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Aug. 25, 2020

To: House Equitable Justice System and Law Enforcement Reform Committee  
From: South Carolina Press Association  
Subject: Police Body Cameras

Dear Subcommittee Members:

Thank you for your service in discussion of police reform in South Carolina.

You face many issues, but it is the position of the SCPA that one of the most important ones is the expeditious opening up to public view police body cameras videos when violence is involved.

Access to body cameras is a provision that the Press Association has advocated for several years... and we have lost. The law enforcement lobby has claimed it would bring about invasion of privacy problems, and they were successful in having body cam videos exempted entirely from the FOIA.

In light of the current outrage at police misconduct, SCPA Attorney Taylor Smith has drafted language removing the body cam exemption from the FOIA. It is attached.

We also want any proposed legislation to include the requirement that police wear and activate the cameras when confronting citizens.

It is our position that the only reason the public knows about the George Floyd murder is because of a citizen video. And we only knew of the shooting death of Walter Scott in North Charleston because of a citizen video. The list of similar cases is long.

In the interest of police transparency, we advocate that the law must change.

We ask you to include the attached wording in your recommendations.

Thank you. Please contact me or Mr. Smith if you have questions.

William C. Rogers  
Executive Director  
S.C. Press Association/S.C. Newspaper Network

Section 23-1-240 Body-worn cameras; definition; guidelines; policies and procedures; fund; data release

(A) For purposes of this section, "body-worn camera" means an electronic device worn on a person's body that records both audio and video data.

(B) State and local law enforcement agencies, under the direction of the Law Enforcement Training Council, shall implement the use of body-worn cameras pursuant to guidelines established by the Law Enforcement Training Council.

(C) Within one hundred eighty days after the effective date of this section, the Law Enforcement Training Council shall conduct a thorough study of the use, implementation procedures, costs, and other related aspects associated with body-worn cameras in jurisdictions with body-worn cameras currently in use or which begin their use during this period. The Law Enforcement Training Council shall develop guidelines for the use of body-worn cameras by state and local law enforcement agencies within one hundred eighty days of the effective date of this act. The guidelines must include, but are not limited to, specifying which law enforcement officers must wear body-worn cameras, when body-worn cameras must be worn and activated, restrictions on the use of body-worn cameras, the process to obtain consent of victims and witnesses before using body-worn cameras during an interview, the retention and release of data recorded by body-worn cameras, and access to the data recorded by body-worn cameras pursuant to subsection (G). The Law Enforcement Training Council shall provide the guidelines to state and local law enforcement agencies. The General Assembly may terminate all or part of the guidelines by resolution.

(D) State and local law enforcement agencies shall develop policies and procedures for the use of body-worn cameras pursuant to the guidelines established by the Law Enforcement Training Council. The agencies shall submit the policies and procedures to the Law Enforcement Training Council within two hundred seventy days of the effective date of this act. The Law Enforcement Training Council shall review and approve or disapprove of the policies and procedures. If the Law Enforcement Training Council disapproves of the policies and procedures, the law enforcement agency shall modify and resubmit the policies and procedures. The Law Enforcement Training Council, by three hundred sixty days from the effective date of this section, shall submit a report to the General Assembly which must include recommendations for statutory provisions necessary to ensure the provisions of this section are appropriately and efficiently managed and carried out and the fiscal impact associated with the use of body-worn cameras as required by this section, updated continuously as necessary.

(E)(1) A "Body-Worn Cameras Fund" is established within the Department of Public Safety for the purpose of assisting state and local law enforcement agencies, the Attorney General's office, solicitors' offices, and public defenders' offices in implementing the provisions of this

section, including, but not limited to, the initial purchase, maintenance, and replacement of body-worn cameras and ongoing costs related to the maintenance and storage of data recorded by body-worn cameras. The Public Safety Coordinating Council shall oversee the fund, and shall, within one hundred eighty days of the effective date of this act, establish a process for the application for and disbursement of monies to state and local law enforcement agencies, the Attorney General's office, solicitors' offices, and public defenders' offices. The Public Safety Coordinating Council shall disburse the funds in a fair and equitable manner, taking into consideration priorities in funding.

(2) Upon approval of a state or local law enforcement agency's policies and procedures by the Law Enforcement Training Council, the agency may apply to the Public Safety Coordinating Council for funding to implement the agency's use of body-worn cameras pursuant to this section, including, but not limited to, the initial purchase, maintenance, and replacement of body-worn cameras and ongoing costs related to the maintenance and storage of data recorded by body-worn cameras. A state or local law enforcement agency is not required to implement the use of body-worn cameras pursuant to this section until the agency has received full funding.

(F) Nothing in this section prohibits a state or local law enforcement agency's use of body-worn cameras pursuant to the agency's existing policies and procedures and funding while the agency is awaiting receipt of the Law Enforcement Training Council's guidelines, approval of the agency's policies and procedures by the Law Enforcement Training Council, and funding from the Public Safety Coordinating Council. Such an agency is eligible to apply to the Public Safety Coordinating Council for reimbursement, including, but not limited to, the initial purchase, maintenance, and replacement of body-worn cameras and ongoing costs related to maintenance and storage of data recorded by body-worn cameras.

(G)(1) Data recorded by a body-worn camera is ~~not~~ a public record subject to disclosure under the [South Carolina](#) Freedom of Information Act, [S.C. Code Ann. § 30-4-10 et. seq.](#)

(2) The State Law Enforcement Division, the Attorney General, and a circuit solicitor may request and must receive data recorded by a body-worn camera for any legitimate criminal justice purpose.

(3) A law enforcement agency, the State Law Enforcement Division, the Attorney General, or a circuit solicitor may release data recorded by a body-worn camera in its discretion.

(4) A law enforcement agency may request and must receive data recorded by a body-worn camera if the recording is relevant to an internal investigation regarding misconduct or disciplinary action of a law enforcement officer.

(5) In addition to the persons who may request and must receive data recorded by a body-worn camera provided in items [\(1\)](#) [\(2\)](#), and [\(6\)](#), the following are also entitled to request and receive such data pursuant to the South Carolina Rules of Criminal Procedure, the South

Carolina Rules of Civil Procedure, or a court order:

- (a) a person who is the subject of the recording;
- (b) a criminal defendant if the recording is relevant to a pending criminal action;
- (c) a civil litigant if the recording is relevant to a pending civil action;
- (d) a person whose property has been seized or damaged in relation to, or is otherwise involved with, a crime to which the recording is related;
- (e) a parent or legal guardian of a minor or incapacitated person described in subitem (a) or (b); and
- (f) an attorney for a person described in subitems (a) through (e).

(6) data recorded by a body-worn camera that involves an officer involved incident resulting in death, injury, property damage, or the use of deadly force is specifically made public information, pursuant to S.C. Code Ann. § 30-4-50, subject to the restrictions and limitations of the South Carolina Freedom of Information Act. A law enforcement or public safety agency may apply to the circuit court for an order to prevent the disclosure of this data recorded by a body-worn camera, using the procedure outlined for law enforcement vehicle-mounted recording device or dashboard camera data in S.C. Code Ann. § 30-4-50(9)(a)-(d).

(H) (1) Both the video and audio recording functions of the body-worn camera shall be activated whenever a law enforcement officer is responding to a call for service or at the initiation of any other law enforcement or investigative stop between a law enforcement officer and a member of the public, except that when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity to do so.

(2) The body-worn cameras video and audio functions shall not be deactivated until the stop has fully concluded and the law enforcement officer leaves the scene.

(3) Limitations On Use Of body-worn cameras.—Body-worn cameras shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative stop between a law enforcement officer and a member of the public, and shall not be equipped with or employ any real time facial recognition technologies.

(4) Use of Redaction Technology.—Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person,

including the tone of the person's voice, provided the redaction does not interfere with a viewer's ability to fully, completely, and accurately comprehend the events captured on the video footage.

(a) When redaction is performed on video footage pursuant to this paragraph, an unedited, original version of the video footage shall be retained pursuant to the requirements of state law.

(b) Except pursuant to the rules for the redaction of video footage set forth in this subsection or where it is otherwise expressly authorized by this Act, no other editing or alteration of video footage, including a reduction of the video footage's resolution, shall be permitted.

(5) Prohibited withholding of footage prohibited.—Body camera video footage may not be withheld from the public on the basis that it is an investigatory record or was compiled for law enforcement purposes where any person under investigation or whose conduct is under review is a police officer or other law enforcement employee and the video footage relates to that person's conduct in their official capacity.