



The Commonwealth of Massachusetts Executive Office of Public Safety and Security

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LAW ENFORCEMENT BODY-WORN CAMERA TASK FORCE

Date: October 12, 2021

Time: 11:00AM-12:30PM

Place: Microsoft Teams (Virtual Meeting – access link posted publicly on mass.gov)

Members Present:

Asst. U/S Angela F.F. Davis (Chair)
Cpt. Steven McCarthy, State Police (Vice-Chair)
Alyssa Hackett, Esq., Committee for Public Counsel Services
Chief Thomas W. Fowler, Salisbury Chief of Police
DA Michael O'Keefe, Cape & Islands District Attorney
Emiliano Falcon-Morano, Esq., ACLU
Fred Taylor, NAACP
Grace Lee, Esq., People's United Bank
Hillary Farber, Esq., University of MA School of Law
Israul Marrero, Boston Police
Kaleigh Marshall, Chelmsford Police Department
Rose King, Esq., Committee for Public Counsel Services
Sheriff Patrick McDermott, Norfolk County Sheriff
Tim Mitchell, EOTSS
Stephen Carley, Esq., MA Attorney General's Office
Chief Steve Sargent, *pending*
Tim King

Members Not Present:

Carmelo Ayuso, State Police
Jose Lozano, Boston Police
Steven J. Brooks, Esq., Brooks & Crawley, LLP
Tom Ashe

Staff:

Suleyken Walker, EOPSS (Board Counsel)
Dan Nakamoto, EOPSS (Board Advisor)

Welcome

Meeting was called to order at 11:02 AM, Chair Davis welcomed everyone, attendance was taken and a quorum was declared.

Review minutes, vote

Motion was made and passed to accept the September 28, 2021 meeting minutes. Stephen Carley abstained.

Presentation (PowerPoint attached)

Jack McDevitt was introduced by Chair Davis as a guest presenter. Mr. McDevitt is a Northeastern University Professor of the Practice in Criminology and Criminal Justice and the Director of the Institute on Race and Justice and has conducted research on body worn cameras. He invited questions throughout the presentation.

Conversation and questions included:

- Steve Sargent asked if the personnel in the BPD pilot wore the camera during raids and asked what policies were in place regarding the frequency of wearing the camera. Jack McDevitt responded that the officers wore the camera at all times but could turn them off during sensitive interactions (i.e. when dealing with a confidential informant or in an undercover situation). There was a policy in place to inform officers when they could turn off the cameras.
 - Stephen Roche of Springfield informed Steve Sargent that the Springfield Police Department has 511 officers using cameras including undercover officers. He offered to share the Springfield Police Department policy with Steve Sargent.
- Fred Taylor asked what officers would need to use the camera and Israul Marrero asked for clarification about the plainclothes unit and undercover officers not wearing cameras. Jack McDevitt informed the members that it is up to the individual agency but that, generally speaking, the chief, command staff, and public relations personnel of an agency may not need a camera if they are not interacting with the public. In the BPD pilot, those on a private detail wore a camera. Undercover personnel infiltrating criminal organizations did not wear a camera for safety reasons.
 - Steve McCarthy informed the task force that every MSP officer will have a body camera by the end of the year. The policy for plainclothes units is that they wear a body camera when overtly acting as a police officer. Covert or administrative duties do not require body cameras.
 - Thomas Fowler reminded the task force that there are departments of all different sizes. His department has 16 personnel and everyone will be wearing a camera. He urged the task force to keep the size of departments in mind.
- Tim King asked if the wiretap statute (MGL c. 272, § 99) has any impact on body-worn camera notification considering that MA is a two-party consent state.
 - Jack McDevitt responded that the BPD pilot personnel had similar questions and they consulted with experts.

- Stephen Carley informed the task force that his professional opinion is that the wiretap statute would come into play in all situations in which it is not obvious that the officer is recording because that would be a one-party consent situation which is not permitted under the wiretap statute.
 - Steve Sargent asked Stephen Carley if this would also apply when in public or outside. Stephen Carley responded that in an open or public street there is no reasonable expectation of privacy but it gets tricky when an officer is on private property and is outside. The key is when the officer is not in an area that is open and public, the other parties in the situation need to be notified.
 - Thomas Fowler asked Stephen Carley if a uniformed officer with a black box on their chest and a blinking light is enough for notification because it is evident that the officer is recording. Stephen Carley responded that he is not aware of this issue being tested by the AGO or anywhere in MA but informed the chief that there is case law in the general sense. There was a challenge in a federal case that went to the First Circuit in which one of the challenges was that an officer tried to indicate to members of the public at Boston Commons that they could not record the officers and the First Circuit decided that the open and obvious recording of the officers was not a violation of the wiretap statute.
- Steve McCarthy expressed that the task force should recommend an amendment to the law to make it clear that using a body-worn camera is not the same as wiretapping.
- Fred Taylor asked for clarification regarding a potential delay when turning a camera off or on and the ability to go back 30 seconds when the camera is turned on. He expressed that incidents can happen during community policing and if the camera has to be turned on, would it be possible to see what happened leading up to the camera being activated. Jack McDevitt informed the task force that Boston had a 30-second buffer and most cameras can go 30-40 seconds before but the new cameras are getting broader buffers.
 - Stephen Roche added that the Springfield Police Department cameras have a 30-second buffer and when the camera light turns on, it announces that it is recording.
- Thomas Fowler stated that the reform bill charges the task force with giving recommendations for officers *not* viewing the video before drafting a report. He expressed that he is a proponent of having officers view the video before drafting the report.
 - Jack McDevitt added that there is also the issue of multiple footage and there is a question of whether the officer is prohibited from viewing their own footage or all footage related to the incident.
 - Stephen Roche agrees with Thomas Fowler and has written legislation to eliminate the prohibition. He stated that the Commissioner of Springfield agrees and that it is important to bear in mind that the officers cannot change the video

because once it is docketed it is saved. He stated that he will be sharing the proposed bill with the task force.

- Steve Sargent added that psychologists have not reached a consensus on the matter. Some psychologists say that the officers lose perspective if they view the video and some psychologists say that viewing the video brings everything back (they gain perspective). He expressed that this is one of the most important conversations regarding the bill and he will be doing research on the Oakland project.
- Michael O’Keefe expressed that he has been troubled by the sequence issue regarding when the video can be viewed and asked if anyone could articulate the rationale for not allowing the officer to look at the video before writing the report.
 - Steve Sargent responded that two police psychologists have influenced the conversation claiming perspective is lost or gained.
 - Michael O’Keefe stated that one does not preclude the other.
- Fred Taylor agreed with Steve Sargent regarding the review of the Oakland project. He stated that viewing the video may alter what the officer believes happened; viewing the video after drafting the report allows a supplemental report.
- Emiliano Falcon-Morano and Alyssa Hackett believe that it is important to not allow the officer to view the footage before drafting the police report so they do not unconsciously adapt their report to what can be seen on the video. Alyssa Hackett added that this issue affects the public’s trust. She added that Commonwealth v. Youseff prohibits unrestricted access.
- Tim King expressed that the union has had an issue with this portion of the legislation. He added that in any critical incident, there is an issue of sensory deprivation. He also stated that if the camera is considered evidence, any officer should be availed to all of the evidence prior to making any statement.
- Thomas Fowler asked if there is a preference for local or cloud storage and if Jack McDevitt has seen the use of regional storage because storage is the most expensive component. Jack McDevitt responded that he has seen the use of shared storage where agencies pool their resources to store footage. Some departments use local storage and then transition to cloud storage to cut down on costs but smaller agencies then run into technology issues.

Subcommittee update

- Subcommittee leaders were invited to share updates on their subcommittees. Some subcommittees have postponed meeting due to pending membership and awaiting the results of public input. Chair Davis reviewed the Public Input Subcommittee’s minutes of the 10/5/2021 meeting. The task force received a copy of the minutes as well as a draft of the Request for Public Input document which has the statement. Stephen Carley motioned to approve the Public Input Subcommittee’s proposed framework, Rose King seconded. The motion carried.
- Stephen Carley will be sending Chair Davis suggestions on public prompts.

- Hillary Farber asked what methods in the past have worked to publicize public input opportunities and listening sessions. Chair Davis responded that there is an expectation that members of the task force participate in getting the word out. Shared that members of the Task Force had suggested that elected officials may want to assist sharing the information as well with their constituencies. EOPSS will be looking into creating a public portal to access the listening sessions as well as using social media.

Public Input

Chair Davis asked if any members of the public would like to speak. Stephen Roche, legal advisor for the city of Springfield, MA encouraged the task force to review Springfield's BWC policy found online.

Adjournment

A motion was made and seconded to adjourn at 12:32 PM.