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November 15, 2019

The Honorable Ralph S. Northam
Governor of Virginia
Patrick Henry Building
1111 East Broad Street
Richmond, Virginia 23219

The Honorable Thomas K. Norment, Jr.
Co-Chair, Senate Finance Committee
Senate of Virginia
P.O. Box 6205
Williamsburg, Virginia 23188

The Honorable Emmett W. Hanger, Jr.
Co-Chair, Senate Finance Committee
Senate of Virginia
P.O. Box 2
Mount Solon, Virginia 22843

The Honorable S. Chris Jones
Chair, House Appropriations Committee
Virginia House of Delegates
P.O. Box 5059
Suffolk, Virginia 23435

Dear Governor Northam and Chairmen Norment, Hanger, and Jones:

Item 381.E. of the 2019 Appropriation Act requires the Executive Secretary of the Supreme Court of Virginia to submit the recommendations of the Body Worn Camera Workgroup convened by the Secretary of Public Safety and Homeland Security. The Workgroup was tasked with studying the workload impact, as well as other fiscal and policy impacts, on the Commonwealth's public safety and judicial agencies from the use of body worn cameras.

Please find enclosed the report of the Workgroup as prepared by the Secretary of Public Safety and Homeland Security.

Very Truly Yours,

A handwritten signature in black ink that reads "Karl R. Hade".

Karl R. Hade

KRH:jrp
Enclosure

cc: The Honorable Brian J. Moran, Secretary of Public Safety and Homeland Security

Report to the General Assembly:

Workgroup Study of the

Workload Impact of Body Worn Cameras on the

Public Safety and Judicial Agencies

Secretary of Public Safety and Homeland Security

November 15, 2019

Report of the Body Worn Camera Workgroup

This report of the Body Worn Camera Workgroup (Workgroup) was prepared in accordance with Item 381.E of the 2019 Appropriation Act (2019 Acts Ch. 854), which provides as follows:

- E.1. The Secretary of Public Safety and Homeland Security shall convene and expand the workgroup created pursuant to paragraph 73.U of this act. The expanded work group shall examine the workload impact, as well as other fiscal and policy impacts, on the Commonwealth's public safety and judicial agencies as a whole. The Executive Secretary of the Supreme Court shall submit the recommendations of the working group to the Chairmen of the House Appropriations and Senate Finance Committees by November 15, 2019. All state agencies and local subdivisions shall provide assistance as requested by the working group.
2. The expanded workgroup shall include representatives of the Supreme Court, the State Compensation Board, staff of the House Appropriations and Senate Finance Committees, Department of Criminal Justice Services, Commonwealth's Attorneys, local governments, and other stakeholders deemed appropriate by the Secretary.
3. Prior to the preparation of the November 15, 2019 report, each Commonwealth's Attorney's office in a locality that employs body worn cameras, in conjunction with the law enforcement agency using body worn cameras, shall report to the Compensation Board and the workgroup the following information on a quarterly basis, in a format prescribed by the Board:
 - a. The number of hours of body worn camera video footage received from their law enforcement agencies. The number of hours should additionally be broken down into corresponding categories of felonies, misdemeanors and traffic offenses. Any recorded event that results in charges for two or more of the above categories shall be reported in the most serious category.
 - b. The number of hours spent in the course of redacting videos; and
 - c. Any other data determined relevant and necessary by the workgroup for this analysis.

The Workgroup was tasked with studying the workload impact, as well as other fiscal and policy impacts, on the Commonwealth's public safety and judicial agencies from the use of body worn cameras. This report represents the continuation of the work began by the State Compensation Board pursuant to Item 73.U of the 2018 Appropriation Act (2018 Spec. Sess. I Acts Ch. 2). For a comprehensive review of the background that led to the initial study of body worn cameras by the State Compensation Board and the subsequent study by the Office of the Secretary of Public Safety and Homeland Security, see the State Compensation Board's 2018 report, *Workgroup Study of the Impact of Body Worn Cameras on Workload in Commonwealth's Attorneys' Offices*.

Work Group Activities

The membership of the Workgroup is attached as Appendix A and included representatives from the judicial system, law enforcement, local governments, Commonwealth's attorneys, defense attorneys, staff of the House Appropriations Committee and Senate Finance Committee, and other relevant stakeholders.

The Workgroup held three meetings during 2019. The minutes of the three meetings are attached as Appendices B, C, and D. The Workgroup's first meeting on July 29, 2019, included a review of the Virginia Compensation Board's 2018 report and focused primarily on the workload impact of body worn cameras on the operations of Commonwealth's attorneys' offices. The Workgroup discussion at this first meeting revealed that other stakeholders, have also experienced significant impacts by the use of body worn cameras in their jurisdictions and that these impacts have not been adequately explored. At the Workgroup's subsequent two meetings, held on September 4, 2019, and October 8, 2019, the Workgroup heard presentations from these other stakeholders, including presentations on the workload impact on defense attorneys, the costs and benefits of body worn cameras to law-enforcement agencies, and the impact on the circuit and district court clerks when body worn camera footage is used as evidence.

In addition, at the Workgroup's final meeting on October 4, 2019, the Virginia Compensation Board presented an overview of the workload data it has received from Commonwealth's attorneys' offices; however, the available data were limited and represented only one quarter's worth of information. The first quarter of workload data collected by Virginia Compensation Board from Commonwealth's attorneys' offices in accordance with the 2019 Appropriation Act are included as Appendix E.

Recommendations

At its final meeting on October 4, 2019, the Workgroup adopted the following four recommendations by consensus:

1. That the Workgroup established in the 2019 Appropriation Act be continued through November 2020 to allow for additional data to be gathered and reported from Commonwealth's attorneys' offices.
2. That the Workgroup should collect data from other stakeholders impacted by the use of body worn cameras to determine the fiscal and policy impacts on such stakeholders. These stakeholders would include public defenders and other defense attorneys, circuit and district court clerks, state and local law-enforcement agencies, and local governments.

3. That the current moratorium, located at Item 4-5.04.m of the 2019 Appropriation Act, on the use of general or nongeneral funds by a state agency or authority for the purchase or implementation of body worn cameras be continued until July 1, 2021.
4. That the current requirement, located at Item 70.K of the 2019 Appropriation Act, that a locality must fund one full-time equivalent entry level assistant Commonwealth's attorney for every 75 body worn cameras employed for use by law-enforcement officers in the locality, provided that the Commonwealth's attorney and locality may agree to a different funding formula, be continued until July 1, 2021.

Appendices

Appendix A: Workgroup Members

Appendix B: Minutes: Body Worn Camera Workgroup, July 29, 2019

Appendix C: Minutes: Body Worn Camera Workgroup, September 4, 2019

Appendix D: Minutes: Body Worn Camera Workgroup, October 8, 2019

**Appendix E: Summary of Information Received from Commonwealth's Attorneys
Regarding Locality Agreements for Funding to Support Workload
Resulting from Body Worn Camera Footage**

Appendix A

Workgroup Members

Janet Areson, Director of Policy Development, Virginia Municipal League
Katie Boyle, Director of Government Affairs, Virginia Association of Counties
The Honorable Donald Caldwell, Attorney for the Commonwealth, City of Roanoke
Humberto Cardounel, Chief, Henrico County Police Department
The Honorable W. Randolph Carter, Jr., Clerk, Suffolk Circuit Court
Jane Chambers, Director, Commonwealth's Attorneys' Services Council
Tom Cunningham, Lieutenant, Virginia State Police
Dorian Dalton, Office of the Executive Secretary of the Supreme Court of Virginia
Devika Davis, Esq.
Robyn de Socio, Executive Director, Virginia Compensation Board
Michael Doucette, Executive Director, Virginia Association of Commonwealth's Attorneys
Christian Goodwin, County Administrator, Louisa County
C. Matt Harris, Deputy County Administrator, Chesterfield County
The Honorable David Hines, Sheriff, Hanover County
Susan Hooks, Chief Deputy, Office of the Attorney for the Commonwealth, City of Virginia Beach
The Honorable Robert Humphreys, Judge, Court of Appeals of Virginia
Michael Jay, House Appropriation Committee
David Johnson, Executive Director, Virginia Indigent Defense Commission
Matt Johnson, Public Defender, City of Hampton
John Jones, Executive Director, Virginia Sheriffs' Association
Caitlin Kilpatrick, Senate Finance Committee
Charlotte Lee, Virginia Compensation Board
Eileen Longenecker, Office of the Executive Secretary of the Supreme Court of Virginia
James McCauley, Ethics Counsel, Virginia State Bar
Chris McDonald, Virginia Association of Counties
The Honorable Brian Moran, Secretary of Public Safety and Homeland Security
Tricia Muller, Administrator of Judicial Operations, Chesterfield County
Mark Pellett, Virginia Compensation Board
Jaime Reyes, Office of the Executive Secretary of the Supreme Court of Virginia
David Reynolds, House Appropriation Committee
The Honorable Brian Roberts, Sheriff, Brunswick County
Adam Rosatelli, Senate Finance Committee
Barbara Saunders, Assistant Ethics Counsel, Virginia State Bar
Dana Schrad, Executive Director, Virginia Association of Chiefs of Police
The Honorable Stephen Shannon, Judge, 19th Judicial Circuit
Erik Smith, Manager, Policy and Standards, Div. of Law Enforcement, Virginia Department of Criminal Justice Services
The Honorable Colin Stolle, Attorney for the Commonwealth, City of Virginia Beach
The Honorable Shannon Taylor, Attorney for the Commonwealth, Henrico County
The Honorable Richard Vaughan, Sheriff, Grayson County
The Honorable Jacqueline Ward Talevi, Judge, 23rd Judicial District
Jerri Wilson, Intergovernmental Affairs Manager, City of Newport News
Kristi Wright, Officer of the Executive Secretary of the Supreme Court of Virginia



APPENDIX B

Body Worn Camera Workgroup

July 29, 2019

1:00 PM

Patrick Henry Building – East Reading Room
Richmond, Virginia 23219

MINUTES

Members Present

Janet Areson, Director of Policy Development,
Virginia Municipal League
Katie Boyle, Director of Government Affairs,
Virginia Association of Counties
Humberto Cardounel, Chief, Henrico County
Police Department
Jane Chambers, Director, Commonwealth's
Attorneys' Services Council
Tom Cunningham, Lieutenant, Virginia State
Police
Dorian Dalton, Office of the Executive Secretary
of the Supreme Court of Virginia
Devika Davis, Esq.
Robyn de Socio, Executive Director, Virginia
Compensation Board
Michael Doucette, Executive Director, Virginia
Association of Commonwealth's
Attorneys
C. Matt Harris, Deputy County Administrator,
Chesterfield County
Susan Hooks, Chief Deputy, Office of the
Attorney for the Commonwealth, City
of Virginia Beach
The Honorable Robert Humphreys, Judge, Court
of Appeals of Virginia
Michael Jay, House Appropriation Committee
David Johnson, Executive Director, Virginia
Indigent Defense Commission
Matt Johnson, Public Defender, City of
Hampton
John Jones, Executive Director, Virginia
Sheriffs' Association
Caitlin Kilpatrick, Senate Finance Committee
Eileen Longenecker, Office of the Executive
Secretary of the Supreme Court of
Virginia
Chris McDonald, Virginia Association of
Counties

The Honorable Brian Moran, Secretary of Public
Safety and Homeland Security
Tricia Muller, Administrator of Judicial
Operations, Chesterfield County
Jaime Reyes, Office of the Executive Secretary
of the Supreme Court of Virginia
David Reynolds, House Appropriation
Committee
Adam Rosatelli, Senate Finance Committee
Barbara Saunders, Assistant Ethics Counsel,
Virginia State Bar
Dana Schrad, Executive Director, Virginia
Association of Chiefs of Police
The Honorable Colin Stolle, Attorney for the
Commonwealth, City of Virginia Beach
The Honorable Shannon Taylor, Attorney for the
Commonwealth, Henrico County
The Honorable Richard Vaughan, Sheriff,
Grayson County
Jerri Wilson, Intergovernmental Affairs
Manager, City of Newport News

Members Absent

The Honorable Donald Caldwell, Attorney for
the Commonwealth, City of Roanoke
The Honorable David Hines, Sheriff, Hanover
County
Mark Pellett, Virginia Compensation Board
The Honorable Brian Roberts, Sheriff,
Brunswick County
The Honorable Stephen Shannon, Judge, 19th
Judicial Circuit
Erik Smith, Manager, Law Enforcement, Policy
and Standards, Virginia Department of
Criminal Justice Services
The Honorable Jacqueline Ward Talevi, Judge,
23rd Judicial District
Kristi Wright, Officer of the Executive Secretary
of the Supreme Court of Virginia

The Body Worn Camera Workgroup (Workgroup) established by Item 381(E) of the 2019 Appropriations Act held its first meeting on July 29, 2019, in Richmond Virginia.

The Honorable Brian Moran, Secretary of Public Safety and Homeland Security, opened the meeting and welcomed the new members of the Workgroup and thanked the returning members of last year's Workgroup. Secretary Moran explained that the Workgroup is tasked with examining the workload impact, as well as other fiscal and policy impacts, of the use of body worn cameras (BWCs) on the Commonwealth's public safety and judicial agencies and that the members of the Workgroup were selected because of their perspectives on the deployment of body worn cameras (BWCs). Secretary Moran stated that the primary goal for this meeting was to get the members of the Workgroup up to speed on the actions of the previous Workgroup and begin discussing next steps.

Review of the Virginia Compensation Board's 2018 Report on Body Worn Cameras – Robyn de Socio, Executive Director, Virginia Compensation Board.

Secretary Moran introduced Robyn de Socio, Executive Director of the Virginia Compensation Board. The Compensation Board was tasked under the 2018 Appropriations Act with conducting a study of the workload impact of BWCs on Commonwealth's attorneys' offices. Ms. de Socio gave a review of the Compensation Board's 2018 Report: Workgroup Study of the Impact of Body Worn Cameras on Workload in Commonwealth's Attorneys' Offices. Ms. de Socio noted that the 2018 Workgroup was created because of the concerns raised by the Virginia Association of Commonwealth's Attorneys regarding BWCs, including whether all BWC footage needs to be reviewed by an attorney and who is responsible for funding the workload generated by the need to review such footage.

Ms. de Socio discussed at length the data reviewed by the 2018 Workgroup as well as the ethical duties of Commonwealth's attorneys related to reviewing and disclosing BWC footage in criminal cases. She noted that the 2018 Workgroup reviewed workload studies from around the country which indicated staffing ratios ranging from 1 to 50 (i.e., 1 attorney position for every 50 BWCs used) to 1 to 100. However, Ms. de Socio noted that the existing research related to the workload impact on prosecutors due to BWCs was limited.

Ms. de Socio then detailed the four recommendations contained in the 2018 Workgroup's report.

- The Commonwealth should fully fund the Compensation Board's approved staffing standards for Commonwealth's attorneys' offices.
- Localities should be required to fund a minimum staffing required of 1 attorney for every 75 BWCs deployed in a locality, unless the locality and the Commonwealth's attorney reach another agreement regarding staffing.
- The 2018 Workgroup should be continued through December 2020, to allow for more data to be collected from law-enforcement agencies and Commonwealth's attorneys' offices.
- Any planning for new or expanded implementation of BWCs by a law-enforcement agency should include the involvement of the Commonwealth's attorney and an analysis of the workload impact on the Commonwealth's attorney's office.

Ms. de Socio stated that the need for additional workload data was essential to conducting the study and noted that the 2019 Appropriations Act requires that all Commonwealth's attorneys' offices submit to the Compensation Board, on a quarterly basis, the following information: (i) the number of hours of BWC footage received from their law-enforcement agencies, broken down by class of offense (i.e., felonies, misdemeanors, or traffic offenses), (ii) the number of hours spent redacting BWC footage, and (iii) any

other data determined relevant by the Workgroup. Ms. de Socio noted that her office is in the process of collecting this data.

Update on Status of Virginia Criminal Discovery Rules – Dorian Dalton, Staff Attorney, Office of the Executive Secretary of the Supreme Court of Virginia

Secretary Moran introduced Dorian Dalton, Staff Attorney, Office of the Executive Secretary of the Supreme Court of Virginia. Ms. Dalton gave an update on the current status of the proposed changes to Virginia's rules governing discovery in criminal cases. Ms. Dalton noted that the discussion regarding the proposed criminal discovery rules has often been conflated with the discussion of the use of BWCs; however, she stressed that the proposed rules and the use of BWCs are separate issues. Ms. Dalton stated that the proposed discovery rules are not the source of the workload or financial impact on Commonwealth's attorneys' offices caused by the use of BWCs. The proposed rules do not alter the existing obligation of the Commonwealth's attorneys to review BWC footage; instead, this obligation arises from constitutional requirements as well as Virginia State Bar rules governing lawyer ethics. Ms. Dalton noted that the existing order on the criminal discovery rules provides they will take effect on July 1, 2020.

Overview of the Impact of Body Worn Cameras on the Operations and Workload of Commonwealth's Attorneys' Offices – Michael Jay, Fiscal Analyst, House Appropriations Committee

Secretary Moran introduced Michael Jay, Fiscal Analyst, House Appropriations Committee. Mr. Jay presented an updated version of a presentation made to the House Appropriations Committee on the impact of body worn cameras on the operations and workload of Commonwealth's attorneys' offices. Mr. Jay gathered the information in his presentation from Commonwealth's attorneys' offices and the Compensation Board. Mr. Jay explained that staffing standards for a Commonwealth's attorney's office are calculated based on the number of felony defendants and felony sentencing events handled by the office. Currently, the Compensation Board calculates a net need of 108 attorney positions and 57 support staff positions.

Mr. Jay noted that most of the 7,320 BWCs in use in the Commonwealth are deployed in larger communities. Seventy-nine Commonwealth's attorneys' offices reported that there are either no BWCs or less than 50 BWCs used in their jurisdiction. Mr. Jay stated that 40 percent of the BWCs in use were deployed in six localities: Chesterfield, Henrico, Newport News, Prince William, Richmond and Norfolk.

Mr. Jay was asked about how the proposed ratio of BWCs to attorneys was derived. Mr. Jay stated that the original 50 to 1 ratio was calculated. Mr. Jay explained that it was based on an analysis of arrest data from Virginia Beach when that jurisdiction began considering outfitting its police officers with BWCs. Based on the number of arrests made in 2014 by the Virginia Beach Police Department, it was estimated that there would have been over 14,000 hours of BWC footage that would need to be viewed by an attorney. Mr. Jay stated that the 50 to 1 ratio was calculated based on the additional number of attorneys it would take to view the estimated amount of BWC footage. Mr. Jay further noted that the 2019 Appropriations Act contained language requiring localities to provide a minimum of one attorney for every 75 BWCs deployed in a jurisdiction.

Workload Impact of Body Worn Cameras on the Henrico Commonwealth's Attorney's Office – The Honorable Shannon Taylor, Henrico County Commonwealth's Attorney

Secretary Moran introduced Shannon Taylor, Henrico Commonwealth's Attorney. Ms. Taylor discussed the workload impact of BWCs on her office. She provided data from the first five months of 2019 detailing the number of hours spent reviewing BWC footage as well as additional hours spent dealing with BWC footage. Ms. Taylor detailed how, beginning in 2016, she had the attorneys in her office start logging the type of cases they had and the time spent on the case. She noted that the policies as to when a BWC is turned on and how many officers respond to a scene vary jurisdiction by jurisdiction. Thus, a basic call for law-enforcement service could have several officers respond and the footage from all the officers' BWCs would need to be reviewed.

Closing Remarks

After Ms. Taylor's presentation, Secretary Moran led a discussion of possible agenda items for the next meeting, including the need to hear about the workload impact of BWCs of other stakeholders in the criminal justice system, including public defenders and court-appointed defense attorneys, law-enforcement agencies, circuit court clerks, and localities. The date of the next Workgroup meeting was announced as September 4, 2019, and the meeting adjourned.



APPENDIX C

Body Worn Camera Workgroup

September 4, 2019

1:00 PM

Patrick Henry Building – East Reading Room
Richmond, Virginia 23219

MINUTES

Members Present

Janet Areson, Director of Policy Development,
Virginia Municipal League
Katie Boyle, Director of Government Affairs,
Virginia Association of Counties
The Honorable W. Randolph Carter, Jr., Clerk,
Suffolk Circuit Court
Tom Cunningham, Lieutenant, Virginia State
Police
Devika Davis, Esq.
Robyn de Socio, Executive Director, Virginia
Compensation Board
Michael Doucette, Executive Director, Virginia
Association of Commonwealth's
Attorneys
Christian Goodwin, County Administrator,
Louisa County
Susan Hooks, Chief Deputy, Office of the
Attorney for the Commonwealth, City
of Virginia Beach
Michael Jay, House Appropriation Committee
David Johnson, Executive Director, Virginia
Indigent Defense Commission
Matt Johnson, Public Defender, City of
Hampton
John Jones, Executive Director, Virginia
Sheriffs' Association
Caitlin Kilpatrick, Senate Finance Committee
Charlotte Lee, Virginia Compensation Board
Eileen Longenecker, Office of the Executive
Secretary of the Supreme Court of
Virginia
James McCauley, Ethics Counsel, Virginia State
Bar
Chris McDonald, Virginia Association of
Counties
The Honorable Brian Moran, Secretary of Public
Safety and Homeland Security
Tricia Muller, Administrator of Judicial
Operations, Chesterfield County
Mark Pellett, Virginia Compensation Board

Jaime Reyes, Office of the Executive Secretary
of the Supreme Court of Virginia
David Reynolds, House Appropriation
Committee
Dana Schrad, Executive Director, Virginia
Association of Chiefs of Police
Erik Smith, Manager, Law Enforcement, Policy
and Standards, Virginia Department of
Criminal Justice Services
The Honorable Colin Stolle, Attorney for the
Commonwealth, City of Virginia Beach
The Honorable Shannon Taylor, Attorney for the
Commonwealth, Henrico County
The Honorable Jacqueline Ward Talevi, Judge,
23rd Judicial District
Jerri Wilson, Intergovernmental Affairs
Manager, City of Newport News
Kristi Wright, Officer of the Executive Secretary
of the Supreme Court of Virginia

Members Absent

The Honorable Donald Caldwell, Attorney for
the Commonwealth, City of Roanoke
Humberto Cardounel, Chief, Henrico County
Police Department
Jane Chambers, Director, Commonwealth's
Attorneys' Services Council
C. Matt Harris, Deputy County Administrator,
Chesterfield County
The Honorable David Hines, Sheriff, Hanover
County
The Honorable Robert Humphreys, Judge, Court
of Appeals of Virginia
The Honorable Brian Roberts, Sheriff,
Brunswick County
Adam Rosatelli, Senate Finance Committee
The Honorable Stephen Shannon, Judge, 19th
Judicial Circuit
The Honorable Richard Vaughan, Sheriff,
Grayson County

The Body Worn Camera Workgroup (workgroup) established by Item 381(E) of the 2019 Appropriation Act held its second meeting on September 4, 2019, in Richmond, Virginia.

The Honorable Brian Moran, Secretary of Public Safety and Homeland Security, opened the meeting and welcomed members of the Workgroup. Secretary Moran reiterated the importance of the Workgroup's task of examining the workload impact, as well as other fiscal and policy impacts, of the use of body worn cameras (BWCs). Secretary Moran recapped the first meeting, held on July 29, 2019, and noted the November 15, 2019, deadline for the Workgroup to report its recommendations. Secretary Moran stated that the Workgroup's next meeting is scheduled for October 8, 2019, and that BWC vendors would be invited to provide demonstrations of their products prior to this meeting.

The Workgroup adopted the minutes from the last meeting.

Impact of Body Worn Cameras on the Workload of Defense Attorneys – David Johnson, Executive Director, Virginia Indigent Defense Commission

Secretary Moran introduced David Johnson, Executive Director of the Virginia Indigent Defense Commission. Mr. Johnson detailed the number of public defenders and court-appointed defense attorneys in Virginia. He noted that there are 25 Public Defender offices, consisting of 335 attorneys, that serve 54 jurisdictions in the Commonwealth, and that there are over 1,500 certified court-appointed defense attorneys who handle cases when the Public Defender office has a conflict and all cases in jurisdictions without a Public Defender office.

Mr. Johnson informed the Workgroup that the Virginia Criminal Justice Conference (VCJC) recently conducted a study on the impact of BWCs on the workloads of public defenders and court-appointed attorneys, surveying almost 500 attorneys. The final study report will be presented at the VCJC conference on September 13, 2019. Mr. Johnson stated that the survey responses indicated that both public defenders and court-appointed attorneys strongly support the use of BWCs, but that such use significantly impacts their workloads. According to the study, 52 percent of the public defenders surveyed reported that they were spending up to an additional five hours per week reviewing BWC footage, 33 percent reported that they were spending up to an additional six to ten hours per week reviewing BWC footage, and 15 percent reported that they were spending more than an additional 10 hours per week reviewing BWC footage. In addition, 93 percent of public defenders and 85 percent of court-appointed attorneys surveyed reported difficulty in finding the time to review all BWC footage, and 73 percent of public defenders and 68 percent of court-appointed attorneys reported an inability to do other case-related work due to the need to review BWC footage. Finally, 36 percent of court-appointed attorneys reported that they are considering accepting fewer or no court-appointed work due to the workload associated with BWC footage.

Mr. Johnson emphasized the difficulty in retaining attorneys in public defender offices due to the workload demands and suggested increasing the compensation for public defenders and court-appointed attorneys as a way to help account for the increased workload resulting from BWC footage.

Body Worn Camera Footage and the Responsibilities of Circuit Court Clerks' Offices – The Honorable W. Randolph Carter, Clerk, Suffolk Circuit Court

Secretary Moran introduced the Honorable W. Randolph Carter, Clerk of the Suffolk Circuit Court. Mr. Carter spoke about the various electronic systems used by the courts (Case Imaging System (CIS), Judicial Imaging System (JIS), and Digital Appellate Records System (DARS)), for storing and transmitting court records. He noted that the records in all criminal cases are sent digitally to the Court of Appeals of Virginia with the exception of BWC footage and physical evidence. He discussed that there is a lack of space in these systems for BWC footage, necessitating storage by the clerks and the transmission of physical copies of the footage to the appellate courts. In response to a question regarding the use of BWC footage in the courtroom, Mr. Carter explained that in Suffolk the Commonwealth's attorneys provide their own equipment to show the footage, which eliminates any issue with the footage being in an incompatible format that other courts have experienced. Finally, Mr. Carter noted that storage of BWC footage can be an issue and that, while the Office of the Executive Secretary of the Supreme Court provides equipment to district courts, circuit courts are required to purchase their own equipment, including computer servers.

Use of Body Worn Cameras by Law Enforcement – Kelvin Wright, Chief, City of Chesapeake Police Department

Secretary Moran introduced Chief Kelvin Wright of the City of Chesapeake Police Department. Chief Wright explained that his department was an early adopter of BWCs, with the first BWCs being deployed in 2001 due to complaints against officers and the lack of in-car cameras. He discussed how all officers were equipped with BWCs as of 2010 and that officers are required to turn on their BWCs during all encounters with citizens and advise the citizens that they are being recorded. Chief Wright spoke about issues related to storage of BWC footage and noted that the department currently has 90 terabytes of storage for BWC footage and consistently requires more storage space. In response to a question about the current status of the department's BWC program, Chief Wright stated that, due to the working relationship with the Commonwealth's attorney's office, the program has been positively received and there is close to universal acceptance of BWCs by officers in the field.

Use of Body Worn Cameras by Charlottesville Police Department – Joe Hatter, Captain, City of Charlottesville Police Department

Secretary Moran introduced Captain Joe Hatter of the City of Charlottesville Police Department. Captain Hatter discussed how his department's biggest issue with BWCs is the cost of implementation. He stated that the department has 125 sworn officer positions and there are 48,000 citizens in his jurisdiction, but there is only one officer within the department to review all BWC footage, though the department has recently created a civilian position that will be responsible for the review of BWC footage. He spoke about the increase in time and manpower to review the footage as the department requires officers to record all encounters with the public. In response to a question about redacting information from BWC footage, Captain Hatter stated that footage of many of the department's encounters are routinely posted online.

Impact of Body Worn Cameras on Localities - Vivian McGettigan, Deputy County Administrator, York County, and David Nye, Chief, City of Fredericksburg Police Department

Secretary Moran introduced Vivian McGettigan, Deputy County Administrator for York County. Ms. McGettigan discussed the positive feedback her locality has received in relation to its BWC policy. She noted that the York County administration, including its Commonwealth's attorney and sheriff, strongly support the county's use of BWCs and have relayed that its citizens expect a level of respect and transparency that BWCs provide. Ms. McGettigan noted that the BWCs were implemented in 2014 with the proceeds from asset forfeiture being used to cover the costs. She stated that York County has 80 uniformed deputies, all of whom are equipped with BWCs, and the costs of BWCs to the county totaled \$169,000 for fiscal years 2015 through 2019, with the cost for 2019 being \$40,000. In addition to these costs, she noted that the Commonwealth's attorney's office added another attorney position in fiscal year 2018 to help assist with the increased workload demands associated with reviewing BWC footage. Ms. McGettigan explained that the benefits of BWCs, noting that the utilization of BWCs reduce misconceptions about deputies and promote positive encounters with citizens and have resulted in a reduction in cases going to trial due to available BWC footage.

Secretary Moran introduced Chief David Nye of the City of Fredericksburg Police Department. Chief Nye discussed the implementation of BWCs for his department in 2014 and noted that his department was the first in his area to do so. He showed the group multiple recent videos from BWC footage from his officers to demonstrate the uses of BWC in the field, and detailed how the use of BWC has been beneficial in his jurisdiction and that the feedback within the department to the use of BWCs has been positive.

Closing Remarks

After Chief Nye's presentation, Secretary Moran reiterated that the first round of data being reported to the Virginia Compensation Board by Commonwealth's attorneys regarding workloads should be available by the Workgroup's next meeting. Secretary Moran then led a discussion of topics for future Workgroup meetings, including the lack of public defenders in some jurisdictions, records retention requirements for BWC footage, and the requirements for disclosure of BWC footage under the Freedom of Information Act. Secretary Moran announced the next meeting of the Workgroup would be October 8, 2019, and the meeting adjourned.



APPENDIX D

Body Worn Camera Workgroup

October 8, 2019

1:00 PM

Patrick Henry Building – East Reading Room
Richmond, Virginia 23219

MINUTES (Draft)

Members Present

Katie Boyle, Director of Government Affairs, Virginia Association of Counties
Humberto Cardounel, Chief, Henrico County Police Department
Jane Chambers, Director, Commonwealth's Attorneys' Services Council
Tom Cunningham, Lieutenant, Virginia State Police
Devika Davis, Esq.
Robyn de Socio, Executive Director, Virginia Compensation Board
Christian Goodwin, County Administrator, Louisa County
C. Matt Harris, Deputy County Administrator, Chesterfield County
The Honorable David Hines, Sheriff, Hanover County
Susan Hooks, Chief Deputy, Office of the Attorney for the Commonwealth, City of Virginia Beach
The Honorable Robert Humphreys, Judge, Court of Appeals of Virginia
Michael Jay, House Appropriation Committee
David Johnson, Executive Director, Virginia Indigent Defense Commission
Matt Johnson, Public Defender, City of Hampton
Charlotte Lee, Virginia Compensation Board
Eileen Longenecker, Office of the Executive Secretary of the Supreme Court of Virginia
James McCauley, Ethics Counsel, Virginia State Bar
Chris McDonald, Virginia Association of Counties
The Honorable Brian Moran, Secretary of Public Safety and Homeland Security
Tricia Muller, Administrator of Judicial Operations, Chesterfield County

David Reynolds, House Appropriation Committee
Adam Rosatelli, Senate Finance Committee
Dana Schrad, Executive Director, Virginia Association of Chiefs of Police
Erik Smith, Manager, Law Enforcement, Policy and Standards, Virginia Department of Criminal Justice Services
The Honorable Colin Stolle, Attorney for the Commonwealth, City of Virginia Beach
The Honorable Shannon Taylor, Attorney for the Commonwealth, Henrico County
The Honorable Jacqueline Ward Talevi, Judge, 23rd Judicial District
Kristi Wright, Officer of the Executive Secretary of the Supreme Court of Virginia

Members Absent

Janet Areson, Director of Policy Development, Virginia Municipal League
The Honorable W. Randolph Carter, Jr., Clerk, Suffolk Circuit Court
The Honorable Donald Caldwell, Attorney for the Commonwealth, City of Roanoke
Michael Doucette, Executive Director, Virginia Association of Commonwealth's Attorneys
John Jones, Executive Director, Virginia Sheriffs' Association
Caitlin Kilpatrick, Senate Finance Committee
Mark Pellett, Virginia Compensation Board
Jaime Reyes, Office of the Executive Secretary of the Supreme Court of Virginia
The Honorable Brian Roberts, Sheriff, Brunswick County
The Honorable Stephen Shannon, Judge, 19th Judicial Circuit
The Honorable Richard Vaughan, Sheriff, Grayson County
Jerri Wilson, Intergovernmental Affairs Manager, City of Newport News

The Body Worn Camera Workgroup (Workgroup) established by Item 381(E) of the 2019 Appropriation Act held its third meeting on October 8, 2019, in Richmond, Virginia.

The Honorable Brian Moran, Secretary of Public Safety and Homeland Security, opened the meeting and welcomed members of the Workgroup. Secretary Moran noted that body worn camera (BWC) vendors, Axon and Motorola, had provided demonstrations of BWCs and related equipment prior to the meeting and he hoped the Workgroup members had the opportunity to visit the vendors. Secretary Moran stated that this would be the final Workgroup meeting for 2019, but that he expects the Workgroup will continue its study next year.

The Workgroup adopted the minutes from the September 4, 2019, meeting.

Body Worn Cameras and the Freedom of Information Act - Alan Gernhardt, Executive Director, Virginia Freedom of Information Advisory Council

Secretary Moran introduced Alan Gernhardt, Executive Director of the Virginia Freedom of Information Advisory Council. Mr. Gernhardt detailed the application of the Freedom of Information Act (FOIA) to law-enforcement records, including BWC videos, and when such videos are subject to release or may be withheld by a law-enforcement agency. In response to an example of an incidence of vandalism that occurred at a high school where the police were blocked by the school from releasing footage of the suspects because they were juveniles, Mr. Gernhardt explained that some records involving juveniles present complications due to laws outside the scope of FOIA.

Body Worn Cameras and Records Retention - Glenn Smith, Records Management Analyst, Library of Virginia

Secretary Moran introduced Glenn Smith, Records Management Analyst for the Library of Virginia. Mr. Smith spoke about the difference between FOIA and records retention. He explained that FOIA has specific rules for what is and what is not considered a record for FOIA purposes while the Virginia Public Records Act provides that an agency determines what is or is not an agency record for retention purposes. Mr. Smith noted that the records retention schedules are developed and updated by the Library of Virginia and that BWC footage is treated in the same manner as other records since the format of the record is not determinative of how long a record must be maintained. In response to a question about storage of BWC footage and the possibility that the format in which the record is stored becomes outdated, Mr. Smith stated that a record may be stored in any format but that the agency maintaining the record must have the ability to access the information in the record. Finally, as part of a discussion about a lack of clarity across the Commonwealth as to what records law enforcement must retain, Mr. Smith suggested that the affected agencies could seek to amend the relevant records retention schedules to attempt to provide clarity.

Body Worn Cameras and District Courts - Kristi Wright, Director of Legislative and Public Relations, Office of the Executive Secretary, Supreme Court of Virginia

Secretary Moran introduced Kristi Wright, Director of Legislative and Public Relations for the Office of the Executive Secretary of the Supreme Court of Virginia. As a result of a discussion at the Workgroup's prior meeting about the impact BWCs on the courts, the Office of the Executive Secretary conducted a survey of district court clerks' offices and Ms. Wright presented the results of this survey. Of the 83

offices where BWC footage is being used as evidence, 40 respondents indicated that cases are frequently or sometimes continued due to the need for additional time for the lawyers to review the BWC footage and 21 respondents indicated that cases were continued rarely or never due to BWC footage. In addition, 45 respondents indicated that the use of BWC footage frequently or sometimes served to lengthen a trial or hearing and 23 respondents indicated that trials or hearings were rarely or never lengthened due to BWC footage.

Use of Body Worn Cameras by Campus Police Departments - Dana Schrad, Executive Director, Virginia Association of Chiefs of Police

Secretary Moran introduced Dana Schrad, Executive Director of the Virginia Association of Chiefs of Police. Ms. Schrad conducted a survey of the use of BWCs by campus police departments and other campus safety agencies. Ms. Schrad reported that 14 of the 31 respondents indicated that their officers use BWCs and only one respondent indicated that the moratorium on the use of state funds for BWCs contained in the 2019 Appropriation Act impacted its use of BWCs. Ms. Schrad also noted that six agencies that do not currently use BWCs plan to have a BWC program in the near future while 16 agencies do not plan to implement a BWC program.

Virginia State Police Use of Body Worn Cameras - Lt. Col. Kirk Marlowe, Director, Bureau of Administrative and Support Services, Virginia State Police

Secretary Moran introduced Lt. Col. Kirk Marlowe, Director of the Virginia State Police's Bureau of Administrative and Support Services. Lt. Col. Marlowe provided a brief history of the Virginia State Police's use of recording devices, which began with video tapes from in-car cameras in the 1990s and transitioned to DVDs in the early 2000s. Lt. Col. Marlowe reviewed the current BWC equipment that has been acquired by the Virginia State Police and the obstacles that need to be resolved before all state troopers can be equipped with BWCs. He also noted that as a result of the moratorium on the use of state funds for BWCs in the 2018 Appropriation Act, the Virginia State Police have outfitted some troopers with wireless microphones. Finally, Lt. Col. Marlowe stressed the utility of BWCs, but noted that he felt that the developers did not take into consideration the costs to law-enforcement agencies associated with maintaining the equipment, storing BWC footage, and processing requests for access to BWC footage.

First Quarter Data on Body Worn Cameras - Robyn de Socio, Executive Director, Virginia Compensation Board

Secretary Moran introduced Robyn de Socio, Executive Director of the Virginia Compensation Board. Ms. de Socio provided an update on the data that has been collected by the Virginia Compensation Board since the Workgroup's first meeting. Ms. de Socio explained that the 2019 Appropriation Act requires all the Commonwealth's attorneys' offices to report certain information regarding the number of hours of BWC footage received from the law-enforcement agencies in their jurisdiction, as well as funding agreements between the Commonwealth's attorneys' offices and their localities. Ms. de Socio reported that only 86 localities have reported these funding agreements to the Compensation Board to date. Ms. de Socio noted that despite the fact that not all localities have responded, the Compensation Board now has a better understanding of the process for reporting data and what needs to be requested from localities and Commonwealth's attorneys' offices and that the Compensation Board is working to improve the reporting process.

Recommendations

After Ms. de Socio's presentation, Secretary Moran led the Workgroup in a discussion of possible recommendations to include in the Workgroup's report due November 15, 2019. The Workgroup adopted the following four recommendations by consensus:

1. That the Workgroup established in the 2019 Appropriation Act be continued through November 2020 to allow for additional data to be gathered and reported from Commonwealth's attorneys' offices.
2. That the Workgroup should collect data from other stakeholders impacted by the use of BWCs to determine the fiscal and policy impacts on such stakeholders. These stakeholders would include public defenders and other defense attorneys, circuit and district court clerks, state and local law-enforcement agencies, and local governments.
3. That the current moratorium, located at Item 70.K of the 2019 Appropriation Act, on the use of general or nongeneral funds by a state agency or authority for the purchase or implementation of BWCs be continued until July 1, 2021.
4. That the current requirement, located at Item 4-5.04.m of the 2019 Appropriation Act, that a locality must fund one full-time equivalent entry level assistant Commonwealth's attorney for every 75 BWCs employed for use by law-enforcement officers in the locality, provided that the Commonwealth's attorney and locality may agree to a different funding formula, be continued until July 1, 2021.

Closing Remarks

After adoption of the recommendations, Secretary Moran thanked the members of the Workgroup for their participation and stated that he was looking forward to continuing the study in 2020. The meeting was then adjourned.

APPENDIX E

Summary of Information Received from Commonwealth's Attorneys regarding Locality Agreements for Funding to Support Workload Resulting from Body Worn Camera Footage

- Of 120 Commonwealth's Attorneys' offices, 87 (73%), are in localities where law enforcement agencies have implemented the use of Body Worn Cameras (BWCs) in FY2020; 23 (19%) are in localities without BWCs; and 10 offices (8%) have provided no information regarding the implementation of BWCs in their localities.
- Of the 87 Commonwealth's Attorneys' offices in localities with BWCs, 63 offices (72.4%) receive some local funding for staff and/or non-personal services funding to support workload from BWCs; 18 offices (20.7%), have agreed to receive no funding from their locality to support BWCs; and 6 offices (6.9%) have no signed agreement to receive funding from their locality to support BWCs.
- There are approximately 8,782 BWCs deployed among all law enforcement agencies within the 87 localities:
 - Approximately 3,729 of these BWCs (42%) are deployed in localities with populations of **less than** 100k and approximately 5,053 of these BWCs (58%) are deployed in localities with populations of **more than** 100k;
 - Approximately 6,110 of these BWCs (70%) are deployed in localities in the Central, Northern, and Hampton Roads regions.
- 64 full-time Assistant Commonwealth's Attorneys and 27 full-time paralegal and/or administrative positions have been funded locally to support the workload resulting from the implementation of BWCs, at an annualized cost of approximately \$6.5 million:
 - 32% of funding is reported in offices serving localities with populations of **less than** 100k and 64% of funding is reported in offices serving localities with populations of **more than** 100k;
 - 82% of locally funded full-time positions allocated to support workload resulting from BWCs are allocated in the Central, Northern, and Hampton Roads regions and 18% are allocated in all other regions.
- 21 of 87 offices (24%) have been allocated full-time Assistant Commonwealth's Attorney positions that meet and/or exceed the default ratio of 1 Assistant Commonwealth's Attorney position per every 75 BWCs deployed in their locality:
 - 18 of these offices (86%) serve locality populations of **less than** 100k and 3 offices (14%) serve locality populations of **more than** 100k;
 - 11 of 21 offices (52%) are located in the Central, Northern, and Hampton Roads regions and 48% of these offices with locality funding meeting the 1:75 ratio are located in all other regions of the Commonwealth.
- 9 part-time Assistant Commonwealth's Attorneys and 6 part-time paralegal and/or administrative positions have been funded locally to support the workload resulting from the implementation of BWCs at an annualized cost of approximately \$388k:
 - 92% of funding is reported in offices serving localities with populations of **less than** 100k and 8% of funding is reported in offices serving localities with populations of **more than** 100k;
 - 48% of locally funded part-time positions allocated to support workload resulting from BWCs are allocated in the Central, Northern, and Hampton Roads regions and 52% are allocated in all other regions.

- Other funding provided by localities to Commonwealth's Attorneys' offices where law enforcement agencies have implemented the use of Body Worn Cameras (BWCs) in FY2020 totals approximately \$666k, and includes funding for such items as added local salary supplements for existing positions, lump sum funding for temporary or part-time/wage personnel, funding for additional equipment, office expenses, or employee training, etc.:
 - 68% of other, non-position, funding is reported in offices serving localities with populations of **less than** 100k, and 32% of this type of funding is reported in offices serving localities with populations of **more than** 100k;
 - 54% of other funding is allocated in the Central, Northern, and Hampton Roads regions and 46% is allocated in all other regions.

Summary of Data Received from Commonwealth's Attorneys regarding Body Worn Camera Footage and Case Types (July through September, 2019)

- 37 offices (43% of Commonwealth's Attorneys' offices where Body Worn Cameras [BWCs] have been implemented among law enforcement agencies within their locality) have provided some FY2020 1st quarter BWC footage data and 20 provided a breakdown of case types between felony, misdemeanor, and traffic cases.
- Among those that provided a breakdown, the average number of hours of BWC footage that was received and processed per felony case was 1.92 hours:
 - The highest average number of hours reported for a single office was 6.43 hours per felony case.
- Among those that provided a breakdown, the average number of hours of BWC footage that was received and processed per misdemeanor case was 0.93 hours:
 - The highest average number of hours reported for a single office was 3.73 hours per misdemeanor case.
- Among those that provided a breakdown, the average number of hours of BWC footage that was received and processed per traffic case was 0.87 hours:
 - The highest average number of hours reported for a single office was 3.00 hours per traffic case.