

SENATE No. 1307

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:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/30/2017</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>2/3/2017</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/3/2017</i>

SENATE No. 1307

By Mr. Eldridge, a petition (accompanied by bill, Senate, No. 1307) of James B. Eldridge, Jason M. Lewis, Kay Khan and Elizabeth A. Malia 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 Ninetieth General Court
(2017-2018)**

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:

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 41 the
2 following chapter:-

3 CHAPTER 41A.

4 BODY-WORN CAMERAS.

5 Section 1. As used in this chapter, the following words shall have the following meanings
6 unless the context clearly requires otherwise:

7 “Personal audio-video recording device”, an intercepting device within the meaning of
8 section 99 of chapter 272 of the General Laws that is attached to an officer’s clothing, helmet, or
9 sunglasses and that can capture video and audio recordings from an officer’s point of view.

10 Section 2. (a) There shall be a Law Enforcement Data Review Committee comprised of
11 the following members or their designees: the Secretary of Public Safety and Security, who shall

12 serve as chair; 1 member of the senate who shall be appointed by the Senate President; 1 member
13 of the house of representatives who shall be appointed by the Speaker of the House; the Attorney
14 General; the Registrar of Motor Vehicles; the Colonel of the Massachusetts State Police; the
15 Chief Counsel of Committee for Public Counsel Services; one police officer from a municipal
16 law enforcement agency, appointed by the Massachusetts Police Association;

17 1 member of the Massachusetts Chiefs of Police Association to be selected by the board
18 of directors; 1 member of the Massachusetts Major City Chiefs Association to be selected by the
19 board of director; and 3 members appointed by the governor, 2 of whom shall be members of
20 community or civil rights advocacy organizations, and 1 of whom shall be an expert from a
21 Massachusetts college or university with specific expertise in both statistical analysis and law
22 enforcement.

23 (b) All Committee members shall serve without compensation for 2 years and until their
24 successors are appointed. Members may be reappointed for an unlimited number of terms. The
25 committee shall meet not less than 4 times per year. The Executive Office of Public Safety and
26 Security shall provide staff and administrative services for the committee.

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

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

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

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

36 (4) to identify and recommend best practices for stop data collection and analysis,
37 including best practices for using advanced technologies;

38 (5) to advise the Executive Office of Public Safety and Security in developing a system
39 for law enforcement entities to electronically gather, record, report and dispose of information
40 concerning motor vehicle accidents, violations, traffic stops, pedestrian stops and citations;

41 (6) to consider and make recommendations about how to determine the baseline data
42 against which data collected pursuant to subsection (c)(5) shall be measured;

43 (7) to review data and reports compiled pursuant this section and to consider and propose
44 solutions to identify, eliminate and prevent racial profiling;

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

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

50 (10) to review reports, analyses, recommendations, and conclusions compiled using data
51 collected in connection with the implementation of chapter 228 of the Laws of 2000, and to
52 consider such reports, analysis, recommendations and conclusions in executing the powers,
53 duties, and responsibilities under this subsection;

54 (11) to file an annual report regarding the committee’s activities during the previous
55 fiscal year and the results of any statistical analyses conducted with the governor and the clerks
56 of the senate and the house of representatives no later than September 1;

57 (12) to issue and release to the public a triennial report in relation to the Minimum Core
58 Standards pursuant to this chapter on or before December 1 of the required year; and

59 (13) to review the complaints of citizens who have exhausted administrative remedies
60 within a police department regarding the unauthorized release of audio-video recordings, or the
61 failure to release such recordings as described in this chapter.

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

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

69 Section 3. Requirements for Personal Audio-Video Recording Devices

70 (a) Each police officer in the commonwealth shall be equipped with a personal audio-
71 video recording device and each law enforcement entity with primary enforcement authority over
72 any jurisdiction in the commonwealth shall establish a plan to carry out this requirement.

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

76 (c) Officers using personal audio-visual recording devices must inform the individual or
77 individuals who are being recorded that the audio and visual content of the interaction is being
78 captured on film. An officer who uses a personal audio-visual recording device is considered to
79 have given his or her consent to being recorded. The committee shall, within 2 months of its
80 formation, draft the statement of notification to be used by officers in each jurisdiction in the
81 commonwealth.

82 (d) If an individual does not want his or her interaction with an officer captured on a
83 personal audio-video recording device, and the individual audibly denies his or her consent to be
84 recorded using the personal audio-video recording device, the officer or officers interacting with
85 the individual shall turn off their personal audio-video recording device after having provided the
86 reason for turning-off the person audio-video recording device in accordance with Section
87 5(b)(4)(v).

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

90 Section 4. (a) All audio-visual recordings that are captured during an interaction between
91 a individual or individuals and an officer or officers are exempt from public disclosure under
92 subsection 26(a) of section 7 or chapter 4 of the General Laws and shall be kept confidential
93 absent a court order.

94 (b) Section 4(a) will not apply to individuals filmed in a police interaction, and their legal
95 representatives shall have the right to inspect and copy such recordings.

96 Section 5. Minimum Core Standards.

97 (a) All personal audio-video recording devices in use must meet the following standards:

98 (1) The resolution shall be at least 640 x 480 pixels.

99 (2) The frame rate shall be at least 25 frames per second.

100 (3) The camera shall be equipped with a battery that permits the device to record
101 continuously for at least 3 hours. All officers shall also be equipped with a spare battery or a
102 means of recharging the camera while on duty.

103 (4) The camera shall employ a wide point of view.

104 (5) At the lowest quality setting, the camera shall permit at least 3 hours of recording.

105 (6) The camera shall have a low lux rating or an IR illuminator for recording targets in
106 low light.

107 Individual law enforcement entities shall decide which model or models of audio-video
108 device to employ and what features in excess of these Minimum Core Standards said devices are
109 to have.

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

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

115 (1) Primary response (patrol in vehicle or during bicycle or motorcycle patrol)

116 (ii) Self-initiated public contacts/foot patrol

117 (iii) Emergency Response

118 (iv) Vehicle or Site Searches

119 (v) SWAT

120 (vi) Police officers engaged in taking individuals into custody

121 (vii) Traffic stops

122 (viii) Suspicious vehicle stops

123 (ix) Suspicious person stops

124 (x) Motor-vehicle accident scenes

125 (xi) During all interrogations of suspected criminals or persons of interest

126 (xii) While in the process of an arrest

127 (xiii) Vehicle pursuits

128 (xiv) Crimes in progress

129 (xv) When ordered to do by a supervisor, and

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

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

135 (i) Of sensitive crimes including rape and sexual assault;

136 (ii) When an individual is fully unclothed;

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

138 (iv) To protect the identity of a confidential informant.

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

142 (3) Personal audio-video recording device training must be provided for all police
143 officers, supervisors, record management/evidence personnel, and all other personnel who may
144 use or otherwise be involved with police-used personal audio-video recording devices.

145 (4) Compliance: (i) Law enforcement entities shall set a policy regarding malfunctions
146 that shall ensure as little interruption in recording as possible. The policy shall require that police
147 officers whose personal audio-video recording device fails to record shall report the malfunction
148 to the supervisor immediately at the time the device has malfunctioned.

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

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

156 (iv) Law enforcement entities shall apply already existing policies regarding
157 documentation of individuals' interactions with police and additional policies as the department
158 sees fit. An officer shall note in the officer's report whether audio or video evidence was
159 gathered relating to the events described in the report, any malfunction occurring during the
160 situation that is the subject of the report, and any instances of deactivation as required by clause
161 (v).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

211 (B) for easy accessibility to lawyers and defendants; and

212 (C) for easy accessibility to citizen review boards.

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

214 records as defined by subsection 26(a) of section 7 or chapter 4 of the General Laws, and must

215 be promulgated within 3 months of the enactment of this act.