PS COMMITTEE #1
September 28, 2015

MEMORANDUM

September 24, 2015

TO: Public Safety Committee

FROM: Susan J. Farag, Legislative Analyst

SUBJECT: **Briefing: Policy Body Cameras**

Today, the Committee will receive an update from the Montgomery County Police Department (MCPD) on the use of body cameras, including the impact of pending State policy on local law enforcement's use of body-worn cameras. The following are expected to brief the Committee:

Assistant Chief Luther Reynolds, MCPD
Captain Michael Wahl, Policy and Planning, MCPD
Brian Acken, Director, Information Management and Technology Division, MCPD

BACKGROUND

The Committee was last briefed in the spring on the Police Department's plans to implement a pilot body camera program. At that time, the Police Department indicated that there were many different legal and technical issues that needed to be address, some of which must be addressed at the State level. The Maryland General Assembly passed Senate Bill 482/House Bill 533 during the 2015 legislative session, which created a Commission tasked with studying and making recommendations regarding the best practices for the use of body cameras by a law enforcement officer. The Commission is required to report its findings to the Maryland Police Training Commission by October 1 (report attached at © 7-23). In turn, the Police Training Commission will develop and publish a policy for the issuance and use of body-worn cameras in the State, by January 1, 2016.

The report's recommended best practices include:

- Testing
- Malfunctions
- Mandatory Activation
- Prohibited Activation
- Ending a Recording
- Notification
- Confidentiality
- Required Storage and Maintenance of a Recording
- Review of Recordings
- Retention of Recordings
- Dissemination and Release
- Training and Discipline
- Discretionary Activation
- Written Policy Required
- Incident Reports
- Agency Polices

The Police Department will provide information on how these recommended best practices impact the Department's current pilot program, as well as its plans to move forward with full-scale body camera program later next year.

RECOMMENDED BEST PRACTICES

Release of Recordings to the Public: One significant aspect of the recommended best practices addresses the release of recordings to the public. At this time, the Commission recommends dissemination and release as required by the Maryland Public Information Act (MPIA). The Commission also recommends that the General Assembly amend the MPIA to include provisions specifically governing the release of body worn camera records, to include by not limited to, those "which depict victims of violent crimes and domestic abuse." This recommendation underscores the need to clarify State law to address the new use of this technology by governmental entities. ***The Committee should understand the privacy concerns related to body camera footage, including the privacy of witnesses, victims, and uninvolved bystanders.***

Other recommended best practices are generally in line with current MCPD practice under its pilot program. Much of the Commission's recommendations provide for flexibility in its best practices such as retention of recordings, training and discipline, and discretionary activation, but require local law enforcement agencies to explicitly state their policies in writing. ***The Committee may wish to ask if any of the Commission's recommendations conflict or otherwise constrain current MCPD policy. How will MCPD policy potentially change moving forward, if at all? What are the potential fiscal impacts of record release under the MPIA?***

BODY CAMERA PILOT PROGRAM

The Police Department implemented its pilot program this summer. There are approximately 80 officers with cameras. The Department's pilot program policy directive is attached at © 24-28 and addresses many of the same issues as recommended in the Commission's best practices. The Department will provide an update on its experience to date, as well as on its plans moving forward toward full implementation next year.

This packet includes the following:	©#
"Body-Worn Digital Recording Device and Electronic Control Device" (Ch. 129 of 2015)	1-6
Final Report, Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers (September 16, 2015)	7-23
MCPD Policy on Body Camera Pilot Program (June 8, 2015)	24-28

F:\Farag\Packets\Public Safety\Update - Police Body Cameras 09-28-15.doc

Chapter 129

(House Bill 533)

AN ACT concerning

~~Wiretapping and Electronic Surveillance~~ *Public Safety – Law Enforcement Officers* – Body–Worn Digital Recording Device and Electronic Control Device – ~~Exception~~

FOR the purpose of establishing that it is lawful under a certain provision of law for a law enforcement officer to intercept a certain oral communication with a certain device under certain circumstances; *requiring the Maryland Police Training Commission to develop and publish a certain policy; establishing the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers; providing for the composition, chair, and staffing of the Commission; prohibiting a member of the Commission from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Commission to study and make recommendations regarding the use of body cameras by a law enforcement officer; requiring the Commission to report its findings and recommendations to the Maryland Police Training Commission and the General Assembly on or before a certain date; providing that a certain jurisdiction is not subject to certain provisions of law for a certain period under certain circumstances; making this Act an emergency measure; providing for the termination of a certain provision of this Act;* defining certain terms; and generally relating to the interception of oral communications.

BY adding to
Article – Courts and Judicial Proceedings
Section 10–402(c)(11)
Annotated Code of Maryland
(2013 Replacement Volume and 2014 Supplement)

BY adding to
Article – Public Safety
Section 3–510
Annotated Code of Maryland
(2011 Replacement Volume and 2014 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

10–402.

1

(c) (11) (I) 1. IN THIS PARAGRAPH THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

2. "BODY–WORN DIGITAL RECORDING DEVICE" MEANS A DEVICE WORN ON THE PERSON OF A LAW ENFORCEMENT OFFICER THAT IS CAPABLE OF RECORDING VIDEO AND INTERCEPTING ORAL COMMUNICATIONS.

3. "ELECTRONIC CONTROL DEVICE" HAS THE MEANING STATED IN § 4–109 OF THE CRIMINAL LAW ARTICLE.

(II) IT IS LAWFUL UNDER THIS SUBTITLE FOR A LAW ENFORCEMENT OFFICER IN THE COURSE OF THE OFFICER'S REGULAR DUTY TO INTERCEPT AN ORAL COMMUNICATION WITH A BODY–WORN DIGITAL RECORDING DEVICE OR AN ELECTRONIC CONTROL DEVICE CAPABLE OF RECORDING VIDEO AND ORAL COMMUNICATIONS IF:

1. THE LAW ENFORCEMENT OFFICER IS IN UNIFORM~~,~~ *OR* PROMINENTLY DISPLAYING THE OFFICER'S BADGE OR OTHER INSIGNIA;

2. THE LAW ENFORCEMENT OFFICER IS ~~CONFORMING~~ *MAKING REASONABLE EFFORTS TO CONFORM* TO STANDARDS *IN ACCORDANCE WITH § 3–510 OF THE PUBLIC SAFETY ARTICLE* FOR THE USE OF BODY–WORN DIGITAL RECORDING DEVICES OR ELECTRONIC CONTROL DEVICES CAPABLE OF RECORDING VIDEO AND ORAL COMMUNICATIONS ~~ESTABLISHED BY THE POLICE TRAINING COMMISSION OR THE DEPARTMENT OF STATE POLICE~~;

3. THE LAW ENFORCEMENT OFFICER IS A PARTY TO THE ORAL COMMUNICATION;

~~2.~~ 4. ~~THE LAW ENFORCEMENT OFFICER, IF REASONABLE UNDER THE CIRCUMSTANCES, HAS BEEN IDENTIFIED AS A LAW ENFORCEMENT OFFICER TO THE OTHER PARTIES TO THE ORAL COMMUNICATION BEFORE THE ORAL INTERCEPTION~~ *LAW ENFORCEMENT NOTIFIES, AS SOON AS IS PRACTICABLE, THE INDIVIDUAL THAT THE INDIVIDUAL IS BEING RECORDED, UNLESS IT IS UNSAFE, IMPRACTICAL, OR IMPOSSIBLE TO DO SO*; AND

~~3.~~ 5. THE ORAL INTERCEPTION IS BEING MADE AS PART OF A VIDEOTAPE OR DIGITAL RECORDING.

Article – Public Safety

3–510.

2

ON OR BEFORE JANUARY 1, 2016, THE MARYLAND POLICE TRAINING COMMISSION SHALL DEVELOP AND PUBLISH ONLINE A POLICY FOR THE ISSUANCE AND USE OF A BODY-WORN CAMERA BY A LAW ENFORCEMENT OFFICER THAT ADDRESSES:

(1) THE TESTING OF BODY-WORN CAMERAS TO ENSURE ADEQUATE FUNCTIONING;

(2) THE PROCEDURE FOR THE LAW ENFORCEMENT OFFICER TO FOLLOW IF THE CAMERA FAILS TO PROPERLY OPERATE AT THE BEGINNING OF OR DURING THE LAW ENFORCEMENT OFFICER'S SHIFT;

(3) WHEN RECORDING IS MANDATORY;

(4) WHEN RECORDING IS PROHIBITED;

(5) WHEN RECORDING IS DISCRETIONARY;

(6) WHEN RECORDING MAY REQUIRE CONSENT OF A SUBJECT BEING RECORDED;

(7) WHEN A RECORDING MAY BE ENDED;

(8) PROVIDING NOTICE OF RECORDING;

(9) ACCESS TO AND CONFIDENTIALITY OF RECORDINGS;

(10) THE SECURE STORAGE OF DATA FROM A BODY-WORN CAMERA;

(11) REVIEW AND USE OF RECORDINGS;

(12) RETENTION OF RECORDINGS;

(13) DISSEMINATION AND RELEASE OF RECORDINGS;

(14) CONSEQUENCES FOR VIOLATIONS OF THE AGENCY'S BODY-WORN CAMERA POLICY;

(15) NOTIFICATION REQUIREMENTS WHEN ANOTHER INDIVIDUAL BECOMES A PARTY TO THE COMMUNICATION FOLLOWING THE INITIAL NOTIFICATION;

(16) SPECIFIC PROTECTIONS FOR INDIVIDUALS WHEN THERE IS AN EXPECTATION OF PRIVACY IN PRIVATE OR PUBLIC PLACES; AND

3

(17) ANY ADDITIONAL ISSUES DETERMINED TO BE RELEVANT IN THE IMPLEMENTATION AND USE OF BODY-WORN CAMERAS BY LAW ENFORCEMENT OFFICERS.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) There is a Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers.

(b) The Commission consists of the following members:

(1) one member of the Senate of Maryland, appointed by the President of the Senate;

(2) one member of the House of Delegates, appointed by the Speaker of the House;

(3) the Secretary of State Police or the Secretary's designee;

(4) the Attorney General or the Attorney General's designee;

(5) the Public Defender or the Public Defender's designee;

(6) one representative of the Governor's Office of Crime Control and Prevention;

(7) one representative of the Maryland Fraternal Order of Police;

(8) one representative from each of the five major local law enforcement agencies in the State, as determined and appointed by the Governor;

(9) one representative of a law enforcement agency that currently utilizes body cameras to record law enforcement officer activities, as appointed by the chair of the Commission;

(10) one representative of the American Civil Liberties Union;

(11) one representative of the National Association for the Advancement of Colored People;

(12) one representative of the Maryland Sheriff's Association;

(13) three representatives of the general public, appointed by the Governor; ~~*and*~~

4

(14) two experts in any field deemed relevant for the purpose of the Commission, as determined and appointed by the chair of the Commission;

(15) one representative of the Maryland Chiefs of Police Association; and

(16) one representative of CASA de Maryland.

(c) The Governor shall appoint a chair of the Commission from among its members.

(d) The Governor's Office of Crime Control and Prevention and the Department of State Police shall provide staff for the Commission.

(e) A member of the Commission:

(1) may not receive compensation as a member of the Commission; but

(2) is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(f) The Commission shall study and make recommendations regarding the best practices for the use of body cameras by a law enforcement officer.

(g) On or before October 1, 2015, the Commission shall report its findings and recommendations to the Maryland Police Training Commission and, in accordance with § 2–1246 of the State Government Article, the General Assembly.

SECTION 3. AND BE IT FURTHER ENACTED, That:

(1) A jurisdiction that commences a pilot program for the use of body–worn cameras or electronic control devices before the issuance of a policy established in accordance with § 3–510 of the Public Safety Article is not subject to § 10–402(c)(11)(ii)2 of the Courts and Judicial Proceedings Article for the duration of the pilot program.

(2) On the conclusion of a pilot program described in this section, a jurisdiction's fully implemented program shall conform to § 10–402(c)(11)(ii)2 of the Courts and Judicial Proceedings Article.

SECTION 4. AND BE IT FURTHER ENACTED, That a jurisdiction that has established a program to use body–worn cameras or electronic devices on or before the date this Act becomes effective is not subject to § 10–402(c)(11)(ii)2 of the Courts and Judicial Proceedings Article until a policy is issued in accordance with § 3–510 of the Public Safety Article.

SECTION ~~3~~ 5. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been

5

passed by a yea and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted. Section 2 of this Act shall remain effective through June 1, 2016, and, at the end of June 1, 2016, with no further action required by the General Assembly, Section 2 of this Act shall be abrogated and of no further force and effect.

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.~~

Approved by the Governor, May 12, 2015.

6

GOVERNOR'S OFFICE OF CRIME CONTROL & PREVENTION

300 E. Joppa Road, Suite 1105
Baltimore, Maryland 21286-3016
410-821-2828 / Toll-free: 1-877-687-9004
Fax: 410-321-3116
dlinfo_goccp@maryland.gov
goccp.maryland.gov

Larry Hogan
Governor

Boyd K. Rutherford
Lt. Governor

Christopher B. Shank
Executive Director

STATE OF MARYLAND

Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers
Frederic N. Smalkin, Chairman

September 16, 2015

The Honorable Thomas V. Mike Miller, President of the Maryland Senate
State House, H-107
Annapolis, MD 21401 – 1991

The Honorable Michael Erin Busch, Speaker of the Maryland House of Delegates
State House, H-101
Annapolis, MD 21401 – 1991

Colonel William M. Pallozzi, Chairman
Maryland Police Training Commission
6852 4th Street
Sykesville, MD 21784

Gentlemen:

I have the honor of forwarding hereby, in accordance with Section 2(g) of Chapters 128 and 129 (2015 Session), the Final Report of this Commission.

All of the Findings as to Best Practices were agreed upon by a majority of voting Commissioners after review of a substantial amount of written material and after a public meeting with discussion and debate over numerous alternatives. The Recommendation to the General Assembly is endorsed by a substantial majority of the Commissioners.

I would be remiss if I did not note the extraordinary staff assistance I have received as Chairman of this Commission from the Governor's Office of Crime Control and Prevention, especially from Donald Hogan, Esq., and Ms. Rachel Kesselman. I would be remiss if I were not also to note the diligence with which all the Commissioners approached and carried out their duties as such. The time was short and the issues were important, and both Staff and Commissioners cooperated in producing a final product that will, I trust, be of assistance to law enforcement agencies across the State as they formulate policies for the use of the new technology which we have studied.

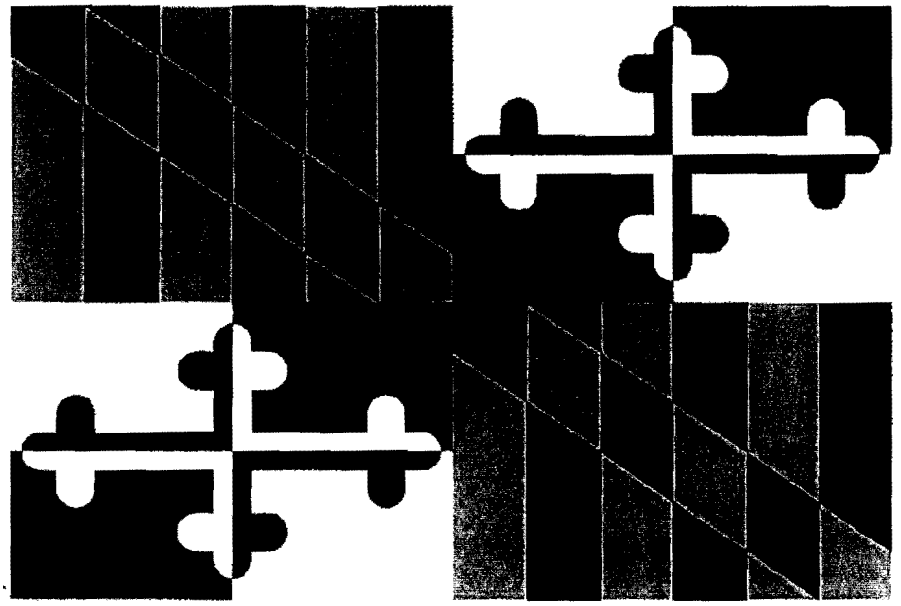
Very respectfully,

Original /s/

Frederick N. Smalkin

cc: Governor Larry Hogan
Encl.

Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers



Final Report, Including Findings as to Best Practices and a Recommendation to the General Assembly

September 16, 2015

8

Table of Contents

ACKNOWLEDGEMENTS 3

ROSTER OF COMMISSIONERS 4

BACKGROUND 5

Definition: Body Worn Camera 6

Initial Meeting 6

Decision Meeting 6

FINDINGS AS TO BEST PRACTICES 8

A. Testing 8
B. Malfunctions 8
C. Mandatory Activation 8
D. Prohibited Activation 8
E. Ending a Recording 8
F. Notification 8
G. Confidentiality 9
H. Required Storage and Maintenance of Recording 9
I. Review of Recordings 9
J. Retention of Recordings 10
K. Dissemination and Release 10
L. Training and Discipline 10
M. Discretionary Activation 10
N. Written Policy Required 10
O. Incident Reports 10
P. Agency BWC Policies 10

RECOMMENDATION TO THE GENERAL ASSEMBLY 11

SUBMISSION 12

APPENDIX (Meeting Minutes) 13

9

ACKNOWLEDGEMENTS

This Report of The *Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers* is the result of hard work, valuable input, and dedication from numerous individuals. State and local law enforcement representatives, legislators, community advocates, a victim's rights' representative, and state and local governmental representatives were exceptionally generous with their time and supportive feedback. Their participation in the Initial Meeting on August 4, 2015, and the Decision Meeting on September 1, 2015, as well as their feedback, suggestions, and recommendations were invaluable for the *Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers Final Report.* The completion, timeliness, and comprehensiveness of this Report would not have been possible without their active participation and support.

ROSTER OF COMMISSIONERS

The Commission was composed of 23 members, including state and local law enforcement representatives, two legislators, community advocates, a victim's rights' representative, and state and local governmental representatives, and a Chairman appointed by Governor Hogan.

Carlos F. Acosta, Esq.
Prince George's County Police Department

Russell Butler, Esq.
Maryland Crime Victims' Resource Center, Inc.

Mr. Vincent Canales, President
Maryland State Fraternal Order of Police

Paul DeWolfe, Jr., Esq.
Office of Public Defender

Chief John M. Fitzgerald
Village of Chevy Chase Police Department

Secretary David Garcia
Department of Information Technology

Phillip Hinkle, Esq.
Charles County Sheriff's Office

Chief Douglas Holland
Hyattsville Police Department

Zenita Hurley, Esq.
Office of Attorney General

Nicole Jassie, Esq.
CASA de Maryland

Colonel William Pallozzi
Maryland State Police

Mr. Edward Parker
Governor's Office of Crime Control & Prevention

Captain Ross R. Passman
Anne Arundel County Police Department

Victor Ramirez
Maryland State Senate

David Rocah, Esq.
ACLU of Maryland

Stephanie J. Robinson, Esq.
Mayor's Office of Public Safety

Frederic N. Smalkin
Chairman

J. Charles Smith, III, Esq.
Frederick County State's Attorney

Mr. Gerald Stansbury, President
Maryland Conference NAACP

Delegate Charles E. Sydnor
House of Delegates

Captain Michael Wahl
Montgomery County Police Department

Major Mark Warren
Baltimore County Police Department

Council President Bernard C. "Jack" Young
Baltimore City Council

BACKGROUND

Preface: Chapters 128 and 129 (2015), *Public Safety – Law Enforcement Officers – Body-Worn Digital Recording Device and Electronic Control Device*, established the **Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers (Commission)**. Under the provisions of these emergency Acts, the Commission was directed to study and make findings and recommendations as to best practices regarding the use of body cameras by law enforcement officers and to report its findings and recommendations to the Maryland Police Training Commission and the General Assembly by October 1, 2015.

Because the Commission was required to report its findings and recommendations within a very short period of time, several model policies were examined and compared to identify similarities and differences.[1] To assist the Commission in meeting its goals, various components of these model policies were analyzed and compiled into a "Working Document," with respect to the criteria established in the *Public Safety Article, § 3-510.*[2] That document, the model policies, and other background documents were distributed to Commissioners at the Initial Meeting, on August 4, 2015, for their consideration and in preparation for the Decision Meeting, scheduled for September 1, 2015. Other helpful materials were subsequently distributed to the Commissioners between the two meetings.

Prior to the Decision Meeting, which was duly held as a public meeting in Annapolis on September 1, 2015, some Commissioners submitted recommended amendments/alternatives to those in the "Working Document." These submissions were distributed to all Commissioners for their consideration. Additional amendments/alternatives were put forward by Commissioners orally or in writing during the Decision Meeting. After discussion of all alternatives, votes were taken as to each item, save one, to determine which of the alternative wordings put before the Commissioners would be adopted as recommended best practices. All choices at the September 1st meeting were by majority vote of those Commissioners present and voting. Consideration of one item was postponed for further study, and that item was subsequently settled upon by a majority of those Commissioners voting by email. A majority of the Commissioners voted to make a recommendation to the General Assembly regarding the Maryland Public Information Act (MPIA).

---

[1] Model policies were retrieved from the following: Spokane Police Department, Ferguson Police Department, IACP, New Jersey Division of Criminal Justice, New Orleans Police Department, ACLU, and Fraternal Order of Police (FOP).

[2] The statute reads in pertinent part: "On or before January 1, 2016, the Maryland Police Training Commission shall develop and publish online a policy for the issuance and use of body-worn camera a law enforcement officer that address: (1) the testing of body-worn cameras to ensure adequate functioning; (2) the procedure for the law enforcement officer to follow if the camera fails to properly operate at the beginning of or during the law enforcement officer's shift; (3) when recording is mandatory; (4) when recording is prohibited; (5) when recording is discretionary; (6) when recording may require consent of a subject being recorded; (7) when a recording may be ended; (8) providing notice of recording; (9) access to and confidentiality of recordings; (10) the secure storage of data from a body-worn camera; (11) review and use of recordings; (12) retention of recordings; (13) dissemination and release of recordings; (14) consequences for violations of the agency's body-worn camera policy; (15) notification requirements when another individual becomes a party to the communication following the initial notification; (16) specific protections for individuals when there is an expectation of privacy in private or public places; and (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers."

Definition: Body Worn Camera (BWC)

As referenced in Chapters 128 and 129 (2015), a "Body Worn Camera (BWC)" means:

1. A device worn on a person of a law enforcement officer that is capable of recording video and intercepting oral communications; or
2. A portable device designed as a weapon capable of injuring, immobilizing, or inflicting pain on an individual by the discharge of electrical current which is capable of recording video and oral communications.

Initial Meeting

The Initial Meeting was held on Tuesday, August 4, 2015, in the Joint Hearing Room, Department of Legislative Services Building, 90 State Circle, Annapolis, Maryland, 21401. This meeting was attended by a majority of the Commissioners, who received a binder with the following documents: (1) Chairman Welcome Letter; (2) Senate Bill 482 (Ch. 128) and Fiscal and Policy Note; (3) "Working Document;" and (4) Model Policies from the following: ACLU; Ferguson Police Department; Fraternal Police Department; IACP; New Jersey Division of Criminal Justice; New Orleans Police Department; and Spokane Police Department. These documents were distributed at the meeting, although most of the materials had been previously emailed to the Commissioners for their consideration when identifying best practices.

Because the adoption of best practices would serve as a one-size-fit all for the entire State of Maryland, Commissioners were invited to submit comments/suggestions via the Body Camera Commission email address (dlbodycamerasmembers_goccp@maryland.gov) so that every Commissioner could view each others' input. Once submitted, all comments/suggestions were gathered and compiled by the Governor's Office of Crime Control & Prevention (GOCCP). Comments and suggestions provided by the public were also circulated by GOCCP to the Commissioners for their review and consideration.

Decision Meeting

The Decision Meeting was duly held as a public meeting on Tuesday, September 1, 2015, in the Joint Hearing Room at the Department of Legislative Services Building. This meeting was attended by 22 Commissioners who received additional information pertaining to the Decision Meeting, to include: (1) Memorandum from Chairman, dated August 27, 2015; (2) Initial Meeting Minutes; (3) Montgomery County Police Chief J. Thomas Manger Letter of August 11, 2015; (4) Why Trust the National Body-Worn Camera Toolkit, U.S. Department of Justice; (5) BWC Toolkit, U.S. Department of Justice; (6) Mayor Stephanie Rawlings-Blake's Working Group on the Use and Implementation of Body-Worn Cameras, Final Recommendations, dated April 3, 2015; (7) Law Enforcement Commission Members Memorandum of August 25, 2015; (8) Law Enforcement Commission Members Joint Recommendations; (9) Victim Language for Consideration submitted by Commissioner Butler; (10) Comments on Working Document – Commissioner Jassie, MCASA; (11) letter from Ryan P. Harkins, Microsoft Corporation, dated August 25, 2015; (12) Comments on Working Document – Suzanne Sangree, Baltimore City Office of Law; (13) Office of Attorney General Comments on Body Camera

Commission dated August 26, 2015; (14) letter from Natasha Mehu, Maryland Association of Counties, dated August 28, 2015; and (15) Secretary of Information and Technology David A. Garcia BWC Recommendations. These documents were provided to Commissioners for their review and consideration.

In response to Chapters 128 and 129 (2015), *Public Safety – Law Enforcement Officers – Body-Worn Digital Recording Device and Electronic Control Device*, the Commission was tasked to study and make findings and recommendations as to best practices regarding the use of body cameras by law enforcement officers, with respect to the criteria established in the *Public Safety Article, § 3-510*. Using the "Working Document" as a guide to address the statutory criteria item-by-item, each item was called up *seriatim*. Once an item was called, Commissioners were invited to propose amendments/alternatives for each item, which was followed by discussion regarding such proposals. Once the discussion on a particular item reached its conclusion, Commissioners were asked to vote by individual voice poll as to the chosen alternative for the item, by number. Items listed within the "Working Document" were always listed as alternative #1 and all amendments/alternatives proposed by the "Law Enforcement Commission Members Joint Recommendations" were always listed as alternative #2. All subsequent proposals were listed as alternative #3, and so forth. All votes were recorded by staff from GOCCP. Those alternatives which received a majority of the votes cast were adopted and are set forth as the final best practices findings of the Commission.

FINDINGS AS TO BEST PRACTICES

A. **Testing**: Prior to beginning each shift, the assigned agency member shall perform a function test of the BWC in accordance with the manufacturer's recommendations and agency policy.

B. **Malfunctions**: Upon discovering a BWC malfunction, agency members shall promptly report the malfunction to a supervisor or other appropriate authority in accordance with agency policy regarding malfunctions.

C. **Mandatory Activation**. Subject to paragraph three of this recommendation below, officers shall begin recording with their BWCs in the below circumstances unless doing so would be unsafe, impossible, or impractical. If officers are unable to begin recording with the BWC due to circumstances making it unsafe, impossible, or impractical to do so, officers shall begin recording with the BWC at the first reasonable opportunity to do so.

1. At the initiation of a call for service or other activity that is investigative or enforcement in nature, or an encounter between the officer and a member of the public that is investigative or enforcement in nature; and
2. Any encounter that becomes confrontational after the initial contact.
3. When victims, witnesses, or other individuals wish to make a statement or share information, but refuse to do so while being recorded, or request that the camera be turned off, officers may turn off the BWC in order to obtain the statement or information. If the encounter begins when the BWC is not actively recording, the law enforcement officer may, but is not required to, temporarily activate the BWC for the sole purpose of documenting the person's refusal to be recorded.

D. **Prohibited Activation**. A law enforcement officer shall not activate a camera to record:

1. Agency personnel during routine administrative activities; or
2. Non-work related personal activity.

E. **Ending a Recording**. Once recording with a BWC has been initiated, officers shall not end the recording until:

1. The event or encounter has fully concluded; or
2. The officer leaves the scene and anticipates no further involvement in the event; or
3. A supervisor or agency policy has authorized that a recording may cease because the officer is no longer engaged in a related enforcement or investigative activity; or
4. When victims, witnesses, or other individuals wish to make a statement or share information, but refuse to do so while being recorded, or request that the camera be turned off, officers may turn off the BWC in order to obtain the statement or information.

F. **Notification**.

1. Except as otherwise exempted by law, a law enforcement officer shall notify, as soon as is practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so.

2. This notice provision is satisfied even if another individual becomes a party to the communication after the initial notice has been provided.

G. Confidentiality.

1. Leased or purchased BWC equipment and all recordings are the property of the law enforcement agency, and only BWC equipment approved by agency policy shall be worn.
2. Except as authorized by agency policy, copying, releasing, altering, erasing, or allowing unauthorized viewing of an agency video recording (or portion thereof) is prohibited and may subject an officer to disciplinary action.

H. Required Storage and Maintenance of Recording.

1. All files shall be securely saved and stored in accordance with agency policy.
2. Each agency's written policy shall include standards and procedures that address:
    a. Security and access control
    b. Creation of audit trails and access logs
3. Each agency shall retain an unedited original version of stored body worn camera footage, and should log anytime the footage is viewed, for what length of time and by whom, as well as any copying or editing.

I. Review of Recordings.

1. Agencies' written policies shall include when members may view BWC recordings. Reasons to view and use of recordings may include, but are not limited to:
    a. Report writing or preparation of other official documents;
    b. Court preparation;
    c. Review of prosecution evidence;
    d. Victim/witness/suspect statements;
    e. Crime scenes;
    f. Statement of charges;
    g. Administrative investigations;
    h. Training;
    i. Performance review;
    j. Incident critique;
    k. Maryland Public Information Act (MPIA) requests;
    l. Policy compliance; and
    m. Disclosures required by law.
2. Additional considerations:
    a. A BWC recording of a constitutionally protected activity may not be used to identify persons present at the activity who are not suspected of being engaged in illegal activity or in need of assistance.
    b. The stored video and audio data from a body worn camera may not:
        i. Be used to create a database or pool of mug shots;
        ii. Be used as fillers in photo arrays; or

iii. Be searched using facial or voice recognition software.

c. This subsection does not prohibit an agency from using recognition software to analyze the recording of a particular incident when a supervisory law enforcement officer has reason to believe that a specific suspect or person in need of assistance may be a subject of a particular recording.

J. Retention of Recordings. An agency's written policy shall include retention period(s) for BWC recordings.

K. Dissemination and Release. BWC video/audio recordings from body cameras will be released as required by the MPIA or other governing law.

L. Training and Discipline.

1. Agencies shall ensure that officers are trained on agency policy and the operation of the BWC equipment prior to use in the field. Training shall also include alternative methods for effective notification of recording to persons with special needs or limited English proficiency.
2. Agencies' written policies shall state that violations of the agency BWC policy may result in discipline.

M. Discretionary Activation. When not otherwise prohibited by law or agency policy, officers may begin recording with their BWC in circumstances when they determine that doing so would be beneficial to the public interest.

N. Written Policy Required. Each law enforcement agency shall develop and issue a written policy for using BWCs that is consistent with state law and regulations issued by the Maryland Police Training Commission prior to implementing a BWC program.

O. Incident Reports. Incident reports should note any use of BWC.

P. Agency BWC Policies. BWC policies of agencies shall be made available to the public.

RECOMMENDATION TO THE GENERAL ASSEMBLY

After discussion at an open meeting, and by a substantial majority, the Commission respectfully and strongly recommends to the General Assembly of Maryland that it consider forthwith amending the Maryland Public Information Act (Annotated Code of Maryland, General Provisions Article §§ 4-101 through 4-601) to incorporate provisions specifically governing the release of audio/video recordings captured by a law enforcement officer's body-worn camera, to include but not limited to, those recordings which depict victims of violent crimes and domestic abuse.

SUBMISSION

Respectfully submitted, this 16th day of September, 2015.

Frederic N. Smalkin
Chief Judge, United States District
Court, District of Maryland (Ret.)
Chairman

19

APPENDIX

20

Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers

Meeting Minutes

The Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers (Commission) was held on Tuesday, August 4, 2015 at the Department of Legislative Services Building, 90 State Circle, Annapolis, Maryland, 21401. The following Commissioners attended: Chief Judge Frederic N. Smalkin, U.S. District Court of Maryland (Retired), Chairman; Delegate Charles E. Sydnor, House of Delegates; Colonel William Pallozzi, Maryland State Police; Zenita Hurley, Esquire, Office of Attorney General; Paul DeWolfe, Jr., Esquire, Office of Public Defender; Mr. Edward Parker, Governor's Office of Crime Control and Prevention (GOCCP); Secretary David Garcia, Department of Information Technology; Mr. Vincent Canales, President, State Fraternal Order of Police; Carlos Acosta, Esquire, Prince George's County Police Department; Captain Michael Wahl, Montgomery County Police Department; Captain Ross R. Passman, Anne Arundel County Police Department; Major Mark Warren, Baltimore County Police Department; Chief Douglas Holland, Hyattsville Police Department; David Rocah, Esquire, ACLU of Maryland; Mr. Gerald Stansbury, President, Maryland Conference NAACP; Karen Kruger (for Phillip Hinkle, Esquire, Charles County Sheriff's Office), Maryland Sheriff's Association; Council President Bernard C. "Jack" Young, Baltimore City Council; J. Charles Smith, III, Esquire, Frederick County State's Attorney; Chief John M. Fitzgerald, Village of Chevy Chase Police Department; and Nicole Jassie, Esquire, CASA de Maryland.

Greetings & Introductions

Chairman Smalkin called the meeting to order at 10:14 a.m. and welcomed all attendees. He introduced himself as a retired judge for the U.S. District Court of Maryland and mentioned that he previously served as Chairman of the Maryland Governor's Emergency Management Advisory Council. He thanked the Commissioners for their attendance, and extended an additional thanks to three individuals who are with GOCCP: Edward Parker, Don Hogan, and Rachel Kesselman. The three individuals were asked to introduce themselves which was followed by an introduction of each Commissioner.

Introductions of Commissioners

Commissioners were asked to state their name and provide some background information with regards to their knowledge and expertise. After each member introduced his/herself, Chairman Smalkin expressed how pleased he was that everyone accepted this position and to work with one another. He further pointed out the broad range of expertise of the commission members.

Scope of the Commission's Mission

Chairman Smalkin stated the Commission's mission is not to recommend whether law enforcement agencies should be required to use body cameras. The mission is to supply Maryland Police Training Commission (MPTC) with "best practices." MPTC is charged with adopting regulations by December 31, 2015, that will be applicable to all police agencies in the State which use body cameras. The

Commission report will also be sent to the General Assembly for their consideration. The report is due by October 1, 2015.

Time for Study & Comment

Chairman Smalkin mentioned that every Commissioner received a binder (Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers) with ten different tabs. The binder was distributed at the meeting, although most of the materials had been previously emailed to each commissioner. The third tab provides the *working document* which was drafted using several model policies. Each policy was examined and viewed as a starting point for identifying "best practices."

Chairman Smalkin stated that this *working document* must serve as a one-size fit all. He asked Chief Fitzgerald how many municipalities are in Chevy Chase in which he replied eleven. Chairman Smalkin also mentioned that there are about 3,000 officers in Baltimore City so a one-size fit all is often difficult but needed – it should mirror Goldilocks where it is not too hot or too cold.

In elegant document drafting, Chairman Smalkin said, your job is to make everything possible but nothing inevitable. Although there may be some inevitable items, we want a reasonable document – this was the premise of the document.

Chairman Smalkin mentioned that comments/suggestions may be submitted to an email account (via GOCCP website) so every Commissioner can view each others' input – there will also be an email for use by the public to comment or submit information. He also stated that comments made by individual Commissioners will be gathered by GOCCP so all information will be combined. GOCCP will also circulate public comments.

In preparation for the next meeting, Chairman Smalkin briefly discussed three topics that will likely be discussed in greater detail on September 1, 2015: Public Information Act (PIA), notice, and records retention.

In reference to PIA (disclosure of data), public records fall under Maryland's PIA Law, and will also include body camera data. The Police Training Commission does not have authority to alter State statutes.

With regards to notice, there are three issues with this: (1) should police officers have to tell an individual that he/she is being recorded; (2) should the notice be contained in the Miranda Rights; and (3) concerns about non-English speaking persons. While some people may say a blinking light serves to indicate the use of a camera, this could also place police in danger. Because of this, it was thought to use constructive notice in which the camera would be "labeled" as such because most languages understand this term.

In reference to records retention, the issue is how long should data be retained? In Delaware, Troopers retain dashboard camera data for approximately 90 days; however, this is different than body cameras because they work in conjunction with a computer.

Chairman Smalkin asked Secretary Garcia how many terabytes are used in Baltimore City. Secretary Garcia replied by stating approximately 648 at any given time for CCTV. Chairman Smalkin stated that

the retention for this is very expensive and the cost per day for storage and the number of people needed to run the system would be tremendous. Because of this, practical and logistical considerations were drafted in the *working document* in which individual departments would have discretion based on what they can afford.

Plenary Meeting of Commission (September 1, 2015)

Chairman Smalkin stated that every Commissioner will need to take their binder home and bring it back for the next meeting. Due to the short turn around, Chairman Smalkin charged the Commissioners to review the *working document* provided in their binders. He stated that each item within the *working document* is sourced to a model policy and also cross referenced to the House Bill 533/Senate Bill 482 to serve as a roadmap.

Chairman Smalkin mentioned that a Plenary Meeting will occur on September 1, 2015 with the purpose of reviewing the *working document.* The commission will work through the various items and vote on each. If a proposed amendment is made, this will be voted on by the Commission in which a majority vote will rule. Because each item will be viewed by the Commission, one-by-one, Chairman Smalkin mentioned that the Plenary Meeting is scheduled for an entire day. The Plenary Meeting will be held on Tuesday, September 1, 2015 from 10:00 a.m. until 4:00 p.m. in the Joint Hearing Room of the Legislative Services Building in Annapolis, Maryland.

Results of September 1, 2015 Proceedings

Chairman Smalkin stated that after the Plenary Meeting the results will be prepared as the commission's report to MPTC and the General Assembly.

Comments & Suggestions

Chairman Smalkin asked the Commissioners if they had any questions, and invited individuals to make comments and/or suggestions.

Delegate Frank Conaway, Jr., representing the 40th District introduced himself, stating he was the first legislator to introduce the body camera bill. Delegate Barbara Roberson from Baltimore City, Chair of Black Caucus and a University of Baltimore graduate, also introduced herself. Chairman Smalkin welcomed them both.

Adjournment

In closing, Chairman Smalkin mentioned that two motions are not debatable: "motion to table" and "motion to adjourn." A motion was then make to adjourn which was followed by a second. The meeting adjourned at 11:01 a.m.

BODY WORN CAMERA SYSTEM PILOT PROGRAM

FC No.: 430
Date: 06-08-15

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

Contents:

I. Policy
II. Definitions
III. Legal Consideration
IV. Implementation
V. General Operational Procedures
VI. Activation of the Body Worn Camera System
VII. Prohibited Use
VIII. Reporting/Documentation
IX. Internal Access and Use of Recordings
X. Retention of Data/Records Requests
XI. CALEA Standards
XII. Proponent Unit

I. Policy

A. It is the policy of this department to utilize the Body-Worn Camera System (BWCS) for the purpose of documenting evidence and accurately recording, through video and audio, interactions that occur between officers and members of the public. All BWCS equipment and recordings are the property of the Montgomery County Police Department.

B. This BWCS policy will be in effect during the BWCS pilot program.

II. Definitions

A. Body-Worn Camera System (BWCS) – a camera system worn on the person of a uniformed law enforcement officer, or an officer prominently displaying the officer's badge or other insignia, that is capable of recording video and intercepting oral communications.

III. Legal Consideration

A. Pursuant to the "State Wiretap Act" under Sections 10-401, et seq. of the Courts and Judicial Proceedings Article of the Maryland Annotated Code, it is unlawful for any person to willfully intercept, endeavor to intercept, disclose, endeavor to disclose, use, or endeavor to use any oral communications. "Oral communication" is defined as any conversation or words spoken to or by any person in private conversation.

B. The State Wiretap Act makes it lawful for a law enforcement officer, in the course of the officer's regular duty, to intercept an oral communication with a body-worn digital recording device capable of recording video and oral communication if:

1. The law enforcement officer is in uniform or prominently displaying the officer's badge or other insignia;
2. The law enforcement officer is a party to the oral communication;
3. The law enforcement officer notifies, as soon as is practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so; and
4. The oral interception is being made as part of a videotape or digital recording.

C. The State Wiretap Act also makes it lawful for a law enforcement officer to intercept an oral communication where the officer is party to the communication and where all parties to the communication have given prior consent to the recording.

IV. Implementation

A. The BWCS pilot program will be instituted for designated uniformed officers for patrol and patrol related functions. The BWCS will accurately document events, actions, conditions and statements made during law enforcement related encounters and activities as authorized under this pilot program.

B. The Department will seek volunteers to be assigned a BWCS.

C. The Department will train participating officers to use the BWCS. Participating officers will use the BWCS in accordance with their training and this policy.

V. General Operational Procedures

A. Only officers trained in the proper use of the BWCS will use the system.

B. Prior to going into service at the beginning of each shift, officers will perform an inspection of the BWCS in accord with their training to ensure that the BWCS is operating properly. In all cases where there is a malfunction of the BWCS, the officer must report the malfunction to a supervisor in an expeditious and timely manner and as soon as practicable.

C. Officers will wear their BWCS in the manner consistent with their training at all times.

D. Officers are only authorized to use a BWCS while in uniform or prominently displaying the officers badge or other insignia.

E. Officers may, but will not be required to, use the BWCS while off duty. Any off duty use must be for law enforcement related encounters and activities as authorized under this pilot program policy.

F. Officers are not authorized to use a BWCS during secondary employment.

G. Officers will only wear a department issued BWCS.

VI. Activation of the Body Worn Camera System

A. Officers shall only activate the BWCS for legitimate law enforcement purposes.

B. Officers will notify individuals that they are being recorded as soon as practicable, unless it is unsafe, impractical, or impossible to do so.

C. The BWCS must be activated during all law enforcement related encounters and activities such as, but not limited to, the following examples;
1. All calls for service that are enforcement and investigation related.
2. All enforcement and investigation related citizen contacts.
3. Documentation of evidence that can be used in the prosecution of criminal and traffic offenses.
3. Arrests and transports.
4. Traffic stops.
5. Priority responses.
6. Vehicle and foot pursuits.
7. Suspicious situations.
8. All searches (persons, vehicles, structures, effects), except strip searches.
9. Interviews and interrogations.
10. Mental health interventions.
11. Any contact that becomes adversarial after the initial contact, in a situation that would not otherwise require recording.

D. Once the BWCS has been activated, officers will continue to record until the officer has left the scene and anticipates no further involvement in the event, the event has concluded, or a supervisor has authorized that a recording may cease. An event will be deemed "concluded" when:
1. All arrests have been made and arrestees have been transported and released from custody;
2. All witnesses and victims have been interviewed;
3. The continued recording will not serve to obtain additional evidence; and
4. No further law enforcement action is likely to occur.

E. Whenever the BWCS equipment is deactivated, the officer must record a brief verbal explanation for the deactivation prior to turning off the recording.

F. There may be instances in which officers are required to take immediate action which may not allow time to activate their BWCS equipment. In these exigent circumstances, the officer shall activate his or her BWCS as soon as it is safe to do so and document the reason for the delayed start in the incident report and/or as part of the recording. At no time should an officer jeopardize his or her own safety or the safety of another in order to activate their BWCS.

G. In situations when community members, witnesses, crime victims or other parties wish to share information related to criminal activity, but refuse to do so while being recorded, officers will have the discretion to turn off the BWCS during the interview. The preference is to record such statements; however, it is recognized that such persons may be hesitant to provide information while being recorded due to a fear of retaliation, privacy concerns or a feeling that the information is sensitive. In these situations, officers may decide that obtaining the information is more important than recording the conversation. In such situation, the officer must record a brief verbal explanation for the deactivation prior to turning off the recording.

H. The BWCS may be deactivated during conversations with officers or supervisors during information sharing sessions or discussing tactics and strategy.

26

I. Officers are required to obtain consent prior to recording an interview with a victim of a sex offense. Consent in these cases must be documented/recorded on camera.

VII. Prohibited Use

A. A BWCS will not be used to create recordings in locker rooms, dressing rooms, and restrooms unless part of a criminal investigation.

B. A BWCS will not be used to create recordings of strip searches.

C. A BWCS will not be used to surreptitiously record conversations of citizens and employees.

D. A BWCS will not be intentionally activated to record conversations of fellow officers without their knowledge and consent during administrative and non-enforcement related activities.

E. Officers will not intentionally record undercover officers or confidential informants without their consent.

VIII. Reporting/Documentation

A. Whenever a BWCS recording is made of an event that results in a police report, the reporting officer must note in the report that the recording exists, if known, and if known, the name(s) of every officer who generated a BWCS recording.

B. All BWCS recordings must be downloaded by the officer at the end of his or her assigned shift, unless an exception is authorized by a supervisor. The officer will be responsible for properly categorizing and tagging the recording at the time of the download.

C. In a critical incident (such as an officer involved shooting, in-custody death or other officer involved incident that results in serious injury or death), a supervisor may immediately take custody of the BWCS and, in such case, will be responsible for the download.

IX. Internal Access and Use of Recordings

A. Recordings may be reviewed:
1. By an officer to make sure the BWCS system is working properly.
2. By an officer to assist with the writing of a report or other official document.
3. By an officer to review/critique his or her own performance.
4. By an officer to review/prepare for court.
5. By a person authorized by the department for the purpose of reviewing evidence.
6. By a supervisor.
7. By a person authorized by the department participating in an official investigation such as a personnel complaint, administrative inquiry, or a criminal or civil investigation.
8. By authorized department personnel to assess possible training value.

B. An Officer required to respond to a citizen or administrative complaint shall have the ability to review any BWCS recording of the subject incident prior to making a statement.

C. A log will be kept to record access to all recordings. The log will include the:
1. name of the employee accessing the recording;
2. reason for access; and
3. date recording was accessed.

D. Employees shall not access, obtain, attempt to obtain, or copy/convert for their personal use any recording produced by a BWCS. Employees shall not upload BWCS recordings to public and/or social media websites.

X. Retention of Data/Records Requests

A. All original BWCS recordings are the property of the Montgomery County Police Department and shall be retained according to the department's retention schedule and consistent with state law and existing evidence protocols, unless a specific request is made to store them for a longer period of time by a person authorized by the Department.

B. All recordings will be destroyed after 120 days, unless the department deems it necessary to retain the recording for a longer period of time. A recording will be retained if an officer or the officer's representative provides notice to the Department within 120 days of the date of the recording of its potential use in an administrative hearing.

C. BWCS recordings that can be used in an investigation or captures a confrontational encounter between an officer and a member of the public will be deemed "evidentiary" and categorized and tagged according to the type of incident. Recordings that do not contain evidence or capture routine, non-confrontational encounters will be deemed "non-evidentiary".

D. Employees shall not attempt to delete, alter, reuse, modify or tamper with BWCS recordings in any manner.

E. The public release of BWCS recordings will be conducted in accordance with applicable public records laws.

F. Recordings will not be disseminated by the employee without receiving written permission under the authority of the Chief of Police.

XI. CALEA Standards: 41.3.8

XII. Proponent Unit: IMTD

J. Thomas Manger
Chief of Police

28