

POLICE BODY-WORN CAMERAS SHOW GREAT PROMISE, BUT ISSUES MUST BE RESOLVED BEFORE PROGRAM GOES STATEWIDE

District Attorneys Association of the State of New York testifies before Assembly; highlights both benefits and challenges of implementing program

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(BROOME COUNTY, NY – December 8, 2015) The District Attorneys Association of the State of New York (DAASNY) said today that District Attorneys recognize the potential value of body worn cameras but have serious concerns about the many challenges inherent to equipping officers with cameras not just for police, but for prosecutors who will use the footage as evidence.

DAASNY President Gerald Mollen (Broome County District Attorney) started by highlighting four places cameras have already proven effective. “First,” said Mollen, “they provide excellent evidence that will help prosecutors improve the investigation and prosecution of cases. Second, they improve transparency and enhance community trust. Third, they hold officer’s accountable in instances of wrongdoing, and on the flip side can protect them from unfounded allegations. Fourth, prosecutors are seeing indicators that they can help reduce litigation – both criminal and civil.”

He cautioned, however, that we don’t have answers to important questions:

- Where will the recordings be stored?
- Who has access to the recordings and how is this achieved?
- How are recordings redacted so that witnesses, undercover police officers and confidential informants can be protected and witness intimidation is minimized?

Mollen continued, “From a county with a small DA’s Office, I can tell you that the financial impact of body worn cameras is perhaps the biggest and least understood concern, particularly personnel costs to deal with hours of video recordings in even the most routine cases.

“The reality is, absent significant state funding, once police begin routinely wearing recording devices District Attorneys will be unable to comply with the voluminous Constitutional and statutory obligations that will be associated with these recordings -- namely reviewing, redacting, transcribing, translating and disclosing thousands of hours of recordings.”

The entire testimony is available below.

December 8, 2015

Gerald Mollen, President, District Attorneys Association of the State of New York

Testimony before the Assembly Committees on Codes, Judiciary and Governmental Operations

The Use of Body Worn Cameras by Law Enforcement Individuals

Introduction

I would like to thank the Chairs of the Committees hosting this hearing – Assembly Members Lentol, Weinstein, and Peoples-Stokes -- and of the committee members for inviting me here today to testify.

My name is Gerald Mollen. I am the Broome County District Attorney and the President of the District Attorneys Association of the State of New York.

Intense media and public attention to police-civilian interactions has spurred jurisdictions around the nation to equip officers with body-worn cameras as quickly as possible. In their haste to show immediate progress, many towns and cities neglected to engage in thoughtful conversations about the implications of utilizing cameras. In some ways, we are fortunate here in New York, because we have the advantage of learning from other states as well as from some of the smaller pilot programs that have begun around our state. I am encouraged by the many key questions you have asked us to address today, as well as by the wide range of participants invited to contribute to this discussion.

District Attorneys recognize the potential value of body worn cameras. As it stands today, many police-civilian interactions are already recorded by passers-by, civilian dashboard cameras, and civilian cell phones. I think we can all agree, regardless of whether we think it is a good or a bad thing, that this has changed the nature of police-civilian interaction. Adding a different perspective by placing a camera on the officer will arguably provide a fuller picture of police-civilian interactions.

District Attorneys also recognize the many challenges inherent to equipping officers with cameras. Many of those challenges are obviously at the front end, but from a prosecutors' perspective, there are countless issues that arise at the back end. The Bureau of Justice Assistance BWC Camera Expert Panel unanimously emphasized the "early and ongoing involvement of the prosecution community in planning and implementing a BWC program" this past February. We agree that in order to roll out an effective system, the end users – the prosecutor and the defense counsel – must add their voice to the conversation.

These hearings are an excellent starting point for forming sound policy regarding body-worn cameras, and I thank you for including prosecutors.

Benefits:

Let me start with some of the benefits that come with body-worn cameras.

First, they provide excellent evidence that will help prosecutors improve the investigation and prosecution of cases. Second, they improve transparency and enhance community trust. Third, they hold officer's accountable in instances of wrongdoing, and on the flip side can protect them from unfounded allegations. Fourth, prosecutors are seeing indicators that they can help reduce litigation – both criminal and civil. Saratoga County, where body worn cameras are currently used, has reported an increase in plea bargaining due to the cameras and their evidentiary value.

Concerns:

Of course, if there were all benefits and no concerns we wouldn't be here today.

Some of the biggest issues are technological concerns. In order to review a video, the prosecutor must have a license for the software used by the officer's camera. There are 550 police departments in NYS – if they have different proprietary systems, a prosecutor may have to get multiple systems in order to review the recordings.

Right now we don't have an answer to the questions:

- Where will the recordings be stored?

- Should they reside on individual servers in the police departments and DA's offices or in the Cloud? Who owns the recordings – the private company or law enforcement?
- Who has access to the recordings and how is this achieved?

Some police departments, for example, have provided District Attorneys with DVDs only to learn that the District Attorney's office did not have a compatible DVD player.

There are important chain of custody issues concerning the recording – in other words, when it is uploaded, what assurances are there that the recording has not been altered, who can view it, and when?

Further, prosecutors need the ability to redact a recording, so that witnesses, undercover police officers and confidential informants can be protected.

Policies have to be developed that take into account all the needs of the various parties with an interest in the cameras. Even just within a prosecutor's office these policies require some work and thought. There are no clear answers to many of the questions posed, but there are various interests that need to be balanced:

- Safety needs of victims and witnesses
- Discovery rights of the defense
- Confidentiality of on-going investigations
- Media requests for information

Fiscal Implications:

The financial impact of body worn cameras is perhaps the biggest and least understood concern.

The cost of purchasing the cameras, which averages close to \$1,000 per camera, is only part of the equation. Maintenance, storage of digital evidence, software to "tag" camera footage in a way that connects it to the correct arrest record, transcription of materials, and discovery compliance all create ongoing expenses. Absent significant state funding, once police begin routinely wearing recording devices, District Attorneys will be unable to comply with the voluminous Constitutional

and statutory obligations that will be associated with these recordings -- namely reviewing, redacting, transcribing, translating and disclosing thousands of hours of recordings.

Storage costs are far greater than the cost of the camera itself and can run as much as \$100 a month per camera. Who pays for the storage? What recordings are retained and for how long? From our experience, long storage times that coincide with the period of time that the case is under appellate review will be essential.

The largest cost of all will be personnel. Reviewing recordings is extremely time consuming. Prosecutors have Brady and ethical obligations to make sure that they are turning over required materials to the defense. In Phoenix, Arizona, their initial experience shows that for every 100 cameras added by the Phoenix (AZ) Police Department, the prosecutor's office needed to hire or re-assign a new staff member. Now imagine if there are 10 cops at a scene that are all recording, this could amount to an enormous volume of recordings and crippling personnel time.

Reviewing the recordings is just the beginning. If the recordings need to be redacted this can take hours for just a few minutes of tape. Transcription of the recordings is also a personnel issue, for instance when a recording is introduced in court. That doesn't just impact prosecution personnel, but also defense attorneys and courtrooms that must have equipment to review and present the recordings.

Privacy Concerns

A fundamental element of any protocol involves one of the questions put forward for this hearing -- whether or not cameras are appropriate as part of our law enforcement protocol and whether there are privacy concerns. I suspect the answer to both is "yes." Clearly we need to have measured conversations about the use of cameras -- passers-by who are neither witnesses or associated with the crime that have been captured on tape, reluctant witnesses who may fear for their safety, domestic violence or sexual assault victims -- these are just the obvious classes of people who may feel concerned about being on a tape that is turned over to defense counsel or even the public.

The flip side to potential privacy issues for those being recorded is whether or not the recordings, themselves, should be made available to the public as standard practice or *via* FOIL requests. Different states are using vastly divergent approaches to whether and how to release camera

footage to the public. The Los Angeles Police Department has stated that it will not release footage to the public unless required to do so through a criminal or civil court proceeding. Las Vegas has a bit of a hybrid model that essentially treats footage like a public record. Footage obtained as part of a felony investigation is withheld from public viewing until introduced as evidence at trial, but most other footage is open to public review, with certain exceptions. Seattle tags and posts heavily redacted footage on a designated YouTube channel. Interested parties can sort through it and submit a FOIL request for an unredacted portion of footage. As an interesting aside, Seattle knew that it couldn't sift through and redact all of its footage, so it turned to the hacking community to write the code that would automatically distort the images.

This year alone 10 states —Arizona, Florida, Georgia, Maryland, Nevada, North Dakota, Oklahoma, Oregon, South Carolina and Texas— passed laws regarding public access to the footage. Interestingly, the most conservative protocols are based on concerns about civil liberties. South Carolina does not release footage recorded by the cameras to the public, by law. But that wasn't to shield the police from public scrutiny – on the contrary that law, sponsored by a Democrat, was meant to protect the privacy of the people being recorded. Georgia is looking to pass a law that would add video footage to materials deemed “records of law enforcement,” thus exempting them from disclosure under their state law.

There is not one correct answer to the question of privacy concerns. There are and will continue to be discussions about the value of releasing footage that is embarrassing or serves no public interest. Posting routine traffic stops might have a deleterious effect on the personal or professional life of the individual while serving no public safety or other public interest purposes. That is the critical balance that we will need to strike – maintaining public safety while respecting legitimate public interest.

One Jurisdiction's Experience

The body worn camera program began in Bronx County in December 2014. It was piloted in the 40th Precinct, with 9 patrol officers who volunteered to use the camera.

Bronx County has had 63 body camera occurrences that have resulted in arrests. There are a total of 83 defendants involved in those arrests and 31 of those cases are still pending. The vast majority

are misdemeanors, with 73 misdemeanor and 10 felony arrests. Three of the felony arrests have pled guilty to a felony, four others are still pending and three cases have been reduced to misdemeanors with one having pled out and the others still pending.

There have been some issues with the recordings themselves involving the type of equipment being used and training issues. The officers have been told to turn on the camera whenever they believe they have reasonable suspicion to approach and stop an individual. Some of the audios are muffled because the officer is too far away. When the officer is too close to the individuals they cut off the face and head since the camera is worn on their chest. The other issue has occurred when the officer turns on the video at some point after the encounter has started. Officers have been asked to bring copies of body cam videos to the District Attorney's early case assessment bureau (ECAB) when there is an arrest. Cooperation with that request continues to improve.

As far as retention and storage, NYPD is better positioned to detail the initial expenses. The Bronx County District Attorney is exploring how to retain and preserve these videos and who will shoulder those costs. Expansion of the pilot has been on hold until these and other costs can be estimated. Additionally, the District Attorney is grappling with the need to redact and turn over appropriate videos to defense counsel as part of discovery as well as at trial. When more officers begin to wear the body cameras, the volume of videos the District Attorney will need to review will necessitate personnel and funding commitments.

And while overall the experience has been fruitful, further study and additional pilot programs are essential to crafting program and protocols that will ultimately be successful.

Summary

Until now, New York has not taken a comprehensive approach to the issue of equipping police officers with body worn cameras. Outside of New York City, town and village police departments have worked on their own accord to secure funding and implement programs. The result is that small jurisdictions have used different vendors at widely divergent price points; equipment varies in quality and compatibility; funding sources are as diverse as grants, tax dollars, or forfeiture funds; policies for the use of cameras is inconsistent across the state; and almost no thought has

been given to how footage will be reviewed, redacted, translated, transcribed, shared with defense counsel and the public; and stored.

These and many more issues need to be resolved before the state moves forward. As a first step, we need to quantify and secure resources to establish and track pilot programs. From there, we can identify find best practices and standards. Only then should we roll out a program that achieves the right balance between public safety and public interest that meets the needs of our communities.

District Attorneys are glad to be at the table as part of these discussions today, and as we move forward.