

HOUSE No. 2170

The Commonwealth of Massachusetts

PRESENTED BY:

Denise Provost

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act promoting the use of body-worn cameras by law enforcement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>

HOUSE No. 2170

By Ms. Provost of Somerville, a petition (accompanied by bill, House, No. 2170) of Denise Provost and others for an investigation by a special commission (including members of the General Court) relative to body-worn cameras by law enforcement officers and providing guidelines for implementing the use of said cameras. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act promoting the use of body-worn cameras by law enforcement.

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

1 SECTION 1. There shall be added a new section 98H of Chapter 41 of the Massachusetts
2 4 General Laws, as follows: 5

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4 Section 1 -- Definitions 7

5 (a) Definitions 8

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

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10 Section 2 – Law Enforcement Data Review Committee 14

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(a) There is created a Law Enforcement Data Review Committee ('Committee'), consisting of not more than 13 members, which shall independently exercise its powers, duties, and responsibilities. The Committee shall have the authority to allow additional participation from various groups that the Committee deems necessary for additional input.

(b) The Committee shall consist of:

(1) two legislators, one member appointed by the Senate President and one member appointed by the Speaker of the House;

(2) the Attorney General or designee;

(3) the Secretary of Public Safety and Security or designee, who shall serve as chair;

(4) the Registrar of Motor Vehicles or designee;

(5) the Colonel of the Massachusetts State Police or designee;

(6) the Chief Counsel of the Committee for Public Counsel Services or designee;

(7) one police officer from a municipal law enforcement agency, appointed by the Massachusetts Police Association;

(8) one member of the Massachusetts Chiefs of Police Association and one member of the Massachusetts Major City Chiefs Association, each selected by their respective boards of directors;

29 (9) two members of community and/or civil rights advocacy organizations appointed by
30 34 the Governor; and 35

31 (10) one expert from a Massachusetts college or university with specific expertise in 36
32 both statistical analysis and law enforcement, appointed by the Governor. 37

33 (c) All Committee members shall serve, without compensation, for two years and until
34 their 38 successors are appointed. Members may be reappointed for an unlimited number of 39
35 terms. The Committee shall meet at least quarterly. The Executive Office of Public 40 Safety and
36 Security shall provide staff and administrative services for the Committee. 41

37 (d) The Committee shall have the following powers, duties, and responsibilities: 42

38 Page | 4

39 (1) to operate as an advisory body and make recommendations, which may be reported
40 43 to the Governor, the Secretary of Public Safety and Security, to the General Court, 44 to state,
41 municipal, college or university police departments and to other law 45 enforcement entities
42 identified as appropriate by the Committee; 46

43 (2) to promulgate model policies for law enforcement entities that are designed to 47
44 protect individuals' civil rights during traffic stops and other police stops; 48

45 (3) to recommend to law enforcement entities models for training on data collection and
46 49 analysis to engage agencies; 50

47 (4) to identify and recommend best practices for stop data collection and analysis, 51
48 including best practices for making use of advanced technologies, and to advise the 52 Executive
49 Office of Public Safety and Security regarding the development of a 53 system for law

50 enforcement entities to electronically gather, record, report and 54 dispose of information
51 concerning motor vehicle accidents, violations, traffic stops, 55 pedestrian stops and citations; 56

52 (5) to consider and make recommendations about how to determine the baseline data 57
53 against which data collected pursuant to subsection (d)(4) shall be measured; 58

54 (6) to review reports compiled pursuant to subsections (d)(1) and (d)(4), and, as 59
55 necessary, other data or reports collected or compiled pursuant to this section, and 60 to consider
56 and propose solutions to identify, eliminate and prevent racial profiling; 61

57 (7) to support and encourage law enforcement departments in their outreach to local 62
58 communities concerning a) the goals of law enforcement via traffic and pedestrian 63 stops, b)
59 perceived racial and ethnic disparities in traffic stops and other law 64 enforcement activities,
60 and c) strategies for monitoring and reducing such disparities 65 where found to exist; 66

61 (8) to receive comment and participation from the public at public hearings; 67

62 (9) to review reports, analyses, recommendations, and conclusions compiled using data
63 68 collected in connection with the implementation of Massachusetts Chapter 228 of 69 the
64 Laws of 2000, and to consider such reports, analysis, recommendations and 70 conclusions in
65 executing the powers, duties, and responsibilities under this 71 subsection; 72

66 (10) to issue and release to the public an annual report to the Governor, no later than 73
67 September 1, regarding the Committee's activities during the previous fiscal year 74 and the
68 results of any statistical analyses conducted, which report shall also be filed 75 with the Clerks of
69 the Senate and the House of Representatives; 76

70 (11) to issue and release to the public a triennial report in relation to the Minimum Core
71 77 Standards set out in Section 3(d) on or before December 1 of the required year; and 78

72 (12) to review the complaints of citizens who have exhausted administrative remedies 79
73 within a police department regarding the unauthorized release of audio-video 80
74 recordings, or the failure to release such recordings as described in Section 3(c)(2). 81

75 (e) The Committee may employ support staff to execute their statutory obligations,
76 subject 82 to appropriation. The Committee may also employ such other staff and attorneys as it
77 83 determines, all of whom shall be in the unclassified service and shall receive such 84
78 compensation as is fixed by the Committee. 85

79 Page | 5

80 (f) The Committee shall have access to all video footage generated audio-visual recording
81 86 devices of each law enforcement entity, but audio-visual recordings received by the 87
82 Committee shall not be redisclosed to third parties except as outlined in Section 3(c)(2). 88

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84 Section 3 – Requirements for Personal Audio-Video Recording Devices 90

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86 (a) General Obligation. 92

87 Each police officer in this State shall be equipped with a personal audio-video recording
88 93 device. Each law enforcement entity with primary enforcement authority over any 94

89 jurisdiction within this state must establish a plan to carry out the foregoing obligation 95 in
90 accordance with Subsection 2 below. 96

91 (b) Applicability to Massachusetts wiretapping statute 97

92 Notwithstanding any provision of 272 MGL §99: 98

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

96 (2) Officers using personal audio-visual recording devices must inform the individual or
97 101 individuals who are being recorded that the audio and visual content of the interaction 102 is
98 being captured on film. An officer who uses a personal audio-visual recording device 103 is
99 considered to have given his or her consent to being recorded. Within two (2) 104 months of its
100 formation, the Committee shall draft the statement of notification to be 105 used by officers in
101 each jurisdiction within the state. 106

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

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

110 (c) Applicability to Massachusetts' public records statute 115

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

114 (2) This exception does not apply to individuals filmed in a police interaction, and their
115 119 legal representatives shall have the right to inspect and copy such recordings. 120

116 (d) Minimum Core Standards. 121

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

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

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

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

123 Page | 6

124 equipped with a spare battery and/or a means of recharging the camera while on 128
125 duty. 129

126 (iv) Camera Focal Width. The camera must employ a wide point of view. 130

127 (v) Memory Specifications. At the lowest quality setting, the camera must permit at 131
128 least 3 hours of recording. 132

129 (vi) Night Visibility. The camera should have a low lux rating and/or an IR 133
130 illuminator for recording targets in low light. 134

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

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

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

139 (A) Primary response (patrol in vehicle or during bicycle or motorcycle patrol) 143

140 (B) Self-initiated public contacts/foot patrol 144

141 (C) Emergency Response 145

142 (D) Vehicle or Site Searches 146

143 (E) SWAT 147

144 (F) Police officers engaged in taking individuals into custody 148

145 (G) Traffic stops 149

146 (H) Suspicious vehicle stops 150

147 (I) Suspicious person stops 151

148 (J) Motor-vehicle accident scenes 152

149 (K) During all interrogations of suspected criminals or persons of interest 153

150 (L) While in the process of an arrest 154

151 (M) Vehicle pursuits 155

152 (N) Crimes in progress 156

153 (O) When ordered to do by a supervisor, and 157

154 (P) Any other instance of police interaction with individuals where probable 158 cause
155 exists that a crime is being planned or has been committed, as articulated 159 in the personal
156 audio-video recording device policy of the law enforcement 160 entity. 161

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

159 (A) Of sensitive crimes including rape and sexual assault; 164

160 (B) When an individual is fully unclothed; 165

161 (C) To protect the identity of an officer in an undercover capacity; and 166

162 (D) To protect the identity of a confidential informant. 167

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

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

171 (iv) Compliance: 175

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

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

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

184 (D) Incident Report - Law enforcement entities shall apply already existing 189 policies
185 regarding documentation of individuals’ interactions with police and 190 additional policies as
186 the department sees fit. An officer shall note the following 191 in his/her report: Whether audio
187 or video evidence was gathered relating to the 192 events described in the report; Any

188 malfunction occurring during the situation 193 that is the subject of the report; and any instances
189 of deactivation as required by 194 section (v) below. 195

190 (v) Deactivation - Before a personal audio-video recording device has been turned off
191 196 in an instance where policy and statute require the device to record, the reason for 197 not
192 using it must be articulated verbally on camera. If the officer is unable to 198 verbally articulate
193 his/her reason, then the officer shall file a written report 199 expressing that reason for the off
194 switch within two hours at the end of the officer's 200 shift when the incident occurred or
195 included within the written incident report 201 regularly filed describing an interaction with an
196 individual. This verbal or written 202 articulation shall be reviewed by both the supervising
197 officer and the Committee or 203 its designee. 204

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

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

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

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

206 Page | 8

207 (C) failure to keep the personal audio-video recording device on during an 213
208 interaction with an individual in accordance with this statute; 214

209 (D) failure to produce written or verbal communication for not turning on their 215
210 personal audio-video recording device or turning the personal audio-video 216 recording device
211 off during an interaction with an individual as required by 217 the incident report requirement of
212 this statute; and 218

213 (E) other breaches of department policies as enumerated within the department 219
214 policies. 220

215 (3) All programs within law enforcement entities governing or establishing rules, 221
216 regulations, or procedures with regard to the data storage of video and audio 222 recordings
217 derived from the use of personal audio-video recording devices must 223 meet the following
218 standards: 224

219 (i) All rules, regulations, procedures, or policies respecting the storage of or access 225 to
220 data obtained through use of personal audio-video recording devices should be 226 made
221 available in written form to all officers and staff within each law enforcement 227 entity. 228

222 (ii) Policies should require data to be downloaded from the personal audio-video 229
223 recording device by the end of the shift in which the camera was used, and 230 audio/video
224 recordings should be appropriately tagged and stored according to the 231 type of event
225 captured. 232

226 (iii) Policies should clearly require an officer's supervisor to take physical custody of 233
227 the camera and assume responsibility for downloading the data contained therein in 234 cases of
228 officer-involved shootings, in-custody deaths, or other incidents involving 235 the officer that
229 result in a person's bodily harm or death. 236

230 (iv) Policies should clearly state where personal audio-video recording device videos 237
231 are to be stored. 238

232 (v) Policies should specifically require the retention of the recorded data in 239
233 compliance with all relevant laws and adequately preserve evidentiary chain of 240 custody. 241

234 (vi) Policies should require the deletion of the recorded data after thirty (30) 242 calendar
235 days if civil contact is made but no enforcement action is taken or 243 complaint has been filed.
236 244

237 (vii) Policies should include specific measures to prevent data tampering, deleting, 245
238 and copying. 246

239 (viii) Policies should clearly describe the circumstances in which supervisors will be 247
240 authorized to review an officer's footage from the personal audio-video recording 248 device.
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242 (ix) Policies should include specific measures for preventing unauthorized access or 250
243 release of recorded data. 251

244 (x) Policies should specifically account for and enumerate those situations in which 252
245 data might be made available to other departments for evidentiary purposes. 253

246 (xi) Policies shall include clear and consistent protocols for releasing recorded data: 254

247 (A) externally to the public and the news media; 255

248 Page | 9

249 (B) for easy accessibility to lawyers and defendants; 256

250 (C) for easy accessibility to citizen review boards. 257

251 (xii) Each department's policy must be in compliance with the disclosure of public 258

252 records as defined by 4 MGL §7(26)(a), and must be promulgated within three (3) 259 months of

253 the enactment of this statute.