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The Honorable Stewart Greenleaf
Majority Chairman, Senate Judiciary Committee
Senate Box 203012
19 East Wing
Harrisburg, PA 17120-3012

Dear Senator Greenleaf,

Last session, you introduced and the Senate passed Senate Bill 976, which amended the Wiretap Act to facilitate the ability of police officers to use body worn cameras (BWCs) and to set rules for public access to video produced by BWCs. Recently, you issued a co-sponsorship memo indicating your intent to re-introduce that same legislation. The American Civil Liberties Union (ACLU) of Pennsylvania voiced concerns over the bill then. Respectfully, we reiterate those same concerns now.

In order for this legislation—and, indeed, for the tens of millions of dollars that municipalities around the state have spent on body cameras and storage—to be meaningful, promotion of transparency and accountability must be balanced with privacy and the public interest. Unfortunately, SB 976 failed to create that balance and instead would have created the worst possible outcome: the use of BWCs with limited-to-no public availability of the data.

Video data 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 legislation identical to SB 976, even if the requester is in the video. The process created by the legislation allows agencies to deny a request if the data is part of an investigation, compounding an existing flaw in the Right to Know Law (RTKL) that makes it extremely difficult to obtain information about Pennsylvania’s criminal justice system. Although the requester may appeal the denial, he or she must pay a \$250 filing fee – effectively pricing out requesters of limited means. Should the requester be able to clear that hurdle, they must then prove that they contacted or attempted to contact every person in the video. Even then, the language of this bill implements vague standards for agencies, district attorneys, and courts to dismiss a request.

The legislation also fails to address or to require two key best practices policies in the use of BWCs. There is no requirement for when a camera must be turned on. As we have seen in recent high profile incidents around the country, police cameras have not been powered on until after police have used force against someone. There needs to be a requirement that cameras are turned on for all public interactions.

Additionally, the bill does not address how long the data should be stored. Massive amounts of data will be compiled by BWCs, creating a large compilation of street

activity in a jurisdiction and an Orwellian nightmare of government tracking. Any requirement that police forces use BWCs must come with a required reasonable timeline for the destruction of data.

Legislation like SB 976 shrouds the police in secrecy, heightening tensions between them and the greater community. It creates the antithesis of its stated goals. New legislation must develop a process to obtaining video data which cultivates transparency and accountability while protecting privacy and the public interest. This only can happen when a person in the video can readily obtain a copy of the data, and the video is made available to all other interested parties under the RTKL.

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.¹ 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.

Video data released as an open record must also include redaction of the faces of victims of crime, witnesses to crime, and bystanders in order to protect them and preserve their privacy. Software companies have developed programs to accomplish this task with efficiency.²

Only video recorded inside a residence should be exempt as an open record under the RTKL. The highest level of privacy protection is necessary inside a person’s home. These videos should be available, though, to the individuals in the recordings.

When legislated properly, police body cameras can be an important and positive tool for both the police force and the community. We encourage you to make the following changes to your bill, in order to better serve the citizens of Pennsylvania and the police officers who serve us:

1. Make BWC video data available under the Right to Know Law;
2. Make BWC video data readily available to anyone in the video;
3. Exempt BWC video recordings from inside a residence under the Right to Know Law and include a provision that video is available for individuals in the recordings;
4. Require the redaction of victims of and witnesses to crime and bystanders;

¹ Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned. (2014) Available at http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf.

² See “Police Video Redaction Software” at <https://www.policeone.com/police-products/Video-Redaction-Software/>.

5. Require the destruction of data when video is not in the public interest and not under investigation, within a reasonable timeframe;
6. Require cameras to be turned on for all public interactions.

Our recommendations promote transparency, accountability, privacy, and the public interest. Without them, we cannot support a bill that will turn police body cameras into a tool of manipulation for law enforcement.

Sincerely,

Andy Hoover
Communications Director, ACLU of Pennsylvania

CC: The Honorable Daylin Leach, Minority Chairman, Senate Judiciary Committee