officer or (2) community care-taking functions.

5 (g) "Minor traffic offense" means a violation under the New Hampshire motor vehicle
6 code or a similar provision of a municipal or local ordinance.

7 (h) "Petty offense" means any offense for which a sentence of imprisonment is not an
8 authorized disposition.

9 (i) "Recording" means the process of capturing data or information stored on a recording
10 medium.

11 (j) "Recording medium" means any recording medium for the retention and playback of
12 recorded audio and video including, but not limited to, VHS, DVD, hard drive, cloud storage, solid
13 state, digital, flash memory technology, or any other electronic medium.

14 (k) "Subject of the recording" means any law enforcement officer or any suspect, victim,
15 detainee, conversant, injured party, witness, or other similarly situated person who appears on the
16 recording, and shall not include people who only incidentally appear on the recording.

17 II. This section shall apply to any law enforcement agency that elects to equip its law
18 enforcement officers with BWCs. All BWCs shall be operated in a manner consistent with the
19 provisions of this section.

20 III. Officers shall only use BWCs issued by their respective law enforcement agencies.
21 BWC equipment and all data, images, and video captured, recorded, or otherwise produced by the
22 equipment are the property of the officer's law enforcement agency.

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

25 V. Officers shall only use BWCs while in uniform.

26 VI. Officers shall activate the video and audio components of BWCs and start recording
27 when the officer is responding to a call for service or engaged in any law enforcement-related
28 encounter or activity; provided, however, that in those cases set forth in subparagraphs VIII(e), (f)
29 and (i) and in paragraph X in which an individual has a right not to be recorded, such recording
30 shall only begin if and after consent has been obtained. If exigent circumstances exist which
31 prevent the BWC from being activated as set forth above, the device shall be activated as soon as
32 practicable.

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

35 VIII. The BWC shall not be used to record:

36 (a) Communications with other police personnel.

37 (b) Encounters with undercover officers or confidential informants unless expressly
38 directed to be included as part of the investigation.

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

3 (d) An interview with a crime victim unless his or her express consent has been
4 obtained before the recording is made. Any recording obtained shall be consistent with the
5 New Hampshire attorney general's model protocol for Response to Adult Sexual Assault Cases, the
6 New Hampshire attorney general's Domestic Violence Protocol for Law Enforcement, the New
7 Hampshire attorney general's Stalking Protocol for Law Enforcement, and the New Hampshire
8 attorney general's Child Abuse and Neglect Protocol, as applicable. This subparagraph may be
9 waived upon approval of the head of the law enforcement agency when the parent or legal guardian
10 is the subject of the investigation to which the juvenile is a victim or witness.

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

15 (f) While on the grounds of any public, private, or parochial elementary or secondary
16 school, except when responding to an imminent threat to life or health or a call for service that
17 involves questioning or taking into custody a student, a parent or guardian, school official, or
18 employee.

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

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

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

24 IX. Except in emergency situations, officers shall inform individuals that they are being
25 recorded. When notification is not made, the recording officer shall note the reason for non-
26 notification within the associated report.

27 X. In locations where an individual has a reasonable expectation of privacy, such as a
28 residence, a citizen may decline to be recorded unless the recording is being made pursuant to an
29 arrest, or in accordance with a warrant issued by a court, or pursuant to a judicially-recognized
30 exception to the warrant requirement. Officers shall inform an individual of this option. If a citizen
31 then declines to be recorded, the officer shall deactivate the audio and video functions. The officer
32 shall document the reason why the camera was not activated in the associated police report.

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

35 XII. If an officer fails to activate the BWC, fails to record the entire contact, or interrupts
36 the recording, the officer shall document why a recording was not made, was interrupted, or was
37 terminated as part of the associated police report. If an officer fails to record the entire contact
38 without a legal or other sufficient justification, a grand jury, civil or criminal court, or

1 administrative tribunal may draw reasonable negative evidentiary inferences against the officer.

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

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

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

12 XVI. All recordings shall be securely stored no later than the end of each shift in conformity
13 to the most recent Security Policy of the Criminal Justice Information Services (CJIS) of the
14 Criminal Justice Information Services Division of the Federal Bureau of Investigation of the U.S.
15 Department of Justice. Recordings shall not be divulged or used by a law enforcement agency for
16 any commercial or other non-law enforcement purpose. Where a law enforcement agency
17 authorizes a third party to act as its agent in storing recordings, the agent shall not independently
18 access, view or alter any recording, except to delete videos as required by law or agency retention
19 policies. Neither the agency nor its agent shall subject any recording to analysis or analytics of any
20 kind, including without limitation facial recognition technology and data mining.

21 XVII. Recordings made by a BWC shall be permanently destroyed by overwriting or
22 otherwise every 14 days, except that such recording shall be retained by the law enforcement
23 agency that employs the officer whose BWC made the recording, or an authorized agent thereof, for
24 up to 3 years if:

25 (a) The recording captures images involving:

26 (1) Any action by a law enforcement officer that seeks through the use of force to
27 overpower a member of the public's self-directed movements or that is intended or likely to inflict
28 pain, harm, injure, or kill a member of the public;

29 (2) The discharge of a firearm;

30 (3) Death or serious bodily injury;

31 (4) An encounter that results in an arrest for a felony-level offense; or

32 (5) An encounter about which a complaint has been registered by a subject of the
33 recording.

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

36 (c) The retention is requested by a member of the public, a parent or legal guardian of a
37 minor, or any deceased subject's next of kind or legally authorized designee where the image or
38 voice of the member, minor, or deceased has been recorded by a BWC;

1 (d) A formal or informal complaint of misconduct is filed; and

2 (e) A supervisor at the law enforcement agency designates the recording for training
3 purposes; provided, however, that all personally identifiable information, including without
4 limitation a person's image, voice, and license plate number, shall first be permanently deleted,
5 distorted, or obscured. A recording so designated and prepared may be viewed by officers for
6 training purposes.

7 XVIII. Any recording undertaken in contravention of this or any other applicable law shall
8 be immediately destroyed and shall not be admissible as evidence in any criminal or civil legal or
9 administrative proceeding.

10 2 New Subparagraph; Wiretapping; Permissible Uses. Amend RSA 570-A:2, II by inserting
11 after subparagraph (l) the following new subparagraph:

12 (m) A law enforcement officer to make a body-worn camera recording pursuant to
13 RSA 106-B:8-a.

14 3 New Paragraph; Access to Governmental Records, Exemptions. Amend RSA 91-A:5 by
15 inserting after paragraph IX the following new paragraph:

16 X. Video and audio recordings made by a law enforcement officer using a body-worn camera
17 pursuant to RSA 106-B:8-a except where such recordings depict:

18 (a) Any action by a law enforcement officer that seeks through the use of force to
19 overpower a member of the public's self-directed movements or that is intended or likely to inflict
20 pain, harm, injure, or kill a member of the public; provided, however, that this exemption shall not
21 include those portions of recordings which constitute an invasion of privacy of any person;

22 (b) The discharge of a firearm;

23 (c) Death or great bodily harm; provided, however, that this exemption shall not include
24 those portions of recordings which constitute an invasion of privacy of any person; or

25 (d) An encounter that results in an arrest for a felony-level offense; provided, however,
26 that this exception shall not include those portions of recordings which constitute an invasion of
27 privacy of any person.

28 4 Effective Date. This act shall take effect January 1, 2017.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1492

BILL TITLE: regarding individual privacy when law enforcement agencies use body-worn cameras.

DATE: February 12, 2016

LOB ROOM: 204

Time Public Hearing Called to Order: 10:00 a.m.

Time Adjourned: 10:20 a.m.

Committee Members: Reps. Tholl, Welch, Burt, Comeau, Martin, Green, Pantelakos, Robertson, Hirsch, Mangipudi and Fields

Bill Sponsors:
Rep. Kurk

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Welch - presented bill to committee

sponsor requested to withdraw this bill,

Respectfully submitted,


Rep. Dennis Fields, Clerk

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1492

BILL TITLE: regarding individual privacy when law enforcement agencies use body-worn cameras.

DATE: February 12, 2016

LOB ROOM: 204

MOTIONS: INEXPEDIENT TO LEGISLATE

Moved by Rep. Welch

Seconded by Rep. Pantelakos

Vote: 11-0

Respectfully submitted,


Rep Dennis Fields, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1492

BILL TITLE: regarding individual privacy when law enforcement agencies use body-worn cameras.

DATE: 2/12/16

LOB ROOM: 204

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. Walt C. H. Seconded by Rep. Patricia K. Kos AM Vote: 11 yeas
0 nays
Adoption of Amendment # _____

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____
_____ Amendment Adopted _____ Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. _____ Seconded by Rep. _____ AM Vote: _____
Adoption of Amendment # _____

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____
_____ Amendment Adopted _____ Amendment Failed

CONSENT CALENDAR: / YES _____ NO
(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Debbie H. Hill
Committee Clerk



2016 SESSION

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: 1492 Title: _____

PH Date: 2/12/16 Exec Session Date: 2/12/16

Motion: ITL on Welch Pantelakos Amendment #: _____

MEMBER	YEAS	NAYS
Tholl, John E., Chairman	1	
Welch, David A., V Chairman	1	
Fields, Dennis H., Clerk	1	
Fesh, Robert M.	ABSENT	
Marston, Dick	ABSENT	
Burt, John A.	1	
Sweeney, Shawn P.	ABSENT	
Barnes, Arthur E.		
Comeau, Ed	1	
Fisher, Robert Z.	ABSENT	
Martin, John F.	1	
Parker, Harold B.	ABSENT	
Green, Dennis	1	
Pantelakos, Laura C.	1	
Berube, Roger R.	ABSENT	
Robertson, Timothy N.	ABSENT 1	
Cushing, Robert R.	ABSENT	
Hirsch, Geoffrey D.	1	
O'Hearne, Andrew S.	ABSENT	
Mangipudi, Latha D.	1	
DiSesa, Len	ABSENT	
TOTAL VOTE:		

11 yeas

0 nays

Committee Report

CONSENT CALENDAR

February 12, 2016

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on Criminal Justice and Public Safety to
which was referred HB 1492,**

**AN ACT regarding individual privacy when law
enforcement agencies use body-worn cameras. Having
considered the same, report the same with the following
resolution: RESOLVED, that it is INEXPEDIENT TO
LEGISLATE.**

Rep. David Welch

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 1492
Title:	regarding individual privacy when law enforcement agencies use body-worn cameras.
Date:	February 12, 2016
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The subject matter contained in this bill is already covered in a previous bill which has passed the House (HB 617). The sponsor requested that the committee find this bill Inexpedient to Legislate.

Vote 11-0.

Rep. David Welch
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Criminal Justice and Public Safety

HB 1492, regarding individual privacy when law enforcement agencies use body-worn cameras.
INEXPEDIENT TO LEGISLATE.

Rep. David Welch for Criminal Justice and Public Safety. The subject matter contained in this bill is already covered in a previous bill which has passed the House (HB 617). The sponsor requested that the committee find this bill Inexpedient to Legislate. **Vote 11-0.**

Original: House Clerk

Cc: Committee Bill File

COMMITTEE REPORT

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 1492
Title:	regarding individual privacy when law enforcement agencies use body-worn cameras.
Date:	February 12, 2016
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The subject matter is already covered in a previous bill. The sponsor decided to withdraw the bill and asked the committee to accomplish the act.

Vote 11-0.

Rep. David Welch
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: Criminal Justice & Public Safety

BILL NUMBER: HB 1492

TITLE: regarding privacy of body cameras

DATE: 2/12/2016 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

The subject matter is already covered
in a previous bill. The sponsor decided
to withdraw the bill and asked the
committee to accomplish the act.

COMMITTEE VOTE: 11-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. David A. Auld
 For the Committee