

# Secure Commonwealth Panel Sub-Panel

Patrick Henry Building, Richmond, Virginia  
September 15, 2015

## DRAFT MEETING MINUTES

### Members Present:

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  
Nancy Parr, Virginia Association of Commonwealth's Attorneys  
Lt. Col. Barry Barnard, Prince William County Police Department  
Lynda O'Connell, Virginia Center for Policing Innovation  
Vivian Sanchez-Jones, Virginia Latino Advisory Board  
Fran Ecker, Department of Criminal Justice Services  
Banci Tewolde, Department of Planning and Budget  
Kevin Carroll, Fraternal Order of Police  
Hudaidah Bhimdi Ahmed, Virginia Asian Advisory Board  
Bill Robertson, Virginia Association of Counties  
Kimball Payne, Virginia Municipal League  
Col. Steve Flaherty, Virginia State Police  
Chief Michael Goldsmith, Norfolk Police Department  
Chief Douglas Middleton, Henrico Police Department  
D.J. Smith, Virginia State Police Association

### Members Not Present:

Hassan Aden, International Association of Chiefs of Police  
Sheriff Arthur Townsend, Jr., Lunenburg County  
Aryn Frazier, University of Virginia, Black Student Alliance  
Jay Speer, Virginia Poverty Law Center  
Wendell Fuller, 100 Black Men of Greater Richmond  
Professor Henry Chambers, Jr., J.D., University of Richmond School of Law  
Chief Alfred Durham, Richmond Police Department  
Karen Jackson, Secretary of Technology  
Linda Bryant, Attorney General's Office  
Dana Schrad, Virginia Association of Chiefs of Police  
David Johnson, Indigent Defense Commission  
Carmen Taylor, National Association of the Advancement of Colored People  
John Jones, Virginia Sheriff's Association

**Other Participants:**

Cathie Hutchins, Office of the Attorney General  
Major Tracy Russillo, Virginia State Police

**Meeting Convened**

Secretary Moran convened the meeting at 1:05 pm and welcomed everyone. He gave a brief summary of the June 17, 2015 meeting.

Co-chairs Senator Watkins and Deputy Chief Bell welcomed everyone as well.

The June 17 meeting minutes previously emailed to members were briefly discussed. No corrections or modifications were made to the minutes.

The meeting then followed the agenda.

**Update from the FOIA/Retention Work Group** – Cathie Hutchins, Sr. Assistant Attorney General, provided an update from the FOIA and Retention working group. She noted the work group encompasses a broad representation of participants. Ms. Hutchins shared that the group reached consensus that the current retention schedule for body-worn cameras is sufficient as is, but there is a need to educate localities and agencies on current requirements to ensure compliance. Ms. Hutchins also noted concerns about storage mediums and stated that digital storage is preferable, as technology will likely change over time.

Several questions from Sub-Panel members addressed current storage and retention practices for investigative vs. non-investigative files and Ms. Hutchins noted that determining the “active life” of the data is determined by agency and evidentiary video is often kept up to 30 years.

Senator Watkins asked Ms. Hutchins to work with the Library of Virginia and Secretary Moran’s office on training opportunities for localities with regard to retention schedules. Ms. Hutchins stated she was happy to do so.

**Overview of the Body-Worn Camera Model Policy** – Teresa Gooch, Division Director of Law Enforcement and Security Services for DCJS presented the Body-Worn Camera Model Policy developed by DCJS to the Sub-Panel. She stated DCJS regularly reviews and revises model policies as needed and based on feedback from stakeholders.

Questions were raised by sub-panel members regarding school resource officers and how policies should be modified to address this particular segment of law enforcement. Chief Middleton stated he has worked with the Superintendent of Schools in his County and has not had any difficulty.

Director Ecker noted that model policies are always a work in progress and should be used as a guide for localities and be adjusted as needed.

Senator Watkins asked that any concerns or recommended changes be submitted in writing to DCJS for consideration.

Chief Middleton reiterated that local policies can be reflective of local needs. For example, he noted that if judges do not want officers recording in court rooms, that can be adjusted in the model policy.

### **Public Comment**

**Claire Gastanaga**, the Executive Director of the American Civil Liberties Union (ACLU) of Virginia addressed the Sub-Panel and expressed concern about the process by which the model policy was developed, as she felt there was not enough citizen input. She also expressed concerns about the content in the model policy, as she feels every Virginian should encounter police in the same way, which should require a cohesive, standard policy for body-worn cameras. Ms. Gastanaga stated the policy did not address the benefit of body-worn cameras for the public, there was no serious consequence outlined for misusing the policy, and she did not feel there was a strong enough stance on officers reviewing videos prior to writing reports. She shared a number of other concerns which she will send to DCJS.

Senator Watkins addressed Ms. Gastanaga and noted this policy is still being discussed and comments will be considered.

**Sterling Rives**, Hanover County Attorney addressed the Sub-Panel and expressed concerns around video footage not being exempt from FOIA. He noted there is a great cost to localities and also expressed concerns about predatory websites and the potential for video footage to be used for entertainment purposes if released. Mr. Rives has requested an opinion from the FOIA Council about this issue.

Chief Middleton stated he also has concerns about privacy with regard to maintaining video footage of citizens and also has concerns about charging the public for the high cost of redaction if releasing the video is appropriate under FOIA.

**Erick Johnson** addressed the Sub-Panel and stated he agreed the policy should be adjusted to address local needs, especially with regard to fiscal impact. He would like to amend FOIA so that personal information would not have to be released. He would also like to exempt this video from the Library of Virginia retention schedules so that localities do not have to retain video footage for non-evidentiary or other purposes.

### **Recommendations**

The Sub-Panel considered the following recommendations during a facilitated discussion.

1. All localities that purchase body-worn cameras should have a policy in place governing their use prior to deploying cameras in the field.
2. Consensus was not reached on this recommendation until the model policy is finalized.

3. All officers equipped with body-worn cameras should receive training on proper use and agency policies.
4. Localities should recognize challenges and costs associated with body-worn cameras and pursue sustainable funding sources to support body-worn camera programs, which are a significant tool for law enforcement, the Commonwealth and localities to improve accountability, transparency and public trust.
5. Localities should work with Commonwealths' Attorneys, as well as county, city and town attorneys throughout the implementation process for body-worn cameras.

The Sub-Panel recommended revising the first recommendation to include considerations for FOIA and records retention.

After significant discussion, the Sub-Panel was not able to reach consensus on recommendation two, as members would like the public to weigh in on the model policy before adopting the recommendation. Sub-panel discussion addressed whether the body was expected to endorse the policy, how the policy would be implemented and disseminated and whether DCJS had contemplated regulations for training standards around the use of body-worn cameras. Secretary Moran explained the body could endorse the policy if they wished and Director Ecker stated that DCJS had not contemplated training standards. Mr. Carroll with the Fraternal Order of Police stated he would like for DCJS to develop standardized training standards to ensure consistency across the Commonwealth.

The Sub-Panel reached consensus on recommendation three.

The Sub-Panel recommended minor revisions in language to ensure consensus across all recommendations, ensure defense attorneys were represented and supported recommendation four.

The Sub-Panel recommended revisions to recommendation five to reflect concerns about lack of involvement by stakeholders in the development of agency policies. The Sub-Panel reached consensus on the language suggested by Chief Middleton for recommendation five.

The following recommendations were adopted by the Sub-Panel, with the exception of recommendation two, which is still under consideration.

1. All localities and state agencies that purchase body-worn cameras should have a policy in place governing their use and resulting data with regard to FOIA considerations and Library of Virginia retention policies prior to deploying cameras in the field.
2. Localities and state agencies deploying body-worn cameras should consider implementing recommendations from DCJS' Body-Worn Camera Model Policy.
3. All officers equipped with body-worn cameras should receive training on proper use and agency policies.

4. Localities and the Commonwealth should recognize challenges and costs associated with body-worn cameras and pursue sustainable funding sources to support body-worn camera programs, which are significant tools for law enforcement, citizens, the Commonwealth and localities to improve accountability, transparency and public trust.
5. Localities and state agencies should develop their policies with input from all potential stakeholders including, but not limited to, special interest groups, citizen groups, elected representatives, courts, defense attorneys, judges, Commonwealth's Attorneys, local government attorneys, school administrators and parents. The draft policy, and ultimately the final policy, should be made available to members of the community upon request.

After discussion about the recommendations, Chief Goldsmith stated that this model policy should not be viewed as a final product and should be taken back to localities for further development.

**Closing Remarks**

Secretary Moran, Senator Watkins and Deputy Chief Bell provided closing remarks and noted that the Secretary's Office would be in touch with Sub-Panel members regarding next steps.

**Meeting Adjourned**

The meeting adjourned at approximately 3:08 pm.

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