

1 Committee of Conference Report on HB 1584-FN, relative to the discharge of a person committed for
2 nonpayment of a fine.

3

4 Recommendation:

5 That the House recede from its position of nonconcurrence with the Senate amendment, and
6 concur with the Senate amendment, and

7 That the Senate and House adopt the following new amendment to the bill as amended by the
8 Senate, and pass the bill as so amended:

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10 Amend the bill by replacing all after the enacting clause with the following:

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12 1 New Chapter; Body-Worn Cameras. Amend RSA by inserting after chapter 105-C the
13 following new chapter:

14

CHAPTER 105-D

15

BODY-WORN CAMERAS

16

105-D:1 Definitions. In this chapter:

17

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

20

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

26

III. "In uniform" means a law enforcement officer who is wearing any officially authorized
27 uniform designated by a law enforcement agency, or a law enforcement officer who is visibly
28 wearing articles of clothing, a badge, tactical gear, gun belt, a patch, or other insignia that he or she
29 is a law enforcement officer acting in the course of his or her duties.

30

IV. "Law enforcement officer" or "officer" means any person employed by a law enforcement
31 agency.

32

V. "Law enforcement agency" or "agency" means a state, county, municipality, special
33 district, security service or police of the community college system of New Hampshire and the
34 university system of New Hampshire, security service of the legislative or judicial branch, unit of

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35 local government police department or any other entity authorized by law to employ law
36 enforcement officers or exercise police authority.

37 VI. "Law enforcement-related encounters or activities" include, but are not limited to,
38 traffic stops, pedestrian stops, arrests, searches, interrogations, investigations, pursuits, crowd
39 control, traffic control, non-community caretaking interactions with an individual while on patrol,
40 or any other instance in which the officer is enforcing the laws of the municipality, county, or state.

41 The term does not include:

42 (a) Activities when the officer is completing paperwork alone or is in the presence of
43 another law enforcement officer or officers; or

44 (b) Community caretaking functions.

45 VII. "Recording" means the process of capturing data or information stored on a recording
46 medium.

47 VIII. "Recording medium" means any recording medium for the retention and playback of
48 recorded audio and video including, but not limited to, VHS, DVD, hard drive, cloud storage, solid
49 state, digital, flash memory technology, or any other electronic medium.

50 IX. "Subject of the recording" means any law enforcement officer or any suspect, victim,
51 detainee, conversant, injured party, witness, or other similarly situated person who appears on the
52 recording, and shall not include people who only incidentally appear on the recording.

53 105-D:2 Use of Body-Worn Cameras.

54 I. This chapter shall apply to any law enforcement agency that elects to equip its law
55 enforcement officers with body-worn cameras. All BWCs shall be operated in a manner consistent
56 with the provisions of this chapter. Every law enforcement agency that elects to equip its officers
57 with BWCs shall adopt policies and procedures relating to the use of BWCs and the retention and
58 destruction of data consistent with this chapter.

59 II. Officers shall only use BWCs issued by their respective law enforcement agencies. BWC
60 equipment and all data, images, and video captured, recorded, or otherwise produced by the
61 equipment are the property of the officer's law enforcement agency and shall be subject to the
62 restrictions in this chapter.

63 III. Officers who are assigned BWCs shall successfully complete an agency-approved
64 training program to ensure proper use and operations.

65 IV. Officers shall only use BWCs while in uniform.

66 V. Officers shall activate the video and audio components of BWCs and start recording upon
67 arrival on scene of a call for service or when engaged in any law enforcement-related encounter or
68 activity, or, if so required by local policy, upon activation of lights and siren; provided, however,
69 that in those cases set forth in subparagraphs VII(d) and (e), and paragraph IX in which an
70 individual has a right not to be recorded, officers shall inform an individual of this option. If a
71 citizen then declines to be recorded, the officer shall deactivate the audio and video functions. The

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72 officer shall document the reason why the camera was not activated in the associated police report.
73 If exigent circumstances exist which prevent the BWC from being activated as set forth above, the
74 device must be turned on as soon as practicable.

75 VI. Recordings shall be specific to an incident. Officers shall not indiscriminately record
76 entire duties or patrols.

77 VII. A BWC shall not be used to record any of the following:

78 (a) Communications with other police personnel except to the extent such
79 communications are incidental to a permissible recording.

80 (b) Encounters with police personnel or individuals whom the officer knows are acting
81 in an undercover capacity or as confidential informants respectively, unless expressly directed to be
82 included as part of the investigation.

83 (c) Intimate searches, when otherwise permitted by the agency's strip-and-body-cavity
84 search policy.

85 (d) An interview with a crime victim unless his or her express consent has been
86 obtained before the recording is made. Any recording obtained shall be consistent with the New
87 Hampshire attorney general's model protocol for response to adult sexual assault cases, the New
88 Hampshire attorney general's domestic violence protocol for law enforcement, the New Hampshire
89 attorney general's stalking protocol for law enforcement, and the New Hampshire attorney
90 general's child abuse and neglect protocol, as applicable. This subparagraph may be waived upon
91 approval of the head of the law enforcement agency or his or her designee when the parent or legal
92 guardian is the subject of the investigation to which a juvenile is a victim or witness.

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

97 (f) While on the grounds of any public, private, or parochial elementary or secondary
98 school, except when responding to an imminent threat to life or health or a call for service.

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

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

102 VIII. Officers shall inform an individual that he or she is being recorded as soon as
103 practicable. When notification is not made, the recording officer shall note the reason for non-
104 notification within the associated report.

105 IX. In locations where an individual has a reasonable expectation of privacy, such as a
106 residence, a restroom, or a locker room, a citizen may decline to be recorded unless the recording is
107 being made while executing an arrest warrant, or a warrant issued by a court, or the officer is in
108 the location pursuant to a judicially-recognized exception to the warrant requirement. Officers

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109 shall inform an individual of this option. If a citizen then declines to be recorded, the officer shall
110 deactivate the audio and video functions, and any images shall, as soon as practicable, be
111 permanently distorted or obscured. The officer shall document the reason why the camera was not
112 activated in the associated police report.

113 X. Once activated, the BWC shall remain activated until the event is completed in order to
114 ensure the integrity of the recording unless otherwise provided in this section.

115 XI. If an officer fails to activate the BWC, fails to record the entire contact, interrupts the
116 recording, or if the BWC malfunctions, the officer shall document why a recording was not made,
117 was interrupted, or was terminated as part of the associated police report.

118 XII. Except as authorized in this section, no person, including without limitation officers
119 and their supervisors, shall edit, alter, erase, delete, duplicate, copy, subject to automated analysis
120 or analytics of any kind, including but not limited to facial recognition technology, share, display, or
121 otherwise distribute in any manner any BWC recordings or portions thereof. This paragraph shall
122 not apply to the sharing of a still image captured by the BWC to help identify individuals or vehicles
123 suspected of being involved in a crime.

124 XIII. Recorded images and sound made from an agency-issued BWC shall be for law
125 enforcement purposes only. All access to this data shall be audited to ensure that authorized users
126 only are accessing the data for law enforcement purposes only. All access to BWC data shall be
127 authorized by the head of the law enforcement agency and only for the purposes set forth in this
128 chapter.

129 XIV. If an officer is suspected of wrongdoing or involved in an officer-involved shooting or
130 other use of deadly force, the agency may limit or restrict an officer from viewing the video file.

131 XV. All recordings shall be securely stored no later than the end of each shift, or as soon
132 thereafter as is reasonably practicable, in conformity to the most recent security policy of the
133 Criminal Justice Information Services (CJIS) of the criminal justice information services division of
134 the Federal Bureau of Investigation of the United States Department of Justice. Recordings shall
135 not be divulged or used by a law enforcement agency for any commercial or other non-law
136 enforcement purpose. Where a law enforcement agency authorizes a third party to act as its agent
137 in storing recordings, the agent shall not independently access, view or alter any recording, except
138 to delete videos as required by law or agency retention policies. Neither the agency nor its agent
139 shall subject any recording to analysis or analytics of any kind, including without limitation facial
140 recognition technology and data mining.

141 XVI. Recordings made by a BWC shall be permanently destroyed by overwriting or
142 otherwise no sooner than 30 days and no longer than 180 days from the date the images were
143 recorded, except that such recording shall be retained by the law enforcement agency that employs
144 the officer whose BWC made the recording, or an authorized agent thereof, for a minimum of 3
145 years if:

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- 146 (a) The recording captures images involving any of the following:
- 147 (1) Any action by a law enforcement officer that involves the use of deadly force or
- 148 deadly restraint.
- 149 (2) The discharge of a firearm, unless for the destruction of an animal.
- 150 (3) Death or serious bodily injury.
- 151 (4) An encounter about which a complaint has been filed with the police department
- 152 within 30 days after the encounter.

153 (b) The recording is being retained by the law enforcement agency as evidence in a civil

154 or criminal case or as part of an internal affairs investigation or as part of an employee disciplinary

155 investigation.

156 XVII. Notwithstanding the provisions of paragraph XVI:

157 (a) If there is any other legal requirement for retaining the recording, including but not

158 limited to litigation, a pending criminal case, a valid court or administrative order, then the

159 recording shall be retained only as long as is legally required; and

160 (b) The chief law enforcement officer of the agency may designate the recording as a

161 training tool, provided that a person's image and vehicle license plate numbers shall first be

162 permanently deleted, distorted, or obscured, or the person has been given an opportunity in writing

163 to decline to have his or her image and/or vehicle license plate number to be so used. A recording so

164 designated and prepared may be viewed solely by officers for training purposes only.

165 XVIII. Any recording undertaken in violation of this chapter or any other applicable law

166 shall be immediately destroyed and, whether destroyed or not, shall not be admissible as evidence

167 in any criminal or civil legal or administrative proceeding, except in a proceeding against an officer

168 for violating the provisions of this chapter. In a proceeding against an officer for violating the

169 provisions of this chapter, the recording shall be destroyed at the conclusion of the proceeding and

170 all appeals.

171 2 New Subparagraph; Wiretapping and Eavesdropping; Exceptions. Amend RSA 570-A:2, II by

172 inserting after subparagraph (l) the following new subparagraph:

173 (m) A law enforcement officer to make a body-worn recording pursuant to RSA 105-D.

174 3 New Paragraph; Access to Governmental Records, Exemptions. Amend RSA 91-A:5 by

175 inserting after paragraph IX the following new paragraph:

176 X. Video and audio recordings made by a law enforcement officer using a body-worn camera

177 pursuant to RSA 105-D except where such recordings depict any of the following:

178 (a) Any restraint or use of force by a law enforcement officer; provided, however, that

179 this exemption shall not include those portions of recordings which constitute an invasion of privacy

180 of any person or which are otherwise exempt from disclosure.

181 (b) The discharge of a firearm, provided that this exemption shall not include those

182 portions of recordings which constitute an invasion of privacy of any person or which are otherwise

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183 exempt from disclosure.

184 (c) An encounter that results in an arrest for a felony-level offense, provided, however,
185 that this exemption shall not apply to recordings or portions thereof that constitute an invasion of
186 privacy or which are otherwise exempt from disclosure.

187 4 Effective Date. This act shall take effect January 1, 2017.

188

The signatures below attest to the authenticity of this Report on HB 1584-FN, relative to the discharge of a person committed for nonpayment of a fine.

Conferees on the Part of the Senate

Conferees on the Part of the House

Sen. Carson, Dist. 14

Rep. Tholl, Coos 5

Sen. Daniels, Dist. 11

Rep. Cushing, Rock. 21

Sen. Lasky, Dist. 13

Rep. Welch, Rock. 13

Rep. DiSesa, Straf. 16

2016-2049-CofC

AMENDED ANALYSIS

This bill:

- I. Regulates a law enforcement agency's use of body-worn cameras.
- II. Exempts such recordings from the wiretapping and eavesdropping statute and, under certain circumstances, from the right-to-know law.