SENATE DOCKET, NO. 1546 FILED ON: 1/16/2015

# SENATE . . . . . No. 1257

## The Commonwealth of Massachusetts

PRESENTED BY:

***James B. Eldridge***

*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 use of body-worn cameras by law enforcement.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *James B. Eldridge* | *Middlesex and Worcester* |
| *Mary S. Keefe* | *15th Worcester* |
| *William N. Brownsberger* | *Second Suffolk and Middlesex* |
| *Benjamin Swan* | *11th Hampden* |
| *Elizabeth A. Malia* | *11th Suffolk* |

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# SENATE . . . . . No. 1257

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1257) of James B. Eldridge, Mary S. Keefe, William N. Brownsberger, Benjamin Swan and others for legislation to promote use of body-worn cameras by law enforcement. Public Safety and Homeland Security.

## The Commonwealth of Massachusetts

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

An Act promoting 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:*

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

Section 1. Definitions

(a) Definitions

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

Section 2. – Law Enforcement Data Review Committee

(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;

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

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

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

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

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

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

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

(4) to identify and recommend best practices for stop data collection and analysis, including best practices for making use of advanced technologies, and to advise the Executive Office of Public Safety and Security regarding the development of a system for law enforcement entities to electronically gather, record, report and dispose of information concerning motor vehicle accidents, violations, traffic stops, pedestrian stops and citations;

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

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

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

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

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

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

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

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

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

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

Section 3. Requirements for Personal Audio-Video Recording Devices

(a) General Obligation.

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

(b) Applicability to Massachusetts wiretapping statute

Notwithstanding any provision of 272 MGL §99:

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

(2) Officers using personal audio-visual recording devices must inform the individual or individuals who are being recorded that the audio and visual content of the interaction is being captured on film. An officer who uses a personal audio-visual recording device is considered to

have given his or her consent to being recorded. Within two (2) months of its formation, the Committee shall draft the statement of notification to be used by officers in each jurisdiction within the state.

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

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

(c) Applicability to Massachusetts' public records statute

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

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

(d) Minimum Core Standards.

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

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

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

(iii) Battery Runtime. The camera should be equipped with a battery that permits the device to record continuously for at least 3 hours. All officers should also be equipped with a spare battery and/or a means of recharging the camera while on duty.

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

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

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

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

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

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

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

(B) Self-initiated public contacts/foot patrol

(C) Emergency Response

(D) Vehicle or Site Searches

(E) SWAT

(F) Police officers engaged in taking individuals into custody

(G) Traffic stops

(H) Suspicious vehicle stops

(I) Suspicious person stops

(J) Motor-vehicle accident scenes

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

(L) While in the process of an arrest

(M) Vehicle pursuits

(N) Crimes in progress

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

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

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

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

(B) When an individual is fully unclothed;

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

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

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

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

(iv) Compliance:

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

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

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

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

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

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

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

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

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

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

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

(E) other breaches of department policies as enumerated within the department policies.

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

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

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

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

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

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

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

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

(viii) Policies should clearly describe the circumstances in which supervisors will be authorized to review an officer's footage from the personal audio-video recording device.

(ix) Policies should include specific measures for preventing unauthorized access or release of recorded data.

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

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

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

(B) for easy accessibility to lawyers and defendants;

(C) for easy accessibility to citizen review boards.

(xii) Each department's policy must be in compliance with the disclosure of public records as defined by 4 MGL §7(26)(a), and must be promulgated within three (3) months of the enactment of this statute.