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Testimony to the Senate Committee on Judiciary in Opposition of SB360
February 13, 2018

Chairman Wilborn and Committee Members,

The Johnson County Sheriff's Office opposes SB360 – relating to copies of records; disclosure of law enforcement recordings using a body camera or vehicle camera.

Police body-worn cameras are increasingly held up as a solution to preventing police misconduct and enhancing police accountability. Research finds that more times than not, the officer accused of misconduct did not commit such an act. The use of cameras and dissemination of the video footage they generate are fraught with myths and misunderstandings. Body cameras are not a panacea to community – law enforcement relations. There is an unrealistic expectation by the public and, in turn, the Legislature of the capabilities of body cameras driven, in large part, by crime dramas, and the media.

The reality of community – law enforcement relations is quite different than the perception. Gallup conducts an annual crime poll¹. This poll was started in 1965. The 2017 poll asked respondents these questions:

1. How much confidence do you, yourself, have in the police?

57% of those surveyed stated they have a great deal or quite a lot. This percentage has never dropped below 50%. The high of 64% was in 2004. The low, in 1993 and 2015, was 52%.

2. How much respect do you have for the police in your area -- a great deal, some or hardly any?

An overwhelming 76% replied a great deal. This is up 6 percentage points from 1965. This number has never been below 56 percent.

¹ Gallup Crime Poll, <http://news.gallup.com/poll/1603/crime.aspx>, 2017

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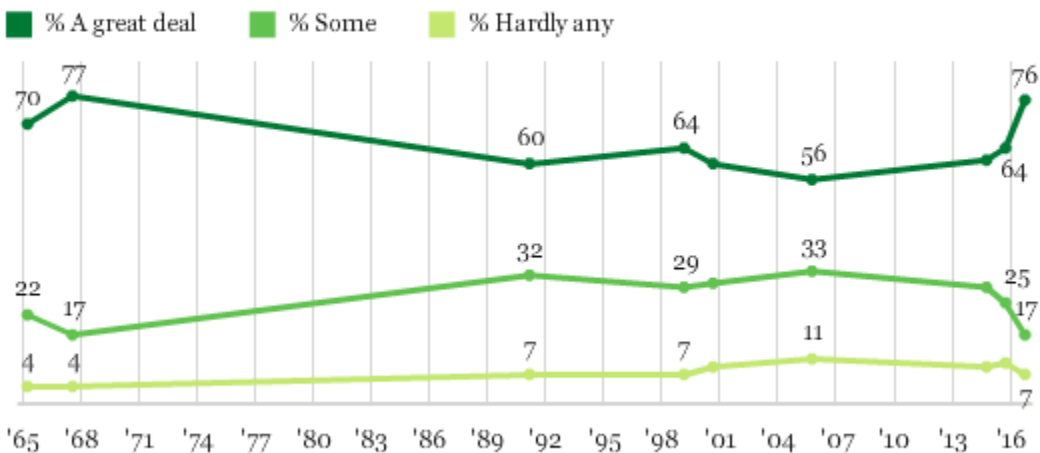
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Americans' Respect for Police in Their Areas, 1965-2016

How much respect do you have for the police in your area -- a great deal, some or hardly any?



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When broken down by race, whites' approval rating of police rose by 11 points, up to 80 percent from 69 percent last year. Among non-whites, the rise was even more dramatic, a bump of 14 points from 53 percent to 67 percent.

The decision to purchase and deploy police-worn body cameras can be thought of as a policy conclusion that flows from a set of assumptions:

- If police know they are being watched, they will be more conscientious.
- If they are more conscientious, they will be less likely to use excessive force, and, in tandem, there will be fewer instances where civilians file complaints about such excessive force.
- Therefore, having police wear body cameras — to watch their tense encounters — will reduce excessive force and civilian complaints.

These assumptions have been proven false by the largest and most robust scientific study of the use of body cams.

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"We found essentially that we could not detect any statistically significant effect of the body-worn cameras," says Anita Ravishankar, a researcher with the Metropolitan Police Department and member of a policy research group working for the city government Lab @ DC – part of the Office of the City Administrator's Office of Performance Management (OPM).²

So why use body cameras? There are many reasons not to and this legislation compounds them.

- 1) The equipment is expensive. Costs involved in their use include the cost of the device itself, ongoing maintenance, and costs associated with storing and maintaining the video footage and recorded data that is collected. Storage costs and decisions about who should have access are some of the most hotly debated issues. In addition, costs are associated with cataloging and retrieving footage in response to subpoenas, investigations and public information requests. The use of this equipment to facilitate redaction and viewing of recordings will adversely impact public safety resources.
- 2) Public access is one of the bigger and yet unresolved issues that this bill looks to address. A body camera does have limitations and the recording from a single body camera may not, in fact, probably will not, capture everything that occurs during an incident presenting challenges to investigators or departments to properly evaluate and interpret the evidence during an investigation. The body camera does not have the same point of view as the officer due to where the camera is worn. Even a body cam worn attached to eye glasses does not have the same perspective as the officer's eyes. It does not have peripheral vision. The body camera can "see" things that an officer may not see based on the technology of the camera, e.g. greater efficiency in low light conditions than the human eye has. So, in fact, the camera may capture images, data, etc. that the officer did not because of stress, fear, physical limitations, and the brain's capacity (or lack thereof) to process huge amounts of data under stress. This is easily demonstrated by "instant replay" on televised sporting events. One camera angle makes it appear that a touchdown was scored, or a fly ball was a home run. A different angle

² Evaluating the Effects of Police Body-Worn Cameras – A Randomized Controlled Trial, David Yokum, Anita Ravishankar, and Alexander Coppock.

http://bwc.thelab.dc.gov/TheLabDC_MPD_BWC_Working_Paper_10.20.17.pdf, October 20, 2017.

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shows the opposite. Neither camera angle has the same vantage point that the official making the call on the play had – and it is that vantage point that the official used to base their decision on. In the case of a law enforcement officer, the point of view they had is what they used to make the decision to take a certain action – not the angle the camera had.

- 3) Additionally, the body cam may not be “looking” where the officer is looking. An action that occurs off camera may precipitate a police action. More to the point, the interpretation - or misinterpretation - of that recording is the real issue. Protecting against that is much more difficult to address. This bill does nothing to come to grips with this issue.
- 4) Body cameras present a potential two-edged sword regarding the articulation of why and when an officer chose to use force. The leading case on use of force is the Supreme Court decision in *Graham v. Connor*.³ The Court held, “...that all claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other seizure of a free citizen should be analyzed under the Fourth Amendment and its objective reasonableness standard...” The court described this standard as, “The reasonableness of a particular use of force **must** be judged from the perspective of a **reasonable officer on the scene**, rather than with the 20/20 vision of hindsight.” In short, it is based on the facts and circumstances as the officer knew them at the time a use of force incident occurred. It is not based on what the camera recorded. Just because the camera recorded something does not mean the officer saw it or perceived it the same way a dispassionate viewer did or, conversely, a viewer with a preconceived notion of what happened of the video did. Viewing in that way is 20/20 hindsight or worse assuming guilt unless “proven” innocent by the video.
- 5) Nothing under the current law prohibits a person authorized to do so from requesting to listen to or view audio or video recordings. We have had such authorized requests at the Johnson County Sheriff’s Office and we have complied with these requests as the law allows. However, we also strongly advise family members to not view the video. Images of a violent act, even a justified act, are indelibly etched on the viewer’s memory. The image of a loved one being injured or killed, even if it is justified under the law, will **never**

³ *Graham v. Connor*, 490 U.S. 386 (1989)

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go away. I have witnessed many violent crime scenes and I can recall every one of them. I purposely did not view crime scene photographs of my daughter, Kelsey, because I did not want those images to be how I remembered her.

This bill would cause irrevocable harm and mandates unrealistic expectations based on false assumptions:

- 1) Page 3, lines 11 and 12, requires that an audio or video recording be provided within 24 hours of a request. This is not practicable. There are a limited number of personnel trained to operate the playback equipment. Certain protocols need to be followed to preserve the evidentiary nature of the recording. A request made at 0200 on Saturday morning would mean the recording would have to be made available by 0200 on Sunday morning. It is quite possible the person(s) qualified to operate the equipment would not be available. The expertise needed to operate the recording for viewing is limited to just a few people to protect the integrity of the recording, which is an investigatory record and evidence. Chain of custody issues develop when evidence is handled for reasons outside of an investigation.

Current law, KSA 45-218, **Inspection of records; request; response; refusal, when; fees**, provides:

*Each request for access to a **public record** shall be acted upon as soon as possible, but not later than the end of the third business day following the date that the request is received. If access to the **public record** is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester not later than the end of the third business day following the date that the request for the statement is received.*

If a time for release is truly necessary, we would recommend following the above requirements in current law (KSA 45-218) for a request to listen to or view a recording.

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- 2) Page 3, lines 23 – 26: We do not feel that it is in the public interest for “any person” to obtain a copy of an investigative record. Current law is sufficient. Release of the recording is determined by an impartial magistrate under the criminal investigation record section of the law, KSA 45-221 (10) A-F. This impartial magistrate is best able to determine if there is a compelling public need for the release of the recording.
- 3) The release of an investigatory record after an investigation is complete as described on page 4, lines 21 to 25 would allow for abuse. Uniformed law enforcement officers wear department patches, numbered badges, and nameplates to make identification easy. These copies of the video could be edited in accordance with an agenda and posted on social media outlets to manipulate the public into believing something happened that didn't or that something that didn't occur, did occur. This is harassment. The agency and officer, or the officer's family could be subject to threats or physical harm.
- 4) Page 4, lines 26 to 28, full release of a video after 270 days, poses the same issues as above. Additionally, body cams are worn when surveying crime scenes. Do we really want to subject the family and friends of a homicide victim to the pain that would come when someone requests the video, receives it, and posts it on the Internet? Do we really want to expose them to the horror of seeing their loved one's deceased body on YouTube? This legislation violates KSA 74-7333 - Bill of rights for victims of crime⁴ and the Kansas Constitution, Article 15 § 15: Victims' rights.⁵ These rights provide:
 - (1) Victims should be treated with courtesy, compassion and with respect for their dignity and privacy and should suffer the minimum of necessary inconvenience from their involvement with the criminal justice system.
 - (5) The views and concerns of victims should be ascertained, and the appropriate assistance provided throughout the criminal process.

4

http://kslegislature.org/li/b2017_18/statute/074_000_0000_chapter/074_073_0000_article/074_073_0033_section/074_073_0033_k/

⁵ <http://ag.ks.gov/victim-services/victims-rights-constitutional-amendment>

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(6) When the personal interests of victims are affected, the views or concerns of the victim should, when appropriate and consistent with criminal law and procedure, be brought to the attention of the court.

(7) Measures may be taken when necessary to provide for the safety of victims and their families and to protect them from intimidation and retaliation.

- 5) The last point is the exemption of the requestor, as authorized by subsection (c), to view an unredacted video. Release of victim information of a sex crime is not permitted under Kansas law, yet the bill seems to allow that information to be released to the requestor – an unlawful act.

I'll go back to the question I posed at the beginning of my testimony. Why use body cameras? If you ask the deputies of our agency (and I did) it is because they feel they can resolve frivolous and malicious complaints made against officers. In most instances, it is the audio that resolves the issue. For example, a deputy is accused (falsely) of saying something demeaning, discriminatory, or sexual in nature. The recording doesn't confirm the accusation. Instead, it disproves it.

The Johnson County Sheriff's Office uses body cameras. All our deputies that work in patrol and traffic as well as those that work in our adult correction facilities wear them. Let me be clear, we do not oppose body cams. What we do oppose is revictimizing crime victims and their families by the unwarranted release of videos to the public. We oppose legislation that authorizes criminal conduct. We oppose the unrealistic assumption that this legislation uses that a body camera is a silver bullet that will somehow prove an officer acted in a wrongful or unlawful manner.

As stated earlier, judging an officer by video recording is a violation of well-established case law – the 20/20 hindsight assumption that the US Supreme Court has clearly stated is not to be used in determining if an officer's actions are lawful. Police – community relations are based on communication, defined expectations, trust, and the rule of law. This is a two-way street. Since humans are involved in this equation there will always be room for misunderstanding or error. No camera or legislation can fix that.

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The Washington, D.C. study clearly points out that false assumptions may be the culprit for body camera use and the push for release of recordings. The thought process that led to putting cameras on law enforcement officers assumes that civilian complaints are factual instances of police misconduct. Instead, it shows that many are civilian fabrication. In addition, it assumes that law enforcement officers are using excessive force with enough regularity to be measurable — but there may be a flaw in the assumptions about the prevalence of law enforcement misconduct. If there was not much misconduct to begin with, there would not be much to record — and there isn't.

In an interview with NPR, Chief of Police Peter Newsham of the Washington, D.C. Metropolitan Police said, "I think a lot of people were suggesting that the body-worn cameras would change behavior. There was no indication that the cameras changed behavior at all. Perhaps that is because my officers were doing the right thing in the first place."

So, given the overwhelming evidence that body cameras do not change behavior, that of law enforcement officers or the citizenry, why should law enforcement officers wear them? Maybe because they consistently vindicate officers' actions. Maybe because they are a useful tool in recording a crime scene.

The Johnson County Sheriff's Office has no intention of discontinuing the use of body cameras. We also recognize that this bill, while well intended, is based on the same false assumptions I outlined in my testimony. We would respectfully ask that the committee does not advance this bill, or even better, tables it. The scientific data does not support its use.

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