To establish pilot programs for, and require the development of policies with respect to, the use of body-worn cameras by officers and agents of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 2 (legislative day, SEPTEMBER 28), 2018

Ms. HARRIS introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish pilot programs for, and require the development of policies with respect to, the use of body-worn cameras by officers and agents of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “DHS Body-Worn Camera Act of 2018”.

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VerDate Sep 11 2014 21:55 Oct 04, 2018 Jkt 089200 PO 00000 Frm 00001 Fmt 6652 Sfmt 6201 E:\BILLS\S3538.IS S3538khammond on DSK30JT082PROD with BILLS
SEC. 2. PILOT PROGRAMS ON USE OF BODY-WORN CAMERAS.

(a) In General.—The Secretary of Homeland Security shall establish pilot programs at U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement to test and evaluate the use of body-worn cameras by officers and agents of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement.

(b) Requirements for Pilot Program at U.S. Customs and Border Protection.—

(1) Duration.—The pilot program required by subsection (a) to be carried out at U.S. Customs and Border Protection shall—

(A) be implemented not later than 60 days after the date of the enactment of this Act; and

(B) terminate on the date that is 11 months after such date of enactment.

(2) Deployment.—The Secretary shall ensure that, under the pilot program described in paragraph (1)—

(A) not fewer than 500 body-worn cameras are deployed to officers and agents of U.S. Customs and Border Protection;
(B) not fewer than half of such cameras are deployed to agents of the Border Patrol; and

(C) not fewer than half of such cameras are deployed along the Southwest Border.

(c) REQUIREMENTS FOR PILOT PROGRAM AT U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT.—

(1) DURATION.—The pilot program required by subsection (a) to be carried out at U.S. Immigration and Customs Enforcement shall—

(A) be implemented not later than 180 days after the date of the enactment of this Act; and

(B) terminate on the date that is 18 months after such date of enactment.

(2) DEPLOYMENT.—The Secretary shall ensure that, under the pilot program described in paragraph (1)—

(A) not fewer than 500 body-worn cameras are deployed to officers and agents of U.S. Immigration and Customs Enforcement; and

(B) not fewer than half of such cameras are deployed to agents of the Enforcement and Removal Operations division.
(d) REPORTS REQUIRED.—Not later than 60 days after the termination under subsection (b)(1)(B) or (c)(1)(B) of a pilot program established under subsection (a), the Secretary shall submit to Congress a report on the pilot program that includes the following:

(1) A detailed description of incidences of the use of force recorded using body-worn cameras under the pilot program, disaggregated by the demographic data subsets of the individuals involved.

(2) A detailed description of incidences of the use of force in which a body-worn camera was not used, disaggregated by the demographic data subsets of the individuals involved.

(3) The number of complaints filed against officers or agents of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement relating to the use of body-worn cameras under the pilot program.

(4) The number of complaints filed related to an incident in which a body-worn camera was worn by such an officer or agent, but in which the body-worn camera as not activated.

(5) The disposition of complaints described in paragraphs (3) and (4).
(6) An assessment of the effect of the use of body-worn cameras under the pilot program on the accountability and transparency of the use of force, including an assessment of—

(A) the efficacy of body-worn cameras in deterring the use of excessive force by such officers and agents; and

(B) the effect of the use of body-worn cameras on responses to and adjudications of complaints.

(7) An assessment of the effect of the use of body-worn cameras under the pilot program on the safety of such officers and agents.

(8) An assessment of the effect of the use of body-worn cameras under the pilot program on public safety.

(9) An assessment of the effect of the use of body-worn cameras under the pilot program on the collection of evidence for criminal investigations and civil immigration enforcement, including the number of cases in which data from a body-worn camera was used as such evidence.

(10) An assessment of the effect of body-worn cameras on the personal privacy of members of the public and such officers and agents, and whether the
use of pinpoint redaction technology may have assisted in protecting personal privacy.

(11) A description of issues that arose under the pilot program relating to the secure storage and handling of recordings from body-worn cameras.

(12) A description of issues that arose under the pilot program relating to the access of the public to recordings from body-worn cameras, including a description of issues that arose in situations in which the use of force by such an officer or agent was involved, and an accounting of any body-worn camera footage released to the public.

(13) Best practices for the development of protocols for the safe and effective use of body-worn cameras.

(14) A description of issues that arose under the pilot program relating to violations of policies developed under section 3, including the number of violations detected, disaggregated by the type of violation, and the number of internal affairs cases opened and the disposition of such cases.

(15) The total number of hours body-worn cameras were activated under the pilot program, disaggregated by region.

(17) An accounting and description of the total number of instances an activity that was required to be recorded by a body-worn camera was not recorded as described in section 3(b)(1)(E).

(18) Any other matters relating to the pilot program that the Secretary considers appropriate.

SEC. 3. DEVELOPMENT OF POLICIES WITH RESPECT TO BODY-WORN CAMERAS.

(a) IN GENERAL.—The Secretary of Homeland Security shall develop draft policies with respect to the use of body-worn cameras by officers and agents of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement.

(b) ELEMENTS.—The draft policies developed under subsection (a) shall include the following:

(1) With respect to when a body-worn camera is activated or deactivated in the course of duty, those policies shall—

(A) specify under what circumstances a body-worn camera is required to be activated, including that such cameras shall be activated, at a minimum, at the inception of any calls for
service or law enforcement encounters, including vehicle stops, pedestrian stops, foot pursuits, witness and victim interviews, in-custody transports, and uses of force, except that when an immediate threat to such an officer’s or agent’s life or safety makes activating the camera impossible or dangerous, the officer or agent shall activate the camera at the first reasonable opportunity to do so;

(B) include policies with respect to the use of body-worn cameras in use-of-force incidents, such as a shooting involving such an officer or agent, or in critical incidents, including such an incident that results in an in-custody death;

(C) specify at what point a body-worn camera is required to be deactivated, which may be no earlier than when an encounter described in subparagraph (A) has fully concluded;

(D) ensure that such an officer or agent does not have the ability to edit or delete a recording taken by a body-worn camera; and

(E) specify that such an officer or agent who is wearing a body-worn camera shall provide an explanation if an activity that is re-
required to be recorded by a body-worn camera is
not recorded.

(2) With respect to storage and maintenance of
recordings from body-worn cameras, those policies
shall—

(A) define the minimum and maximum
lengths of time for which such recordings shall
be retained;

(B) provide for the secure storage, han-
dling, and destruction of such recordings;

(C) prevent and address issues relating to
tampering with, or deleting or copying, such re-
cordings; and

(D) establish a system to store such re-
cordings collected in a manner that requires the
logging of all viewing, modification, and dele-
tion of such recordings and prevents, to the
greatest extent practicable, unauthorized access
to and unauthorized disclosure of such record-
ings.

(3) With respect to privacy protections, those
policies shall—

(A) provide for necessary privacy protec-
tions for such officers and agents wearing body-
worn cameras and members of the public with
whom such officers and agents interact, includ-
ing the use of pinpoint redaction technology to
protect personal privacy in a manner that does
not interfere with the ability to fully and accu-
rately ascertain the events that transpired;

(B) require the consent of victims of and
witnesses to a crime before recording interviews
relating to the crime may be recorded;

(C)(i) require that such an officer or agent
who is wearing a body-worn camera notify an
individual that is the subject of a recording that
the individual is being recorded as close to the
inception of the encounter as reasonably pos-
sible; and

(ii) in the case of such an officer or agent
at a permanent Border Patrol checkpoint,
specify that the requirement under clause (i)
can be achieved by posting prominent signage
in English and Spanish indicating that individ-
uals at the permanent checkpoint may be re-
corded;

(D) require that, before entering a resi-
dence without a warrant or in nonexigent cir-
cumstances, such an officer or agent obtain
consent from the occupant of the residence to continue the use of a body-worn camera; and

(E) ensure that recordings unrelated to law enforcement purposes are minimized to the greatest extent practicable.

(4) With respect to access to recordings from body-worn cameras, those policies shall—

(A) ensure that any such officer or agent wearing a body-worn camera is prohibited from accessing a recording on the camera without an authorized purpose;

(B) clearly describe the circumstances in which such officers and agents and their supervisors may view recordings from body-worn cameras;

(C) permit supervisors to view recordings from body-worn cameras only for training purposes (and not for use in any disciplinary action against such an officer or agent) or when there is a complaint filed against such an officer or agent or a use-of-force incident; and

(D) establish—

(i) under what circumstances a recording from a body-worn camera will be released to the subject of the recording or
to another law enforcement or intelligence agency or to the public; and

(ii) protocols for such release.

(5) Those policies shall establish under what circumstances recordings from body-worn cameras may be used to investigate potential misconduct of such officers or agents or for other law enforcement purposes.

(6) Those policies shall establish disciplinary procedures for violations of body-worn camera policies by agency personnel, including officers, agents, and supervisors.

(7) Those policies shall ensure that training is required and provided to all such officers and agents who use body-worn cameras, as well as any personnel involved in the management, storage, or use of body-worn camera data, and ensure that such training is provided before the use of any body worn camera by such an officer or agent or the involvement of such agency personnel in the direct management, storage, or use of body-worn camera data.

**SEC. 4. CONSULTATIONS; PUBLIC COMMENT.**

In developing the pilot program required by section 2(a) and the draft policies required by section 3, the Secretary of Homeland Security shall—
(1) consult with—

   (A) the Officer for Civil Rights and Civil Liberties of the Department of Homeland Security;

   (B) the Chief Privacy Officer of the Department of Homeland Security;

   (C) the Director of the Office of Privacy and Civil Liberties of the Department of Justice; and

   (D) any labor organizations representing employees of the Department of Homeland Security involved with the use of body-worn cameras;

(2) provide an opportunity for public comment; and

(3) produce a report, which shall be posted on a publicly available Internet website of the Department of Homeland Security, that—

   (A) summarizes the comments received under paragraph (2); and

   (B) describes the final policies developed under section 3 and the rationale for each such policy.
SEC. 5. IMPLEMENTATION PLAN.

(a) IN GENERAL.—The Secretary of Homeland Security shall submit to Congress—

(1) a plan to implement, on a permanent basis, the use of body-worn cameras by officers and agents of U.S. Customs and Border Protection; and

(2) a plan to implement, on a permanent basis, the use of such cameras by officers and agents of U.S. Immigration and Customs Enforcement.

(b) ELEMENTS.—Each plan required by subsection (a) shall include the following:

(1) A detailed description of the draft policies developed under section 3.

(2) An identification of the following:

(A) The number of body-worn cameras to be purchased and deployed.

(B) Operational requirements for body-worn cameras, including systems and support staff.

(C) The locations where body-worn cameras will be used.

(D) Costs associated with the use of body-worn cameras.

(E) A description of the cost-benefit analysis used to determine the number, placement,
and location of body-worn cameras specified in
the plan.

(c) Submission.—

(1) U.S. Customs and Border Protection.—The Secretary shall submit the plan required
by subsection (a)(1) with respect to U.S. Customs
and Border Protection not later than one year after
the date of the enactment of this Act.

(2) U.S. Immigration and Customs Enforcement.—The Secretary shall submit the plan re-
quired by subsection (a)(2) with respect to U.S. Im-
migration and Customs Enforcement not later than
21 months after the date of the enactment of this
Act.

SEC. 6. DEPLOYMENT OF BODY-WORN CAMERAS.

(a) In General.—Not later than 180 days after the
date on which an implementation plan is submitted under
section 5, the Secretary of Homeland Security shall com-
mence implementation of the plan to ensure the use of
body-worn cameras by officers and agents described in
subsection (b) whose job duties involve or may reasonably
be expected to involve law enforcement contacts with the
public.
(b) Officers and Agents Described.—Officers and agents described in this subsection are officers and agents of—

(1) the Office of Field Operations, the U.S. Border Patrol, or Air and Marine Operations of U.S. Customs and Border Protection; or