

115TH CONGRESS
2D SESSION

S. 3538

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “DHS Body-Worn Cam-
5 era Act of 2018”.

1 **SEC. 2. PILOT PROGRAMS ON USE OF BODY-WORN CAM-**
2 **ERAS.**

3 (a) IN GENERAL.—The Secretary of Homeland Secu-
4 rity shall establish pilot programs at U.S. Customs and
5 Border Protection and U.S. Immigration and Customs
6 Enforcement to test and evaluate the use of body-worn
7 cameras by officers and agents of U.S. Customs and Bor-
8 der Protection and U.S. Immigration and Customs En-
9 forcement.

10 (b) REQUIREMENTS FOR PILOT PROGRAM AT U.S.
11 CUSTOMS AND BORDER PROTECTION.—

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

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

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

19 (2) DEPLOYMENT.—The Secretary shall ensure
20 that, under the pilot program described in para-
21 graph (1)—

22 (A) not fewer than 500 body-worn cameras
23 are deployed to officers and agents of U.S. Cus-
24 toms and Border Protection;

1 (B) not fewer than half of such cameras
2 are deployed to agents of the Border Patrol;
3 and

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

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

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

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

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

16 (2) DEPLOYMENT.—The Secretary shall ensure
17 that, under the pilot program described in para-
18 graph (1)—

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

22 (B) not fewer than half of such cameras
23 are deployed to agents of the Enforcement and
24 Removal Operations division.

1 (d) REPORTS REQUIRED.—Not later than 60 days
2 after the termination under subsection (b)(1)(B) or
3 (c)(1)(B) of a pilot program established under subsection
4 (a), the Secretary shall submit to Congress a report on
5 the pilot program that includes the following:

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

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

14 (3) The number of complaints filed against offi-
15 cers or agents of U.S. Customs and Border Protec-
16 tion and U.S. Immigration and Customs Enforce-
17 ment relating to the use of body-worn cameras
18 under the pilot program.

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

23 (5) The disposition of complaints described in
24 paragraphs (3) and (4).

1 (6) An assessment of the effect of the use of
2 body-worn cameras under the pilot program on the
3 accountability and transparency of the use of force,
4 including an assessment of—

5 (A) the efficacy of body-worn cameras in
6 deterring the use of excessive force by such offi-
7 cers and agents; and

8 (B) the effect of the use of body-worn cam-
9 eras on responses to and adjudications of com-
10 plaints.

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

14 (8) An assessment of the effect of the use of
15 body-worn cameras under the pilot program on pub-
16 lic safety.

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

23 (10) An assessment of the effect of body-worn
24 cameras on the personal privacy of members of the
25 public and such officers and agents, and whether the

1 use of pinpoint redaction technology may have as-
2 sisted in protecting personal privacy.

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

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

13 (13) Best practices for the development of pro-
14 tocols for the safe and effective use of body-worn
15 cameras.

16 (14) A description of issues that arose under
17 the pilot program relating to violations of policies
18 developed under section 3, including the number of
19 violations detected, disaggregated by the type of vio-
20 lation, and the number of internal affairs cases
21 opened and the disposition of such cases.

22 (15) The total number of hours body-worn cam-
23 eras were activated under the pilot program,
24 disaggregated by region.

1 (16) An accounting of who accessed any body-
2 worn camera recordings, disaggregated by classified
3 position title and region.

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

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

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

12 (a) IN GENERAL.—The Secretary of Homeland Secu-
13 rity shall develop draft policies with respect to the use of
14 body-worn cameras by officers and agents of U.S. Cus-
15 toms and Border Protection and U.S. Immigration and
16 Customs Enforcement.

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

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

22 (A) specify under what circumstances a
23 body-worn camera is required to be activated,
24 including that such cameras shall be activated,
25 at a minimum, at the inception of any calls for

1 service or law enforcement encounters, includ-
2 ing vehicle stops, pedestrian stops, foot pur-
3 suits, witness and victim interviews, in-custody
4 transports, and uses of force, except that when
5 an immediate threat to such an officer's or
6 agent's life or safety makes activating the cam-
7 era impossible or dangerous, the officer or
8 agent shall activate the camera at the first rea-
9 sonable opportunity to do so;

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

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

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

22 (E) specify that such an officer or agent
23 who is wearing a body-worn camera shall pro-
24 vide an explanation if an activity that is re-

1 required to be recorded by a body-worn camera is
2 not recorded.

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

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

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

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

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

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

23 (A) provide for necessary privacy protec-
24 tions for such officers and agents wearing body-
25 worn cameras and members of the public with

1 whom such officers and agents interact, includ-
2 ing the use of pinpoint redaction technology to
3 protect personal privacy in a manner that does
4 not interfere with the ability to fully and accu-
5 rately ascertain the events that transpired;

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

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

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

22 (D) require that, before entering a resi-
23 dence without a warrant or in nonexigent cir-
24 cumstances, such an officer or agent obtain

1 consent from the occupant of the residence to
2 continue the use of a body-worn camera; and

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

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

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

12 (B) clearly describe the circumstances in
13 which such officers and agents and their super-
14 visors may view recordings from body-worn
15 cameras;

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

22 (D) establish—

23 (i) under what circumstances a re-
24 cording from a body-worn camera will be
25 released to the subject of the recording or

1 to another law enforcement or intelligence
2 agency or to the public; and

3 (ii) protocols for such release.

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

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

13 (7) Those policies shall ensure that training is
14 required and provided to all such officers and agents
15 who use body-worn cameras, as well as any per-
16 sonnel involved in the management, storage, or use
17 of body-worn camera data, and ensure that such
18 training is provided before the use of any body worn
19 camera by such an officer or agent or the involve-
20 ment of such agency personnel in the direct manage-
21 ment, storage, or use of body-worn camera data.

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

23 In developing the pilot program required by section
24 2(a) and the draft policies required by section 3, the Sec-
25 retary of Homeland Security shall—

1 (1) consult with—

2 (A) the Officer for Civil Rights and Civil
3 Liberties of the Department of Homeland Secu-
4 rity;

5 (B) the Chief Privacy Officer of the De-
6 partment of Homeland Security;

7 (C) the Director of the Office of Privacy
8 and Civil Liberties of the Department of Jus-
9 tice; and

10 (D) any labor organizations representing
11 employees of the Department of Homeland Se-
12 curity involved with the use of body-worn cam-
13 eras;

14 (2) provide an opportunity for public comment;
15 and

16 (3) produce a report, which shall be posted on
17 a publicly available Internet website of the Depart-
18 ment of Homeland Security, that—

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

21 (B) describes the final policies developed
22 under section 3 and the rationale for each such
23 policy.

1 **SEC. 5. IMPLEMENTATION PLAN.**

2 (a) IN GENERAL.—The Secretary of Homeland Secu-
3 rity shall submit to Congress—

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

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

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

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

14 (2) An identification of the following:

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

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

20 (C) The locations where body-worn cam-
21 eras will be used.

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

24 (E) A description of the cost-benefit anal-
25 ysis used to determine the number, placement,

1 and location of body-worn cameras specified in
2 the plan.

3 (c) SUBMISSION.—

4 (1) U.S. CUSTOMS AND BORDER PROTEC-
5 TION.—The Secretary shall submit the plan required
6 by subsection (a)(1) with respect to U.S. Customs
7 and Border Protection not later than one year after
8 the date of the enactment of this Act.

9 (2) U.S. IMMIGRATION AND CUSTOMS ENFORCE-
10 MENT.—The Secretary shall submit the plan re-
11 quired by subsection (a)(2) with respect to U.S. Im-
12 migration and Customs Enforcement not later than
13 21 months after the date of the enactment of this
14 Act.

15 **SEC. 6. DEPLOYMENT OF BODY-WORN CAMERAS.**

16 (a) IN GENERAL.—Not later than 180 days after the
17 date on which an implementation plan is submitted under
18 section 5, the Secretary of Homeland Security shall com-
19 mence implementation of the plan to ensure the use of
20 body-worn cameras by officers and agents described in
21 subsection (b) whose job duties involve or may reasonably
22 be expected to involve law enforcement contacts with the
23 public.

1 (b) OFFICERS AND AGENTS DESCRIBED.—Officers
2 and agents described in this subsection are officers and
3 agents of—

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

7 (2) Enforcement and Removal Operations or
8 Homeland Security Investigations of U.S. Immigra-
9 tion and Customs Enforcement.

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