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## MEMORANDUM

**TO:** The Pennsylvania Senate

**FROM:** Elizabeth Randol, Legislative Director, ACLU of Pennsylvania

**DATE:** April 17, 2017

**RE: OPPOSITION TO SENATE BILL 560 (GREENLEAF)**

[Senate Bill 560](#) amends the Wiretap Act to facilitate the ability of police officers to use body worn cameras (BWC). If these cameras are to be an effective tool, their use must be accompanied by policies that promote transparency and accountability and that balance privacy and public interest. SB 560 fails to create that balance and enable the use of BWCs with limited-to-no public availability of the data.

**On behalf of the 44,000 members of the ACLU of Pennsylvania, I respectfully urge you to vote ‘no’ on Senate Bill 560 for the following reasons:**

**Body worn cameras are stripped of their intended use as a means to hold police accountable:** [States are increasingly adopting](#) the use of BWCs in response to calls for greater police accountability. Numerous studies<sup>1234</sup> have shown that BWCs are effective at reducing use of force complaints and increasing police accountability. But accountability is impossible without public access to camera footage. SB 560 preemptively exempts body worn cameras from [Pennsylvania’s Right To Know Law](#) (RTKL) on the grounds that it is not a public record and as such, redefine their use as the antithesis of their original function.

One month after Michael Brown was killed in Ferguson, Mo., the Police Executive Research Forum — perhaps the most respected body of police leaders in the country — [released a report on how body cameras should be used by police departments in the United States](#).<sup>5</sup> In the introduction, PERF’s executive director, Chuck Wexler, wrote the following:

*A police department that deploys body-worn cameras is making a statement that it believes the actions of its officers are a matter of public record. By facing the challenges and expense of purchasing and implementing a body-worn camera system, developing policies, and training its officers in how to use the cameras, a department creates a reasonable expectation that members of the public and the news media will want to review the actions of officers.*

<sup>1</sup> [Evaluating the Impact of Police Officer Body-Worn Cameras](#), Orlando Police Dept. and University of Southern Florida, 2015.

<sup>2</sup> Ariel, B., Farrar, W.A. & Sutherland, A. [Effect of Police Body-Worn Cameras on Use of Force and Citizens’ Complaints Against the Police](#), Journal of Quantitative Criminology 31: 509 (2015).

<sup>3</sup> White, Michael D. [Police Officer Body-Worn Cameras: Assessing the Evidence](#), Office of Justice Programs Diagnostic Center, produced for the Office of Community Oriented Policing Services, July 2014.

<sup>4</sup> Miller, Lindsay, and Jessica Toliver. [Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned](#), Police Executive Research Forum, September 2014.

<sup>5</sup> Ibid.

Like Wexler, the RTKL [presumes that a record is public](#) unless the government agency can justify withholding it under one of its stated exemptions. The burden is on the government agency and NOT the requestor to make that case. SB 560 upends this presumption and places the burden squarely on the public. As a result, BWCs cease to function as a means of police accountability and would be recreated solely as a law enforcement tool for evidence and data collection. The RTKL, while not perfect, anticipates objections to certain records, including ones that may be related to an investigation. And it [already establishes a process](#) for determining whether a record should be exempt from public disclosure. By preemptively determining that BWC footage is not a public record, SB 560 is then left to establish a separate request process - unnecessary if BWC footage requests were managed under the existing RTKL process.

**Makes public and individual access to body camera footage nearly impossible:** Video footage that documents incidents of legitimate public interest such as arrests, use of force by an officer, or disputes between an officer and a resident will be nearly impossible to obtain under SB 560.

First, this bill fails to provide direct access to [individuals recorded on body cameras](#). If law enforcement is collecting and retaining personal data/information, those individuals should have the right to know what has been collected. This is not an unreasonable expectation; even the FBI allows people to request their personal dossiers through the Freedom of Information Act. Individuals in a BWC video should be able to readily obtain a copy of the footage without being required to submit to the full request process.

Second, this bill makes [other public requests](#) for police body camera footage an onerous and expensive process. It creates a byzantine process to request data from police cameras. If the request is denied, there is no free appeal to Office of Open Records. Instead, **petitioners are charged a \$125 fee to file an appeal in a Court of Common Pleas**, effectively discouraging the public from appealing request denials. The bill language offers only vague standards for agencies, district attorneys, and courts to deny a request. At no point in this process is the agency that holds the data or the court required to release the record. If this bill is enacted, the public will rarely, if ever, see body camera video captured by police officers.<sup>6</sup>

**Fails to establish policies for data destruction:** Body worn cameras can capture massive amounts of data, creating a large compilation of street activity in a jurisdiction. Some of that footage will be immediately relevant to a criminal investigation, an investigation of police use of force, or other similar cases. But most of the footage will not be relevant for those purposes; and the longer it is kept, the greater the potential for misuse. For this reason, any legislation that enables police departments to use BWCs must include a reasonable and required timeline for the storage/destruction of data, including a strict policy of destroying footage that is not the subject of investigation or inquiry (including by the public or the press).

**Enables unprecedented (and likely unconstitutional) invasions of privacy:** Unrelated to BWCs, this bill also includes a revision to the Wiretap Act that authorizes the recording of inmates' every conversation and thus eliminates an inmate's expectation of privacy for conversations with family members, spouses, clergy, and other personal visitors. This would be unprecedented under Pennsylvania's statutory scheme and is almost certainly unconstitutional.<sup>7</sup>

**For these reasons, we urge you to vote 'NO' on Senate Bill 560.**

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<sup>6</sup> Some argue that these restrictions are warranted due to increased costs associated with BWC footage requests, especially the cost of redaction. But body camera companies have developed and provide efficient and cheap redaction programs. With Axon Enterprise — the company that supplies body cameras to three-quarters of the police departments in the U.S. that have them — the difference between a body camera system that offers automated redaction and one that doesn't is \$24 per user per month: [https://prismic-io.s3.amazonaws.com/tasr%2Fc004bf55-0743-4711-9cc6-df4f62e2beb3\\_product+card+--axon+plans.pdf](https://prismic-io.s3.amazonaws.com/tasr%2Fc004bf55-0743-4711-9cc6-df4f62e2beb3_product+card+--axon+plans.pdf).

<sup>7</sup> We should return to the statutory framework established in 1995, when recording of inmate telephone calls was exempted from the Wiretap Act under 1995 Pa. Legis. Serv. 1st Sp. Sess. Act 1995-20 (H.B. 127).