**PRIVACY AND RECORD KEEPING SUBCOMMITTE**

**LAW ENFORCEMENT BODY WORN CAMERA TASK FORCE**

Date: January 26, 2022

Time: 1:00 – 2:00 PM

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

*Subcommittee Members Present:*

Fred Taylor, National Association for the Advancement of Colored People

Hillary Farber, Esq., University of Massachusetts School of Law

Sgt. Tim King, Massachusetts Coalition of Police

Emiliano Falcon-Morano, Esq., American Civil Liberties Union

Chief Steve Sargent, Worcester Police Department

*Subcommittee Members Absent:*

Alyssa Hackett, Esq., Massachusetts Criminal Defense Lawyers

*Guests*:

Stephen Carley, Task Force Member, Office of the Attorney General

Tastery Reed, Office of Police Accountability and Transparency, Boston

Michael Toney, Office of Police Accountability and Transparency, Boston

Staff: Daniel Nakamoto, EOPSS (Board Advisor) & Suleyken Walker (Task Force Counsel)

1. **whether a police officer entering a home who did not receive consent to record would be violating the wiretap statute.**

This issue was discussed at the last meeting. Suleyken suggested that Stephen Carley, Task Force member, would be a good resource and he was able to join the meeting. Stephen indicated that this issue was not a wiretap problem as it would not be a secret recording or an interception under the statute. He cited case law, while not binding, where the use of audio and video was determined not to be an interception as the recording device was externally located and obvious. Case cited was Project Vertias Action Fund v. Conley. Such instances may be more of a violation of privacy than the wiretap statutes. There was extensive discussion among Subcommittee members. The conclusions of these discussions follow.

Scenario 1: When a police officer arrives at a private home for a law enforcement issue, the officer is required to provide notice that the incident and conversation is being recorded on video. The person’s consent or objection must be recorded. Regardless of whether the person consents, the recording continues to the conclusion of the incident. It was noted that search warrants should include language about the use of video recordings in the execution of the search. There was consensus on this issue.

Scenario 2: When a police officer arrives at a home for reasons unrelated to a call for service or other law enforcement issue, the officer is required to provide notice that the incident and conversation is being recorded on video. It was noted that police experience few or no incidents that do not have a law enforcement reason for entering a private home. The person’s consent or objection must be recorded. Under this circumstance, there was disagreement on what should happen if the civilian does not consent to the recording. Some members believe that the recording should continue until the conclusion of the incident. In the event that something happens, this would be protection for both the officer and the civilian. Limitations on future disclosures? Redaction could address some of the privacy concerns. Other members believe that as the police would not have a lawful purpose in such instances, the recording should be stopped. Should the sound be shut off? There was discussion and the members agreed that this was not an acceptable compromise.

1. Task Force Schedule

Daniel noted that the Subcommittee was falling behind schedule. Subcommittee drafts were slated for January 15th so the Drafting Subcommittee could complete its work by the of February for public comment in March. There was discussion. The schedule was developed to comply with the legislative timelines, not in consideration of the workload. The issues under review are too important not to fully discuss and develop appropriate recommendations. This would be a topic for discussion at the next Task Force meeting.

1. Standards to Ensure Secure Storage and Accessibility of BWC Recordings

There was not enough time remaining in the meeting to complete the review of the standards. In order to speed up with review process, it was agreed that Members would review the standards and submit comments to Daniel prior to the next meeting.

Next Meeting

The next meeting was scheduled for February 1st at 1:00 PM. Members agreed to review the Standards and submit comments to Daniel by Monday, January 31st.

The meeting was adjourned at 12:50 PM.