

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Constitution Hills, Quezon City

SEVENTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 6250



Introduced by Hon. ANICETO "JOHN" D. BERTIZ, III

EXPLANATORY NOTE

As Representative of overseas Filipino workers (OFWs), I sympathize with the OFW mother of slain 17-year-old Grade 11 public school student Kian Loyd delos Santos.

If the Caloocan City police raid team had body cameras on them, we would have had clear video evidence now of how Kian died and see who were responsible.

I file this bill in honor of Kian and other minors who perished in police operations so that their untimely deaths will not be in vain.

This bill is adapted from and based on the model policy of the American Civil Liberties Union (ACLU) on the use of body cameras in law enforcement:
<https://www.aclu.org/other/model-act-regulating-use-wearable-body-cameras-law-enforcement>

The required use of body cams in Philippine law enforcement is long overdue. We need to provide Filipinos with ample, appropriate, and technology-updated law enforcement and protection of civil liberties.

Appropriate body cam use in law enforcement can protect the innocent and law enforcers and help mete out justice on those who choose to violate the law with impunity.

This bill provides initial funding of P200 million pesos for the acquisition of body cams for police units in the most populous cities and towns of the country.


ANICETO "JOHN" D. BERTIZ, III
ACTS OFW Party-list

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AN ACT
REQUIRING POLICE AND OTHER LAW ENFORCEMENT OFFICERS TO WEAR BODY
CAMERAS IN LAW ENFORCEMENT OPERATIONS AND SITUATIONS,
APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House of Representatives of the Philippines
in Congress assembled:

Section 1. **Short Title.** - This Act shall be known as the *"The Kian delos Santos
Body Cam Act of 2017"*

Section 2. **Declaration of Policy.** - It is the declared policy of the State that:

- 1) No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.
- 2) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.
- 3) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law. Any evidence obtained in violation of this or of the right of the people to be secure in their persons, houses, papers, and effects

against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding.

4) No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

5) No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

6) The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

7) The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

Section 3. ***Definition of Terms.*** As used in this Act:

(1) "Law enforcement officer" shall mean any person authorized by law to conduct searches and effectuate arrests and who is employed by the state, by a government instrumentality or officer with law enforcement authority, or by a local government

(2) "Subject of the video footage" shall mean any identifiable law enforcement officer or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body camera recording, and shall not include people who only incidentally appear on the recording.

(3) "Use of force" shall mean any action by a law enforcement officer that (A) results in death, injury, complaint of injury, or complaint of pain that persists beyond the use of a physical control hold, or (B) involves the use of a weapon, including a personal body weapon, chemical agent, impact weapon, extended range impact weapon, sonic weapon, sensory weapon, conducted energy device, or firearm, against a member of the public, or (C) involves any intentional pointing of a firearm at a member of the public.

(4) "Video footage" shall mean any images or audio recorded by a body camera.

Section 4. ***Use of Body Cameras in Law Enforcement Operations and Situations.*** Body cameras shall be used given the following circumstances:

(a) Only law enforcement officers with the authority to conduct searches and make arrests shall be permitted to wear a body camera. Such body cameras shall be worn in a location and manner that maximizes the camera's ability to capture video footage of the officer's activities.

(b) Both the video and audio recording functions of the body camera shall be activated whenever a law enforcement officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a law enforcement officer and a member of the public, except that when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity to do so. The body camera shall not be deactivated until the encounter has fully concluded and the law enforcement officer leaves the scene.

(c) A law enforcement officer who is wearing a body camera shall notify the subject(s) of the recording that they are being recorded by a body camera as close to the inception of the encounter as is reasonably possible.

(d) Notwithstanding the requirements of subsection (b):

(1) Prior to entering a private residence without a warrant or in non-exigent circumstances, a law enforcement officer shall ask the occupant if the occupant wants the officer to discontinue use of the officer's body camera. If the occupant responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera;

(2) When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, ask the apparent crime victim, if the apparent crime victim wants the officer to discontinue use of the officer's body camera. If the apparent crime victim responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera; and

(3) When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a law enforcement officer shall, as soon as practicable, ask the person seeking to

remain anonymous, if the person seeking to remain anonymous wants the officer to discontinue use of the officer's body camera. If the person seeking to remain anonymous responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera.

(e) All law enforcement offers to discontinue the use of a body camera made pursuant to subsection (d), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.

(f) Body cameras shall not be used surreptitiously.

(g) Body cameras shall not be used to gather intelligence information based on protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a law enforcement officer and a member of the public.

(h) Law enforcement officers shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, except when responding to an imminent threat to life or health.

(i) Body camera video footage shall be retained by the law enforcement agency that employs the officer whose camera captured the footage, or an authorized agent thereof, for six (6) months from the date it was recorded, after which time such footage shall be permanently deleted.

(1) During the six (6) month retention period, the following persons shall have the right to inspect the body camera footage:

(A) Any person who is a subject of body camera video footage, and/or their designated legal counsel;

(B) A parent of a minor subject of body camera video footage, and/or their designated legal counsel;

(C) The spouse, next of kin or legally authorized designee of a deceased subject of body camera video footage, and/or their designated legal counsel;

(D) A law enforcement officer whose body camera recorded the video footage, and/or their designated legal counsel, subject to the limitations and restrictions in this Act;

(E) The superior officer of a law enforcement officer whose body camera recorded the video footage, subject to the limitations and restrictions in this Act; and

(F) Any defense counsel who claims, pursuant to a written affidavit, to have a reasonable basis for believing a video may contain evidence that exculpates a client.

(2) The right to inspect subject to subsection (i)(1) shall not include the right to possess a copy of the body camera video footage, unless the release of the body camera footage is otherwise authorized by this Act or by another applicable law.

(3) When a body camera fails to capture some or all of the audio or video of an incident due to malfunction, displacement of camera, or any other cause, any audio or video footage that is captured shall be treated the same as any other body camera audio or video footage under the law.

(j) Notwithstanding the retention and deletion requirements in subsection (i):

(1) Video footage shall be automatically retained for no less than three (3) years if the video footage captures an interaction or event involving:

(A) Any use of force; or

(B) An encounter about which a complaint has been registered by a subject of the video footage.

(2) Body camera video footage shall also be retained for no less than three (3) years if a longer retention period is voluntarily requested by:

(A) The law enforcement officer whose body camera recorded the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;

(B) Any law enforcement officer who is a subject of the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;

(C) Any superior officer of a law enforcement officer whose body camera recorded the video footage or who is a subject of the video footage, if that superior officer reasonably asserts the video footage has evidentiary or exculpatory value;

(D) Any law enforcement officer, if the video footage is being retained solely and exclusively for police training purposes;

(E) Any member of the public who is a subject of the video footage;

(F) Any parent or legal guardian of a minor who is a subject of the video footage; or

(G) A deceased subject's spouse, next of kin, or legally authorized designee.

(k) To effectuate subsections (j)(2)(E), (j)(2)(F) and (j)(2)(G), any member of the public who is a subject of video footage, the parent or legal guardian of a minor who is a subject of the video footage, or a deceased subject's next of kin or legally authorized designee, shall be permitted to review the specific video footage in question in order to make a determination as to whether they will voluntarily request it be subjected to a three (3) year retention period.

(l) All video footage of an interaction or event captured by a body camera, if that interaction or event is identified with reasonable specificity and requested by a member of the public, shall be provided to the person or entity making the request in accordance with the procedures for requesting and providing government records set forth in the Executive Order on Freedom of Information and law on Freedom of Information that will take effect after this Act comes into legal force.

(1) Notwithstanding the public release requirements in subsection (l), the following categories of video footage shall not be released to the public in the absence of express written permission from the non-law enforcement subject(s) of the video footage:

(A) Video footage not subject to a minimum three (3) year retention period pursuant to subsection (j); and

(B) Video footage that is subject to a minimum three (3) year retention period solely and exclusively pursuant to subsection (j)(1)(B) or (j)(2).

(2) Notwithstanding any time periods established for acknowledging and responding to records requests via Freedom of Information law, executive order, or regulation, responses to requests for video footage that is subject to a minimum three (3) year retention period pursuant to subsection (j)(1)(A), where a subject of the video footage is recorded being killed, shot by a firearm, or grievously injured, shall be prioritized and the requested video footage shall be provided as expeditiously as possible, but in no circumstances later than five (5) days following receipt of the request.

(3) Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person, including the tone of the

person's voice, provided the redaction does not interfere with a viewer's ability to fully, completely, and accurately comprehend the events captured on the video footage.

(A) When redaction is performed on video footage pursuant to subsection (l)(3), an unedited, original version of the video footage shall be retained pursuant to the requirements of subsection (i) and (j).

(B) Except pursuant to the rules for the redaction of video footage set forth in subsection (l)(3) or where it is otherwise expressly authorized by this Act, no other editing or alteration of video footage, including a reduction of the video footage's resolution, shall be permitted.

(4) The provisions governing the production of body camera video footage to the public in this Act shall take precedence over all other state and local laws, rules, and regulations to the contrary.

(m) Body camera video footage may not be withheld from the public on the basis that it is an investigatory record or was compiled for law enforcement purposes where any person under investigation or whose conduct is under review is a police officer or other law enforcement employee and the video footage relates to that person's on-the-job conduct.

(n) Any video footage retained beyond six (6) months solely and exclusively pursuant to subsection (j)(2)(D) shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.

(o) No government agency or official, or law enforcement agency, officer, or official may publicly disclose, release, or share body camera video footage unless:

(1) Doing so is expressly authorized pursuant to this Act or another applicable law; or

(2) The video footage is subject to public release pursuant to subsection (l), and not exempted from public release pursuant to subsection (l)(1).

(p) No law enforcement officer shall review or receive an accounting of any body camera video footage that is subject to a minimum three (3) year retention period pursuant to subsection (j)(1) prior to completing any required initial reports, statements, and interviews regarding the recorded event, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.

(q) Video footage that is not subject to a minimum three (3) year retention period shall not be:

(1) Viewed by any superior officer of a law enforcement officer whose body camera recorded the footage absent a specific allegation of misconduct; or

(2) Subjected to facial recognition or any other form of automated analysis or analytics of any kind, unless:

(A) A judicial warrant providing authorization is obtained;

(B) The judicial warrant specifies the precise video recording to which the authorization applies; and

(C) The authorizing court finds there is probable cause to believe the video footage contains evidence that is relevant to an ongoing criminal investigation.

(r) Video footage shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.

(s) Where a law enforcement agency authorizes a third-party to act as its agent in maintaining body camera footage, the agent shall not be permitted to independently access, view, or alter any video footage, except to delete videos as required by law or agency retention policies.

(t) Should any law enforcement officer, employee, or agent fail to adhere to the recording or retention requirements contained in this chapter, intentionally interfere with a body camera's ability to accurately capture video footage, or otherwise manipulate the video footage captured by a body camera during or after its operation:

(1) Appropriate disciplinary action shall be taken against the individual officer, employee or agent;

(2) A rebuttable evidentiary presumption shall be adopted in favor of criminal defendants who reasonably assert that exculpatory evidence was destroyed or not captured; and

(3) A rebuttable evidentiary presumption shall be adopted on behalf of civil plaintiffs suing the government, a law enforcement agency and/or law enforcement officers for damages based on police misconduct who reasonably assert that evidence supporting their claim was destroyed or not captured.

(u) The disciplinary action requirement and rebuttable presumptions in subsection (t) may be overcome by contrary evidence or proof of exigent circumstances that made compliance impossible.

(v) Any body camera video footage recorded in contravention of this Act or any other applicable law may not be offered as evidence by any government entity, agency, department, prosecutorial office, or any other subdivision thereof in any criminal or civil action or proceeding against any member of the public.

(w) Any law enforcement policy or other guidance regarding body cameras, their use, or the video footage therefrom that is adopted by a national or local government entity or agency, including any police or law enforcement department, shall be made publicly available on that entity's or agency's website.

(x) Nothing in this chapter shall be read to contravene any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.

Section 5. ***Appropriations.*** The sum of Two Hundred Million Pesos (P200,000,000.00) is hereby appropriate to initial fund the acquisition of body cameras for use of the Philippine National Police in the one hundred most populous cities and municipalities of the country.

Section 6. ***Implementing Rules and Regulations.*** Within sixty (60) days from the effectivity of this Act, the Commission on Human Rights, jointly and in collaboration with Department of Interior and Local Government, the Department of Justice, and the Department of Science and Technology, promulgate the implementing rules and regulations of this Act.

Section 7. ***Separability.*** - If any provision or part of this Act is declared invalid or unconstitutional, the remaining parts or provisions not affected shall continue to be in full force and effect.

Section 8. ***Repealing Clause.*** - All laws, executive orders, and administrative orders or parts thereof inconsistent with any provision of this Act are hereby repealed or amended accordingly.

Section 9. ***Effectivity Clause.*** - This Act shall take effect fifteen (15) days after its publication in the online version of the *Official Gazette* or in two (2) newspapers of general circulation or with established internet website presence.

Approved.