

Secure Commonwealth Panel Law Enforcement Technology Sub-Panel

Senate Room 3, The Capitol, Richmond, Virginia
April 21, 2015

DRAFT MEETING MINUTES

Members Present:

Hassan Aden, International Association of Chiefs of Police
Arthur Townsend, Jr., Lunenburg County
Carmen Taylor, National Association of the Advancement of Colored People
Lt. Col. Barry Barnard, Policy Executive Research Forum
Aryn Frazier, University of Virginia, Black Student Alliance
Hudaidah Bhimdi Ahmed, Virginia Asian Advisory Board
Dana Schrad, Virginia Association of Chiefs of Police
Nancy Parr, Virginia Association of Commonwealth's Attorneys
Bill Robertson, Virginia Association of Counties
Lynda O'Connell, Virginia Center for Policing Innovation
Vivian Sanchez-Jones, Virginia Latino Advisory Board
Kimball Payne, Virginia Municipal League
Jay Speer, Virginia Poverty Law Center
Col. Steve Flaherty, Virginia State Police
Brian Moran, Secretary of Public Safety and Homeland Security
Tonya Vincent, Deputy Secretary of Public Safety and Homeland Security
Senator John Watkins
Deputy Chief John Bell, Virginia Beach Police Department
Wendell Fuller, 100 Black Men of Greater Richmond
Linda Bryant, Attorney General's Office
Chief Michael Goldsmith, Norfolk Police Department
Chief Douglas Middleton, Henrico Police Department
Fran Ecker, Department of Criminal Justice Services
Banci Tewolde, Department of Planning and Budget
Kevin Carroll, Fraternal Order of Police
David Johnson, Indigent Defense Commission
D.J. Smith, Virginia State Police Association
Dave Roberts, International Association of Chiefs of Police

Members Not Present:

Chief Alfred Durham, Richmond Police Department
John Jones, Virginia Sheriff's Association
Karen Jackson, Secretary of Technology

Secretary of Public Safety and Homeland Security convened the meeting at 10:05 a.m. Secretary Moran, co-chair Senator John Watkins and co-chair Deputy Chief John Bell (Virginia Beach) provided introductory remarks. Members of the sub-panel introduced themselves.

Context Setting and Overview

The following individuals gave presentations to the sub-panel members. A summary of their presentations and ensuing comments from members are described below.

Tonya Vincent, Deputy Secretary of Public Safety and Homeland Security

Legislative Update (see Attachment A). Deputy Secretary Vincent presented information about legislation considered by the General Assembly during the 2015 session.

David Roberts, International Association of Chiefs of Police

Technology Representative (see Attachment B and C). Mr. Roberts provided information on IACP efforts to help law enforcement deal with technology issues by creating a model body-worn camera policy. The policy is advisory only and does not specify a timeline for data retention. It includes universal factors and objectives, such as ownership, notice to the public, training, accessibility, release and redaction, who and when body-worn cameras are to be worn, etc. In January 2014, the IACP published a concept paper about body-worn cameras. There is no database tracking which law enforcement agencies utilize body-worn cameras.

Chief Kelvin Wright, Chesapeake Police Department

Local Perspective. Chief Wright shared information about his department's experience with body-worn cameras and similar technology such as in-car dash cameras and audio recorders. In 2010/11 the department experimented with body-worn cameras which officers liked. They bought 125 cameras for \$231,000. The department is now up to 250 cameras on the street for uniformed and K9 officers. In the past four years, the department has spent \$548,000 for body-worn cameras, mostly for storage and additional personnel to manage the data.

Some lessons learned include not considering the impact on the courts and prosecutor's offices, which needed additional resources to make sure the recordings could be reviewed by prosecutors, shared with defense attorneys and played in court. The development of policies is important and should include meetings with stakeholders; they met with the NAACP. Retention and recording policies are important; they learned that local hospitals and mental health facilities will not permit recording in their facilities. Storage and volume of data needs to be considered; the department has over 5 terabytes of data which is stored for 13 months. The department did not anticipate an increase in the number of FOIA requests. Overall the use of body-worn cameras has been positive on officer actions and attitudes. Chief Wright reported a 40% decrease in the number of citizen complaints against officers in the past four years. They also invited citizens who make complaints to view the video and some decide not to come and view it.

Subpanel Questions:

Why do you keep the data for 13 months? This is a recommendation from the Commonwealth's Attorney. If there is an active case, the data is kept longer.

What is the impact on your Commonwealth's Attorney, Nancy Parr. Ms. Parr indicated there was not a huge impact but that her 24 assistant prosecutors spend many hours a week watching the videos. She needs an extra one to two attorneys to handle the volume. The acquisition of a new case management system will help.

Is the department able to comply with FOIA's 5 day response rule? It is difficult to retrieve data within five days and they often ask for additional time. The department hired an extra person to help manage the data.

Do the cameras help with crowd control measures? Essentially yes because today's citizens have recording capabilities with their cell phones and having a complete recording from the officers' perspectives is important to understanding and assessing how events transpired from beginning to the end.

Do the cameras have timed buffer? Yes, there is a 30 second buffer so that when an officer activates the camera, it automatically saves the previous 30 seconds, without audio. It should be noted not all situations officers encounter allow time to activate cameras, especially in high-stress situations; therefore it is important to manage expectations when assessing, after the fact, when and how officers activated cameras. Expectations about cameras should not detract from normal investigative methods.

Are the cameras battery operated? Yes, usually the batteries last for one shift. After each shift the cameras are docked and there is no ability of the officer to alter or delete the data. The department creates an audit trail of all data and documents when and how data is accessed.

[To CA Nancy Parr] *Why are your attorneys watching all the videos?* To prepare for cases and supplement officers' notes. We turn over the tapes to defense attorneys.

[To the group] *Can we survey law enforcement agencies across the state to learn what the retention lengths are?* Yes, the IACP and VACP can help obtain this data.

Why was there resistance from hospitals from officers' use of body-worn cameras? HIPAA.

It was noted that a critical part of utilizing body-worn cameras is training for officers. Chief Middleton shared that his officers do not wear cameras until they have completed a six hour training course that includes a "fair and impartial policing" component. He indicated that his officers appreciate the training because of this component, which helps them with critical thinking, perceptions and attitudes. The Henrico Police Department will deploy 400 cameras by the end of the year and like Chief Wright, they engaged stakeholders including the NAACP,

citizens groups, and tea party representatives. Henrico shared the six hour training with the NAACP, which liked it. An important aspect of using body-worn cameras is publicizing the fact that it will help departments be transparent. Like the Chesapeake Police Department, he had to hire additional personnel to manage data retention. When he presented the budget request to the board of supervisors, it included funds for hiring of personnel and fiscal impact to the courts and prosecutor's office.

The Honorable Nancy Parr, City of Chesapeake Commonwealth's Attorney

Local Perspective. CA Parr shared her office's response to the implementation of body-worn cameras by police officers. Every afternoon her attorneys watch videos, averaging one to twelve hours a week. She needs an extra one to two attorneys to accommodate the volume. Big crime scenes and DUI cases are the most time consuming to watch. Additional officers showing up on the scenes increases the time needed to view the additional videos from their cameras. The attorneys are looking for any exculpatory evidence to share with defense attorneys. Data storage is not really an issue for her because their police department provides her with two DVDS of each video, one for her office and the other for defense attorneys. They do not have capability to edit videos and rely on the police to redact any operational footage or investigative discussions between officers that is not discoverable. She noted it's important to make sure your courts are equipped to play videos.

CA Parr also mentioned the recent Virginia Supreme Court study into criminal discovery practices and ensuing recommendations for a statewide system for discovery, which requires financial investment by the state. She also mentioned that the Virginia Association of Commonwealth's Attorneys have created a Justice and Professionalism Committee which is looking at best practices for body-worn cameras.

CA Parr expressed the importance of officers taking good notes and not just relying on the videos. There are issues that can arise such as coats blocking the camera or battery usage.

Colonel W. Steven Flaherty, Virginia State Police

State-wide Perspective. Col. Flaherty shared information about the Virginia State Police's efforts to consider the use of body-worn cameras. Because they are a large agency with 48 offices throughout the Commonwealth, the cost to implement technology updates is an expensive endeavor. Currently about 60% of troopers' vehicles are equipped with in-car cameras and they keep data on DVDs for 30 days. They give notice to the public when recording and record all pursuits, traffic stops, vehicle searches, field interviews, DUIs, traffic accidents and check points. For the past couple of years they have been reviewing and researching body-worn camera vendors. They are working with DGS on RFP for a vendor to provide integrated dash-cameras and body-worn cameras. One of the challenges has been some vendor technology ends up interfering with other in-car equipment such as radios. Regarding storage, they do not have the bandwidth to push videos across the state so they must use DVDs and thumb

drives. Between the 500-600 troopers deployed in 24 hours, it equates to 54,000 hours each month of recorded data.

Are officers allowed to use personally purchased body-worn cameras? It depends on each department's policy. The Chesapeake Police Department and the Virginia State Police do not allow it.

Professor Henry Chambers, Jr., JD, University of Richmond School of Law

Constitutional and Privacy Concerns. There are many issues with body-worn cameras that do not necessarily implicate the constitution. There are four primary privacy issues: (1) is the police officer lawfully where he/she should be for the encounter? (2) what do the police officer's actions do to implicate the camera? (3) what are other people in the encounter doing or allowed to do? (4) what do you do with the content of the recording?

The Fourth, Fifth and Sixth Amendments of the Constitution may be implicated. Whether consent to search (4th) is on the recording is relevant. How and when self-incriminating statements are recorded (and what is on /off tape) is relevant to the 5th amendment. And to the extent exculpatory evidence is captured on a tape is pertinent to the 6th amendment. However, there is no specific guidance from the US Constitution.

Privacy is a fuzzy concept but there are some norms we can consider. Is there notice to the public that a camera is being used? What are the victim's privacy rights? What are the expectations of privacy in each situation? Public places may not create expectations of privacy. If body-worn cameras provide better quality of interaction and recording, is it fair that some localities cannot afford them? This may become a constitutional issue. Complaints about entire law enforcement agencies may become an issue, like it has been in NYC and Ferguson.

Several questions about federal privacy laws, like FIRPA for juveniles. Some people misinterpret FIRPA and give narrowly tailored advice.

Senator Watkins asked VACO and VML to poll localities about what they are doing regarding body-worn cameras, what kind of policies they have, etc.

Sub-Panel Discussion (facilitated by Adam Thiel, Deputy Secretary of Public Safety and Homeland Security)

Cost Considerations

Chief Middleton began the discussion by sharing the cost of implementation depends on a department's deployment strategies, number of people, storage and licensing fees. Henrico PD used the state procurement rules to obtain 11 offers from vendors. Their contract included cooperative language that other agencies can utilize.

Kevin Carroll noted that policies need to account for officers who are on their way to work and technically on-duty but have not picked up their cameras yet. They may end up responding to a call before picking up the body-worn camera at the precinct.

David Roberts suggested detailed metrics on cameras was necessary, such how they are used, when, and the need to establish a baseline to evaluate whether departments are getting their return on investments. *A question was asked about what metrics would be used?* David Roberts replied that the level of complaints, use of force complaints and information on officer and citizen behavior could be metrics. Mr. Roberts gave as an example that an officer can narrate as to what is going on or why they are there on a situation if it is practicable.

Deputy Attorney General, Linda Bryant, asked whether a study on the efficacy of body-worn cameras was feasible, and acknowledged that such studies require time and money.

PERF representative shared that PERF is currently conducting a study in collaboration with George Mason University.

Chief Middleton observed that a lot of work has already been done and there is no need to reinvent the wheel.

Capabilities

Chief Goldsmith noted the cost of body-worn cameras will drop but the real costs are incurred in storage, retention and software.

Deputy Attorney General, Linda Bryant, mentioned that the number of hours for prosecutors to review footage and the search capabilities of the software will be crucial and prosecutors need additional financial resources to keep with the technology.

Senior Program Manager for IACP, Dave Roberts, inquired about the Dept. of Forensic Sciences capability to store footage and suggested cloud based services may be helpful.

Chairman of Prince George's County Board of Supervisors, Bill Robertson, noted that the cost to store data will determine how long to keep it. This and FOIA considerations need to be considered early in the process.

Secretary Moran shared that the Library of Virginia requires agencies to retain recorded data for 30 days.

The Indigent Defense Commission's Executive Director, David Johnson, reminded the group of the financial cost to defense attorneys, who must maintain records for five, 10 or 20 years. Public defender offices share the same personnel challenges as prosecutors in reviewing data.

Lt. Col. Barnard suggested using surveys to help gauge the public sentiment and response to body-worn cameras.

Deputy Secretary Thiel asked how community partners feel about the cost versus benefit of body-worn cameras?

Lynchburg's City Manager, Kimball Payne, replied that the social and political environment and expectations negates any cost concerns. It's not a matter of expense but how do localities pay and implement body-worn cameras and that it's a waste of time to try and justify the need.

Virginia's NAACP President, Ms. Carmen Taylor, agreed and said that communities all over Virginia want cameras regardless of the cost and that body-cameras need to happen.

A concern was raised about the different equipment used by each locality and suggested that localities need to be consistent in purchasing the same equipment as other localities.

VACP Executive Director, Dana Schrad, highlighted the importance of training because of the turnover rates within law enforcement agencies. She noted that the state has already reduced funding to regional training academies and police departments for years and that every locality has financial strains and burdens. She asked for state financial support.

Bill Robertson observed that rural localities may have a different attitude towards cameras, police and technology costs.

Sheriff Townsend said that before the media focus, the need and expectations for cameras did not exist but now he is beginning to hear from constituents that they do want them.

VCPI's Executive Director, Lynda O'Connell, noted that government financial support for community policing has decreased significantly over the past decade to a frightening extent that many departments and police officers have never even heard of the concept. Community policing goes hand in hand with the issue of body-worn cameras and the two cannot be separated.

Ms. Aryn Frazier commented on the disconnect between students and police officers. She advised that UVA falls under the watch of 3 different police jurisdictions which can be confusing for students to know what the community policies are amongst the agencies. Trust between the students and law enforcement was very important factor.

Security and Privacy

Chief Goldsmith noted that as a matter of policy, he had no choice but to outsource storage of data to 3rd party, which is more capable of handling volume and better situated to assume the risk and responsibility of maintaining data. It boils down to business decision for the department.

Col. Flaherty observed that not one size fits all departments. Each department is unique and has different needs that must be considered before implementing body-worn cameras.

Public Comment

Claire Gastañaga, ACLU – shared a number of concerns and observations about body-worn cameras, including the use of body-worn cameras by special conservators of the peace, who are citizens with law enforcement arrest powers. Cameras can be a useful tool but does not solve all issues. Metrics are especially helpful for evidence based policing. She supports model policies to protect both the public and police.

Robert Thomas, NAACP – Noted that body-worn cameras are the most talked about community policing tool. He said funding exists in community block grants for urban agencies and the USDA community block grants are available for rural agencies. He supported community input in this discussion and said the NAACP was willing to work with the panel.

Closing Remarks

Secretary Moran thanked everyone for attending and participating. He mentioned that the group has homework to think about before the next meeting, such as policy, cost, storage and cloud considerations.

The next sub-panel meeting is scheduled for May 7th and the regular panel meeting scheduled for May 21st.

Meeting Adjourned

The meeting adjourned at approximately 2:00 p.m.