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Recent Development

Comprehensive Police Officer Body Camera Guidelines in Illinois

Liane C. Dublinski*

I. INTRODUCTION

Following Michael Brown's death in Ferguson, Missouri¹ and Freddie Gray's death in Baltimore, Maryland,² the public was hungry for answers about what had happened.³ Both cases involved testimony and evidence that contradicted with the police officer's side of the story.⁴ The respective cities in both cases were shaken by angry protests and riots in opposition to what protesters viewed to be an oppressive, untrustworthy police culture.⁵ When the public was able to see what happened, like in the cases of Eric Garner⁶ and Walter Scott,⁷

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1. See generally *Ferguson Protests: What We Know About Michael Brown's Last Minutes*, BBC NEWS (Nov. 24, 2014), <http://www.bbc.com/news/world-us-canada-28841715>.

2. See generally Greg Botelho & Ashley Fantz, *What We Know, Don't Know About Freddie Gray's Death*, CNN (Apr. 29, 2015, 10:52 AM), <http://www.cnn.com/2015/04/22/us/baltimore-freddie-gray-what-we-know>.

3. See generally Matt Pearce, 'We Want Answers,' *Family Lawyer for Missouri Teen Shot by Cop Says*, L.A. TIMES (Aug. 12, 2014, 1:26 PM), <http://www.latimes.com/nation/nationnow/la-na-ferguson-missouri-shooting-officer-identity-20140812-story.html> (regarding Michael Brown); *New Day* (CNN Broadcast Apr. 29, 2015), <http://www.cnn.com/TRANSCRIPTS/1504/29/nday.03.html> (regarding Freddie Gray).

4. See generally *Ferguson Protests*, *supra* note 1; Justin Fenton & Kevin Rector, *Former Baltimore Police Commander: Porter Acted Reasonably in Handling Freddie Gray*, BALT. SUN (Dec. 10, 2015, 8:49 PM), <http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-porter-trial-thursday-20151210-story.html> (discussing contradictory evidence in the trial of one of the police officers charged with involuntary manslaughter in Freddie Gray's case).

5. See *Ferguson Unrest: From Shooting to Nationwide Protests*, BBC NEWS (Aug. 10, 2015), <http://www.bbc.com/news/world-us-canada-30193354> (discussing circumstances in Ferguson, Missouri, that led to mass protests); Greg Botelho et al., *Baltimore Protests: Crowds, Police Stand Off After Curfew*, CNN (Apr. 29, 2015, 4:18 AM), <http://www.cnn.com/2015/04/28/us/baltimore-riots/>.

6. See generally Dana Ford et al., *Protests Erupt in Wake of Chokehold Death Decision*, CNN (Dec. 8, 2014, 2:04 PM), <http://www.cnn.com/2014/12/04/justice/new-york-grand-jury-chokehold>.

7. See generally Editorial, *The Walter Scott Murder*, N.Y. TIMES (Apr. 8, 2015),

they were outraged.⁸ It was clear that there was, and still is, a clear need for reform, and law enforcement agencies agreed.⁹

After these tragic events, the media has devoted substantial resources in recent years to covering instances of excessive force by police officers, particularly when those police officers shoot and kill civilians.¹⁰ Though there is not currently a database that keeps track of when officers kill civilians, some experts believe that the number has not necessarily gone up.¹¹ Instead, the growing mention of police shootings in the media is likely a result of a technological shift that has dramatically altered how Americans perceive officers' use of deadly force.¹² Members of the public can now experience the shooting as if they were present thanks to cell phone videos and, increasingly, officer-worn body cameras.

II. BENEFITS AND CONCERNS OF POLICE BODY CAMERAS

There are a number of valuable benefits that can come from law enforcement officers wearing body cameras. Chief among those benefits are transparency and accountability.¹³ Body cameras

http://www.nytimes.com/2015/04/09/opinion/the-walter-scott-murder.html?_r=0; *Outrage and Apathy as Another Unarmed Black Man Is Gunned Down by Police*, BALT. SUN (Apr. 8, 2015, 12:09 PM), <http://www.baltimoresun.com/news/opinion/editorial/bs-ed-race-police-activism-20150408-story.html>.

8. See Catherine E. Shoichet & Chandler Friedman, *Walter Scott Case: Michael Slager Released from Jail After Posting Bond*, CNN (Jan. 5, 2016), <http://www.cnn.com/2016/01/04/us/south-carolina-michael-slager-bail/> (stating that the graphic footage of Walter Scott's death "sparked outrage and reignited a national conversation around race and policing"); Brent Staples, *Hope and Anger at the Garner Protests*, N.Y. TIMES (Dec. 5, 2014), <http://www.nytimes.com/2014/12/06/opinion/hope-and-anger-at-the-garner-protests.html> (describing protests in cities throughout the country as voicing outrage and frustration over the police shootings and rallying behind the slogan "I Can't Breathe," which alludes to the death of Eric Garner).

9. See H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Sims) (audio tape on file with author) (stating that the law enforcement community recognized there was a need for reform and participated in legislative process of Senate Bill 1304).

10. See Elliott C. McLaughlin, *We're Not Seeing More Police Shootings, Just More News Coverage*, CNN (Apr. 21, 2015, 7:26 AM), <http://www.cnn.com/2015/04/20/us/police-brutality-video-social-media-attitudes> (discussing media coverage of police officer-related deaths).

11. Ben Kesling & Mark Peters, *Teen's Shooting Highlights Racial Tension*, WALL ST. J. (Aug. 12, 2014, 11:00 PM), <http://www.wsj.com/articles/police-protect-identity-of-officer-involved-in-missouri-teens-shooting-1407861679> (quoting Professor Maria Haberfeld of John Jay College of Criminal Justice as saying, "There is no escalation in the use of deadly force. What we are seeing is a proliferation of cellphones and cameras.").

12. *Id.*; Kimberly Kindly et al., *A Year of Reckoning: Police Fatally Shoot Nearly 1,000*, WASH. POST (Dec. 26, 2015), <http://www.washingtonpost.com/sf/investigative/2015/12/26/a-year-of-reckoning-police-fatally-shoot-nearly-1000>.

13. Karson Kampfe, *Police-Worn Body Cameras: Balancing Privacy and Accountability Through State and Police Department Action*, 76 OHIO ST. L.J. 1153, 1163–64 (2015) (describing

recordings can provide evidence of what actually occurred between an officer and civilian in what otherwise might be a suspicious encounter.¹⁴ While much of the media attention focuses on police officer uses of force, and body cameras would certainly help shed light on those situations, the cameras would also be beneficial in the more prevalent problem of unconstitutional searches.¹⁵ Transparency in these situations can lead to increases in perceived legitimacy of police, which, in turn, creates a greater sense of trust between the police and the public.¹⁶

Body cameras do not only benefit the public but have been shown to help the police as well.¹⁷ Departments that have begun utilizing body cameras have seen a significant drop in the number of citizen complaints against officers and incidents of police officer use of force.¹⁸ This result has been attributed to self-awareness—that is, people are less likely to engage in socially undesirable behavior if they know they are being observed.¹⁹ Police chiefs in departments utilizing body cameras have noticed that instructing their officers to tell a citizen that they are being recorded in confrontational encounters is often sufficient to

the public benefits of police body cameras).

14. *Id.* at 1155. *But see* Timothy Williams et al., *Police Body Cameras: What Do You See?*, N.Y. TIMES (Apr. 1, 2016), http://www.nytimes.com/interactive/2016/04/01/us/police-bodycam-video.html?_r=0 (illustrating a study done by Seth W. Stoughton, a law professor at the University of South Carolina, that concludes that what people see in police body camera footage tends to be shaped by what they already believe).

15. Kampfe, *supra* note 13, at 1163–64; David A. Harris, *Picture This: Body-Worn Video Devices (Head Cams) as Tools for Ensuring Fourth Amendment Compliance by Police*, 43 TEX. TECH. L. REV. 357, 363–64 (2010) (noting that an estimated 30% of police searches are unconstitutional and suggesting that body cameras would provide evidence for disciplinary action against the officers involved, whereas the exclusionary rule is only a remedy in the mere 3% of those searches that reveal evidence).

16. Kampfe, *supra* note 10, at 1164; *see also* MICHAEL WHITE, DEP'T OF JUSTICE, POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE 19 (2014), <https://www.ojp.diagnosticscenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>. *But see* LINDSAY MILLER & JESSICA TOLIVER, DEP'T OF JUSTICE, IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED 13–14 (2014), <https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf> (expressing concern from police officers that recording every interaction with the public may make citizens less likely to be open with police officers).

17. Kampfe, *supra* note 10, at 1164–67 (describing how police cameras decrease the number of civil law suits and civilian complaints, allow for better training material, and increase efficiency for officers doing paperwork and for the courts by getting more guilty pleas).

18. *Id.* at 1165; *see also* Barak Ariel et al., *The Effect of Police Body-Worn Cameras on Use and Force of Citizen Complaints Against the Police: A Randomized Controlled Trial*, 31 J. QUANTITATIVE CRIMINOLOGY 509, 524 (2015) (revealing an 88% decrease in citizen complaints for police officer use of force during a body camera trial period).

19. *Id.* at 1162; *see also* Ariel et al., *supra* note 18, at 516 (explaining why people act in a way they perceive to be more socially acceptable when they believe others are watching).

neutralize the situation.²⁰

While there are many positive implications of police officers using body cameras, both legal scholars²¹ and proponents of reform²² have raised a number of policy and privacy concerns related to these cameras.²³ The largest concern raised about the increased use of police body cameras is the effect on privacy.²⁴ Placing cameras on all police officers in a municipality, county, or state necessarily allows the government to record all aspects of the lives of members of the public.²⁵ This type of quasi-government surveillance of the public is troublesome to some.²⁶ It is precisely what so unsettled many Americans when they learned about the NSA's telephone surveillance program.²⁷ Police departments, and the local or state government by extension, could end up with videotapes of the inside of people's homes.²⁸ Even if police officers entered someone's home for a legitimate, non-search purpose, the officers would have the ability to review the tapes, slow them down,

20. MILLER & TOLIVER, *supra* note 16, at 6.

21. *E.g.*, *Developments in the Law—Policing*, 128 HARV. L. REV. 1794, 1808 (2015) (discussing the benefits and detriments of using body cameras in the context of policing reforms).

22. *E.g.*, Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All* (Am. Civil Liberties Union, version 2.0, 2015), https://www.aclu.org/sites/default/files/assets/police_body-mounted_cameras-v2.pdf.

23. *E.g.*, *id.*; *Developments in the Law, supra* note 21; Matthew Feeney, *Police Body Cameras Raise Privacy Issues for Cops and the Public*, CATO INST. (Feb. 12, 2015, 1:27 PM), <http://www.cato.org/blog/police-body-cameras-raise-privacy-issues-cops-public>; Kelly Freund, *When Cameras Are Rolling: Privacy Implications of Body-Mounted Cameras on Police*, 49 COLUM. J.L. & SOC. PROBS. 91 (2015); Dru S. Letourneau, *Police Body Cameras: Implementation with Caution, Forethought, and Policy*, 50 U. RICH. L. REV. 439, 442 (2015); Brian Liebman, *The Watchman Blinded: Does the North Carolina Public Records Law Frustrate the Purpose of Police Body Cameras?*, 94 N.C. L. REV. 344, 372–73 (2015); *see also* ABRAMS INST., MEDIA FREEDOM & INFO. ACCESS CLINIC, POLICE BODY CAMERA FOOTAGE: JUST ANOTHER PUBLIC RECORD 16–25 (2015), http://isp.yale.edu/sites/default/files/publications/police_body_camera_footage_just_another_public_record.pdf; EUGENE P. RAMIREZ, A REPORT ON BODY WORN CAMERAS 12 (2014), https://www.bja.gov/bwc/pdfs/14-005_Report_BODY_WORN_CAMERAS.pdf.

24. *See generally* Freund, *supra* note 23 (examining potential privacy concerns of the use of police body cameras); University Alliance, *Police Body Cameras: Pros and Cons*, NEW ENG. C., <http://www.newenglandcollegeonline.com/resources/criminal-justice/police-body-cameras-pros-and-cons/> (last visited Apr. 28, 2016) (stating privacy concerns are among the most cited concerns of police body cameras).

25. *See* Stanley, *supra* note 22, at 2 (discussing officer-worn body cameras as surveillance and the limited circumstances where the ACLU supports their use).

26. Stanley, *supra* note 22, at 2 (discussing officer-worn body cameras as surveillance and the limited circumstances where the ACLU supports their use).

27. *See, e.g.*, Glenn Greenwald, *NSA Collecting Phone Records of Millions of Verizon Customers Daily*, GUARDIAN (June 6, 2013, 6:05 AM), <http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order> (discussing the government's broad surveillance of Verizon customer's phone records).

28. Kampfe, *supra* note 13, at 1170.

and enhance images, which could lead to the discovery of evidence that would otherwise have gone unnoticed.²⁹ Police officers wearing the body cameras could also argue that their privacy would be violated by the cameras, as the cameras would record the officers at all times, including when the officers were not interacting with the public and may be speaking about private matters.³⁰

These problems are compounded by the fact that body camera recordings are technically public records,³¹ and unless the videos fell within an exemption, a nosy neighbor could have access to any of these police recordings through the Freedom of Information Act (“FOIA”).³² Other issues body cameras present include: how long local governments would have to keep the recordings, which take up a lot of storage space and are expensive;³³ whether the government could refuse to disclose the recordings altogether if it contained content that was subject to a FOIA exemption or if the government would merely have to obscure the objectionable material;³⁴ and whether the subject of the recording would have to consent to releasing the recording to a third party.³⁵

The other inherent problem with trying to reconcile the benefits of using police body cameras and protecting peoples’ privacy is that even if police officers were instructed to turn the cameras off and on in

29. *Developments in the Law*, *supra* note 21, at 1808.

30. Feeney, *supra* note 23; *see* RAMIREZ, *supra* note 23, at 12 (recognizing the privacy issues for police officers by requiring the cameras to be on at all times).

31. 5 ILL. COMP. STAT. 140/2(c) (2016) (defining public record as “all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of, or under the control of any public body.”). Responsive records under the control of third-party contractors that were hired to perform a government function, such as storing and managing police body camera footage, are also considered public records that need to be disclosed upon request if they do not fall under an exception. *Id.* at 140/7(2).

32. *Id.* at 140/1.

33. *See generally* Letourneau, *supra* note 23, at 442 (discussing body camera with different options of transferring recordings for storage). Police body cameras can range from a few hundred dollars to several thousand dollars. *Id.*; *see also* WHITE, *supra* note 16, at 9, 32–34 (noting that commonly used body cameras cost between \$800 and \$1000 but other expenses associated with body cameras entail hardware replacement costs including batteries, storage costs, and the high manpower costs required to redact the recordings).

34. *See* ABRAMS INST., *supra* note 23, at 16–25 (discussing some states’ categorical ban on releasing body camera footage due to privacy concerns and suggesting ways those concerns can be assuaged while still releasing parts of the footage to the public).

35. *See* RAMIREZ, *supra* note 23, at 5 (discussing the effect a state being a one-party or two-party consent state has on police body cameras); Stanley, *supra* note 22, at 7 (suggesting policy considerations for the public disclosure of police body camera footage).

certain circumstances, turning the camera off and on is still subject to an officer's judgment and user error—that is, an officer may forget to turn the camera off or on in the moment the recording is actually necessary.³⁶ Many think this could defeat the purpose of having the cameras in the first place as it would not hold officers accountable for their actions at all times.³⁷

III. ILLINOIS'S COMPREHENSIVE POLICE REFORM MEASURES

In Illinois, many municipalities and law enforcement agencies saw the benefit of police body cameras, but due to the number of concerns associated with them, decided to wait for guidelines from the state legislature about how to implement a body camera program rather than create their own policies, which could open the agency up to possible liability.³⁸ To address this, the Illinois legislature began preparing a bill to do exactly that, provide guidelines to law enforcement agencies in implementing their body camera programs.³⁹ While about 200 bills on the subject were filed in the Illinois legislature in 2015, Senate Bill 1304 eventually won the day.⁴⁰

Senate Bill 1304 was a bipartisan effort that had the benefit of input from the law enforcement community.⁴¹ Illinois wanted to be ahead of the curve and implement new laws that addressed not only the concerns about police body cameras, but went even further to try to address the institutional problems within law enforcement that unfortunately lead to

36. See Liebman, *supra* note 23, at 372–73 (discussing the discretion police officers possess in turning body cameras off and on); cf. Stanley, *supra* note 22, at 3 (giving the example of a police officer not turning a camera on to evade recording abuses committed while on duty).

37. Stanley, *supra* note 17, at 2–3; Nick Wing, *Here's How Police Could End Up Making Body Cameras Mostly Useless*, HUFFINGTON POST (Oct. 10, 2015, 9:03 AM), http://www.huffingtonpost.com/entry/police-body-camera-policy_us_5605a721e4b0dd8503079683; Yoohyun Jung, *As More Police Wear Body Cams, Questions Arise*, ARIZ. DAILY STAR (Feb. 28, 2015, 7:00 PM), http://tucson.com/news/blogs/police-beat/as-more-police-wear-body-cams-questions-arise/article_bd0978be-5dc9-5d9e-a1ba-d08207e451c9.html.

38. See Posting of Sarah Griffin, sgriffin@cityoffreeport.org, to ilgl-list@listserv.municode.com (Apr. 20, 2015) (on file with author) (asking whether other local law enforcement agencies were planning on utilizing police body-worn cameras or if they were waiting for new legislation). Responses to the question revealed that some attorneys of these law enforcement agencies preferred to wait for guidelines from the legislature rather than create their own policies. Posting of Jill Pelka-Wilger, pelka-wilgerj@naperville.il.us, and Michael Jurusik, mtjurusik@ktjlaw.com, to ilgl-list@listserv.municode.com (Apr. 20, 2015) (on file with author).

39. S. 1304, 99th Gen. Assem., 9th Sess. (Ill. 2015); H., Rec. of Debates, 99th Gen. Assem., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Sims) (audio tape on file with author).

40. *Id.*

41. See generally *Bill Status of SB1304*, ILL. GEN. ASSEMBLY, <http://www.ilga.gov/legislation/BillStatus.asp?DocNum=1304&GAID=13&DocTypeID=SB&SessionID=88&GA=99> (last visited Apr. 28, 2016).

many tragic scenarios.⁴² Representative Elgie R. Sims, Jr. was the primary sponsor of Senate Bill 1304, which had been originally introduced as a floor amendment to a simple bill regarding conviction fees.⁴³ The Illinois House of Representatives passed the bill on May 28, 2015, with 107 yea, 3 nay, and 4 present votes,⁴⁴ and the Illinois Senate soon followed on May 30, 2015, with 45 yea, 5 nay, and 6 present votes.⁴⁵ Governor Rauner signed the bill on August 12, 2015, making it Illinois Public Act 99-0352.⁴⁶ The Act created three new laws and amended several others.

A. Law Enforcement Officer-Worn Body Camera Act

One of the most significant portions of Public Act 99-0352 is its creation of the Law Enforcement Officer-Worn Body Camera Act (“Body Camera Act”), which became effective on January 1, 2016.⁴⁷ Despite the title of the Body Camera Act, it does not actually mandate that all police departments and police officers use body cameras.⁴⁸ Instead, it charges the Illinois Law Enforcement Training and Standards Board (“Training Board”)—created by the Illinois Police Training Act⁴⁹—with developing basic guidelines for the use of officer-worn body cameras.⁵⁰ Any police department that chooses to use body cameras must then adopt a written policy using the guidelines created by the Training Board as a base.⁵¹

The basic premise of the Body Camera Act ““is that police body

42. H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Sims) (audio tape on file with author).

43. *Bill Status of SB1304*, *supra* note 41.

44. H., Voting History for Senate Bill 1304, 99 Gen. Assem., 57th Sess. (Ill. May 28, 2015), http://www.ilga.gov/legislation/votehistory/99/house/09900SB1304_05282015_054000T.pdf.

45. S., Voting History for Senate Bill 1304, 99 Gen. Assem., Reg. Sess. (Ill. May 30, 2015), http://www.ilga.gov/legislation/votehistory/99/senate/09900SB1304_05302015_023000C.pdf.

46. *See* Act of Aug. 12, 2015, 2015 Ill. Legis. Serv. Pub. Act 99-352 (S.B. 1304 West) (effective Aug. 12, 2015).

47. 50 ILL. COMP. STAT. 706/10-1 to 10-35 (2016).

48. *See id.* at 706/10-15 (providing that the Body Camera Act is applicable to all law enforcement agencies that utilize body cameras, but not requiring all agencies to utilize the cameras).

49. 50 ILL. COMP. STAT. 705/1-12 (2016).

50. 50 ILL. COMP. STAT. 706/10-20(a). As of the date of publication, the Training Board had not yet proposed administrative rules in accordance with the Body Camera Act.

51. *Id.* While local law enforcement departments creating these written policies will presumably train its offices on using the body cameras, the statute, as written, does not require it. *See id.* Yet, it is interesting to note that the legislation added a provision to the State Police Act that requires the Illinois Department of State Police to provide training to officers who utilize the body cameras. *See* 20 ILL. COMP. STAT. 2610/35(c) (2016).

cameras must be turned on at all times an officer is on duty.⁵² Yet, according to the sponsor of the bill, Representative Sims, there is a difference between the camera being on and the camera recording events.⁵³ The language of the Body Camera Act is partially unclear in this regard: While the Body Camera Act delineates times when a body camera either can or must be “turned off,”⁵⁴ it seems that what the drafters intended was that in those instances the cameras be “on” but not recording. This is evidenced by the fact that the cameras police departments are required to use under the Body Camera Act must have the ability to record the thirty seconds prior to when a police officer activates the camera’s recording feature.⁵⁵ Using cameras with such a feature would mean that the camera would need to “on” at all times, even when it was not recording, otherwise it would not be able to record the past thirty seconds.⁵⁶ In addition to requiring law enforcement agencies to buy cameras with pre-recording capabilities, the Body Camera Act also requires that the cameras are capable of recording for a period of ten hours or more.⁵⁷

In creating the ground-floor guidelines for the body camera programs, the Body Camera Act also addresses many of the privacy concerns outlined above by establishing when it is permissible and when it is mandatory to have the cameras turned off (i.e., not recording).⁵⁸ The cameras need not be recording when, one, there are exigent circumstances that prevent the camera from being turned on, or, two, when the police officer is in a patrol car that is equipped with a functioning in-car camera.⁵⁹ These allowances give police officers some leeway from the requirement of having the cameras on at all

52. 50 ILL. COMP. STAT. 706/10-20(a)(3).

53. H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Sims) (audio tape on file with author).

54. 50 ILL. COMP. STAT. 706/10-20(a)(4).

55. *Id.* at 706/10-20(a)(1). This requirement is excluded for any law enforcement agency that purchased their body cameras prior to July 1, 2015. *Id.*

56. *See, e.g.,* Jane Wells, *The Big Business of Police Body Cameras*, CNBC (Dec. 17, 2014, 4:51 PM), <http://www.cnbc.com/2014/12/17/the-big-business-of-police-body-cameras.html> (describing how police body cameras that record the prior thirty seconds roll constantly and that each thirty seconds is immediately replaced by the next thirty seconds until the officer hits a button to start recording); Stan Horaczek, *Body Cameras Want to Change Law Enforcement*, AM. PHOTO (Aug. 21, 2014), <http://www.americanphotomag.com/body-cameras-want-change-law-enforcement> (describing the Taser Axon camera with pre-recording capabilities that allows the camera to constantly film).

57. *Id.* at 706/10-20(a)(2). Again, this requirement excludes all cameras purchased by law enforcement agencies prior to July 15, 2015. *Id.*

58. *Id.* at 706/10-20(a)(3)–(4.5).

59. *Id.* at 706/10-20(a)(3).

times, but at the same time, the Body Camera Act provides that even in situations where an exception applies, the cameras need to be turned on and recording as soon as practicable and as soon as the officer exits the patrol car.⁶⁰ Police officers may also turn off their body cameras when they are engaged in “community caretaking functions,” unless the officer believes that someone is committing or is about to commit a crime, in which case they must turn the camera back on.⁶¹ A community caretaking function is defined as “as task undertaken by a law enforcement officer in which the officer is performing an articulable act unrelated to the investigation of a crime.”⁶²

While some critics of using body cameras worried about keeping the cameras on at all times for the sake of the privacy of the police officers,⁶³ the Body Camera Act specifically does not create an exception to turn the camera off when officers are not interacting with the public and only talking amongst themselves.⁶⁴ Representative Sims explained in the House debates of Senate Bill 1304 that this type of exception was not created because when a police officer is on duty, he or she has no expectation of privacy.⁶⁵ This idea was included within the Body Camera Act provision pertaining to non-officer recordings,⁶⁶ and is consistent with the legislature’s overall goals of transparency and accountability.⁶⁷ The officers may not have an expectation of privacy in their conversations, but the Body Camera Act does protect officers from being disciplined for minor policy or procedure violations that

60. *Id.* at 706/10-20(a)(3)(B).

61. *Id.* at 706/10-20(a)(4.5).

62. *Id.* at 706/10-10. In the Illinois House debates, Representative Sims mentioned a police officer participating in a court appearance or other public forum as examples of community caretaking functions. H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Sims) (audio tape on file with author).

63. Feeney, *supra* note 23; RAMIREZ, *supra* note 23, at 12.

64. H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Sims) (audio tape on file with author).

65. *Id.*

66. 50 ILL. COMP. STAT. 706/10-20(a)(11) (“No officer may hinder or prohibit any person, not a law enforcement officer, from recording a law enforcement officer in the performance of his or her duties in a public place or when the officer has no reasonable expectation of privacy. The law enforcement agency’s written policy shall indicate the potential criminal penalties, as well as any departmental discipline, which may result from unlawful confiscation or destruction of the recording medium of a person who is not a law enforcement officer. However, an officer may take reasonable action to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order.”).

67. H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Sims) (audio tape on file with author) (“I am a firm believer that transparency breeds confidence, and what we are trying to do is put transparency and build transparency into this process, so that the citizens that we represent will have confidence in that system.”).

may be viewed on the recording by the officer's supervisor.⁶⁸

The Body Camera Act also provides for instances when police officers must turn the body cameras off, as opposed to when it is only permissible.⁶⁹ Those instances include when a victim, witness of a crime, or community member asks for the camera to be turned off and when a police officer is interacting with a confidential informant.⁷⁰ In all of these cases, however, the camera need not stop recording if exigent circumstances exist or otherwise doing so would be "impracticable or impossible."⁷¹ Additionally, police officers are given the discretion to continue recording in all of these circumstances if they believe the victim, witness, or confidential informant has committed a crime or is in the process of doing so.⁷² In that circumstance, the police officer must indicate on the recording, presumably audibly, the reason they are continuing to record.⁷³

To ensure that police body camera recordings are compliant with the Illinois eavesdropping laws, which forbid the recording of "private conversations" in a "surreptitious manner,"⁷⁴ the Body Camera Act requires police officers to provide notice to those being recorded by the body cameras who also have a reasonable expectation of privacy.⁷⁵ The police officers must do so in a way that is evident on the recording,⁷⁶ meaning an officer must audibly indicate that the subject is being recorded.⁷⁷ Once again, police officers are given discretion to not

68. See 50 ILL. COMP. STAT. 706/10-20(a)(9). An example of a minor policy violation that police officers would not be disciplined for based on the body camera footage is uniform violations. ILL. POLICE BENEVOLENT & PROTECTIVE ASS'N, SENATE BILL 1304: BILL SUMMARY OVERVIEW (2015), <http://www.pbpa.org/Portals/0/News/Senate%20Bill%201304.pdf>.

69. 50 ILL. COMP. STAT. 706/10-20(a)(4).

70. *Id.* at 706/10-20(a)(4)(A)–(C).

71. *Id.* at 706/10-20(a)(4).

72. *Id.*

73. *Id.*

74. 720 ILL. COMP. STAT. 5/14-1-9 (2016). The statute defines "surreptitious" as "obtained or made by stealth or deception, or executed through secrecy or concealment." *Id.* at 5/14-1(g). A "private conversation" is "any oral communication between 2 or more persons . . . when one or more of the parties intended the communication to be of a private nature under circumstances reasonably justifying that expectation." *Id.* at 5/14-1(d). A person speaking in public at volumes loud enough to be heard by others would not be considered to be having a private conversation and anyone, including police officers with body cameras, could record that person without their permission. See *People v. Clark*, 6 N.E.3d 154, 161 (Ill. 2014) (noting that recording a conversation between people that was loud enough to be heard by others was "wholly innocent conduct" and not illegal); *ACLU v. Alvarez*, 679 F.3d 583, 586, 606 (7th Cir. 2012) (allowing ACLU protesters to film police officers in public who were speaking loud enough to be heard by bystanders).

75. 50 ILL. COMP. STAT. 706/10-20(a)(5).

76. *Id.*

77. See H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of

provide such warnings when exigent circumstances exist that prevent the officer from doing so;⁷⁸ however, the officer must provide notice as soon as possible in those situations.⁷⁹ To clarify some confusion surrounding the most recent amendment to the Illinois Eavesdropping Act,⁸⁰ where many believed that the legislature had outlawed the public's ability to record police officers on their cell phones,⁸¹ the Body Camera Act added specific language that citizens are not prohibited from recording officers in their official duties in public.⁸² Yet, police officers are also expressly permitted to "take reasonable action to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order."⁸³

As previously mentioned, one of the major points of concern in requiring body cameras was how FOIA would apply to these recordings.⁸⁴ The Body Camera Act exempts officer-worn body camera recordings from disclosure under FOIA, meaning that even though the video may be considered a public record under FOIA, the video will not be released.⁸⁵ Yet, the Body Camera Act also provides for instances where the video footage from the body cameras may be released.⁸⁶ For instance, the video must be released under FOIA if it has been identified due to a "complaint, discharge of a firearm, use of force, arrest or

Rep. Sims) (audio tape on file with author) (stating that the exact procedure for how and when to inform the public that the camera is recording will be left up to the individual departments).

78. 50 ILL. COMP. STAT. 706/10-20(a)(5).

79. *Id.*

80. Act of Dec. 20, 2014, 2014 Ill. Legis. Serv. Pub. Act 98-1142 (S.B. 1342 West) (amending 720 ILL. COMP. STAT. 5/14-1 to 14-5).

81. H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Flowers) (audio tape on file with author) (stating there was some confusion about whether the public could record police officers following the amendment of the Eavesdropping Statute); *see also* Thomas Halleck, *Illinois Passes Bill That Makes It Illegal to Record the Police*, INT'L BUS. TIMES (Dec. 9, 2014, 6:07 AM), <http://www.ibtimes.com/illinois-passes-bill-makes-it-illegal-record-police-1744724> (reporting that the amendments to the Illinois eavesdropping statutes codified a recent case that made it legal for members of the public to record police officers who do not have reasonable expectations of privacy).

82. *See* 50 ILL. COMP. STAT. 706/10-20(a)(11) ("No officer may hinder or prohibit any person, not a law enforcement officer, from recording a law enforcement officer in the performance of his or her duties in a public place or when the officer has no reasonable expectation of privacy."); Halleck, *supra* note 81.

83. 50 ILL. COMP. STAT. 706/10-20(a)(11).

84. *See supra* note 31–35 and accompanying text.

85. 50 ILL. COMP. STAT. 706/10-20(b); 5 ILL. COMP. STAT. 140/7.5(bb) (2016).

86. 50 ILL. COMP. STAT. 706/10-20(b); ILL. ATT'Y GEN., ILLINOIS FREEDOM OF INFORMATION ACT: FREQUENTLY ASKED QUESTIONS BY PUBLIC BODIES 2 (2013), http://foia.illattorneygeneral.net/pdf/faq_foia_government.pdf.

detention, or resulting in death or bodily harm.”⁸⁷ Despite the opportunity for FOIA disclosure, if a victim or witness has an expectation of privacy, for example during sensitive situations in their home, the law enforcement agency must obtain the permission of the victim or witness prior to release of the recording.⁸⁸

Law enforcement agencies are required to keep all footage from the body cameras for a period of ninety days, after which the agency may destroy the footage.⁸⁹ Alternatively, a recording must be retained by the law enforcement agency if it is flagged because

- (i) a formal or informal complaint has been filed;
- (ii) the officer discharged his or her firearm or used force during the encounter;
- (iii) death or great bodily harm occurred to any person in the recording;
- (iv) the encounter resulted in a detention or an arrest, excluding traffic stops which resulted in only a minor traffic offense or business offense;
- (v) the officer is subject to an internal investigation or otherwise being investigated for possible misconduct;
- (vi) the supervisor of the officer, prosecutor, defendant, or court determines that the encounter has evidentiary value in a criminal prosecution; or
- (vii) the recording officer requests that the video be flagged for official purposes related to his or her official duties.⁹⁰

Recordings flagged for use in criminal, civil, or administrative proceedings must be kept until the final disposition of the matter in court.⁹¹ Law enforcement agencies may also keep a recording past ninety days if they mark it as material for training purposes; in that circumstance, the Body Camera Act does not require the agency to receive permission from the subject of the recording.⁹² To avoid unnecessary invasions of privacy, only personnel responsible for redacting, labeling, and duplicating the recordings are able to view the recordings—presumably, this would be the agency FOIA officer.⁹³ Yet, officers are allowed to review the recordings as well, prior to filling out their incident reports, so long as they are with a supervising officer and state that they reviewed the recordings in their report.⁹⁴

To support law enforcement agencies that want to use body cameras but cannot afford to purchase the cameras, the Body Camera Act

87. 50 ILL. COMP. STAT. 706/10-20(b)(1).

88. *Id.* at 706/10-20(b)(1)(B).

89. *Id.* at 706/10-20(a)(7).

90. *Id.* at 706/10-20(a)(7)(B).

91. *Id.* at 706/10-20(a)(7)(C).

92. *Id.* at 706/10-20(a)(8).

93. *Id.* at 706/10-20(a)(6).

94. *Id.*

establishes a grant program.⁹⁵ The money for the grants will come from a five-dollar fee added to Illinois traffic tickets, excluding parking, registration and pedestrian offenses.⁹⁶ The money will be added to the same special fund in the State Treasury as the grants for purchasing patrol car cameras, wherein the Training Board will handle its distribution.⁹⁷ Each law enforcement agency that receives these grants from the state must adopt the rules the Training Board creates based on the above requirements from the Body Camera Act.⁹⁸ The agencies must also provide a report to the Training Board and the General Assembly with information about their implementation of and compliance with the body camera program, including the number of officers using the cameras, how many cameras are utilized by the agency, any technical issues with the cameras, the supervisor review process, and information about any recordings used in prosecutions.⁹⁹

B. Police and Community Relations Improvement Act

The Police and Community Relations Improvement Act (“Community Relations Act”),¹⁰⁰ also created by Public Act 99-0352, aims to go beyond just body cameras to advance the goals of transparency and accountability for law enforcement in Illinois.¹⁰¹ The Community Relations Act provides that that each law enforcement agency needs to “have an officer-involved death investigation policy in writing.”¹⁰² These procedures must include the requirement that each officer-involved death investigation will be conducted by at least two investigators, from outside of the law enforcement agency, one of whom is certified as a lead homicide investigator.¹⁰³

After the conclusion of the investigation, the two independent

95. *Id.* at 706/10-15; 50 ILL. COMP. STAT. 707/10 (2016); 730 ILL. COMP. STAT. 5/5-9-1 (2016).

96. Act of Aug. 12, 2015, 2015 Ill. Legis. Serv. Pub. Act 99-352, § 20-160 (S.B. 1304 West) (amending 730 ILL. COMP. STAT. 5/5-9-1); H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Sims) (audio tape on file with author); Bryant Jackson-Green, *Rauner Signs Law Establishing Statewide Rules for Use of Police Body Cameras*, ILL. POL’Y (Aug. 14, 2015), <https://www.illinoispolicy.org/rauner-signs-law-establishing-statewide-rules-for-use-of-police-body-cameras>.

97. 50 ILL. COMP. STAT. 707/10(a).

98. *Id.* at 707/10(b); 50 ILL. COMP. STAT. 706/20(a).

99. 50 ILL. COMP. STAT. 707/15(b); 50 ILL. COMP. STAT. 706/10-25.

100. 50 ILL. COMP. STAT. 727/1-1 to 1-25 (2016).

101. H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Franks) (audio tape on file with author).

102. 50 ILL. COMP. STAT. 727/1-10(a).

103. *Id.* at 727/1-10(b). Compensation for the outside investigators “may be determined in an intergovernmental or interagency agreement.” *Id.* at 727/1-20.

investigators are to deliver a complete report to the State's Attorney of the county in which the officer-involved death occurred.¹⁰⁴ If the State's Attorney does not find any basis to prosecute the officer involved in the death, or if the officer is not otherwise charged or indicted, the investigators must release the report to the public.¹⁰⁵ While the new law requires these additional steps be taken to investigate officer-involved deaths, it "does not prohibit any law enforcement agency from conducting an internal investigation into the officer-involved death" if it does not interfere with the investigation conducted under the Community Relations Act.¹⁰⁶

To address potential conflicts of interest when the State's Attorney is prosecuting a police officer, the legislation provided for a mechanism to appoint a special prosecutor.¹⁰⁷ If the court finds, on its own motion or that of an interested party, that the State's Attorney has an actual conflict of interest, the court can appoint a special prosecutor.¹⁰⁸ Yet, it is not mandatory for the court to do so.¹⁰⁹ While debating this legislation, Representative Jack Franks reported that the State's Attorney in his district was concerned that the language "any interested party" would allow any citizen in the state who may be following a proceeding to file a petition for a special prosecutor.¹¹⁰ Representative Sims, however, assured him that, in addition to the court, only an individual who is subject to the investigation or criminal or civil proceeding may file a petition requesting a special prosecutor.¹¹¹ The language requiring an "actual conflict" was put into the legislation at the request of Representative Jim Durkin and other House Republicans to avoid people requesting special prosecutors based on any perceived slight.¹¹²

104. *Id.* at 727/1-10(d).

105. *Id.* at 727/1-10(e).

106. *Id.* at 727/1-15.

107. Act of Aug. 12, 2015, 2015 Ill. Legis. Serv. Pub. Act 99-352, § 20-145 (S.B. 1304 West) (amending 55 ILL. COMP. STAT. 5/3-9008).

108. 55 ILL. COMP. STAT. 5/3-9008(a-10) (2016).

109. *See id.* at 5/3-9008(a-5) ("If the court finds that the State's Attorney is sick, absent, or otherwise unable to fulfill his or her duties, the court *may* appoint some competent attorney to prosecute or defend the cause or proceeding." (emphasis added)).

110. H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Franks) (audio tape on file with author).

111. *Id.* (statement of Rep. Sims).

112. *Id.* (statement of Rep. Durkin).

C. Uniform Crime Reporting Act

The Uniform Crime Reporting Act (“Crime Reporting Act”),¹¹³ the third law created by Public Act 99-0352, is Illinois’s attempt to address the problem of not having information and statistics available on crime, police-related or not.¹¹⁴ The Crime Reporting Act requires the Department of State Police to be a “central repository and custodian” for all crime statistics.¹¹⁵ All law enforcement agencies are required to submit a report to the Department of State Police each month that includes arrest-related deaths, police discharge of firearms, domestic and hate crime incidents, and offenses involving schools.¹¹⁶ Law enforcement agencies must also provide supplemental, quarterly criminal homicide reports, including a description of the victim, the offender, the relationship between the victim and offender, any weapons used, and the circumstances of the incident.¹¹⁷

D. Reform of Current Laws

Public Act 99-0352 amended a number of other existing statutes to accomplish other law enforcement related reforms.¹¹⁸ For instance, the legislation looked to address the fact that Chicago police officers make a startling number of street stops, particularly of African American men in predominantly white neighborhoods.¹¹⁹ In the absence of impracticability, impossibility, or other exigent circumstances, police officers are now required to provide any person they detain with a “stop

113. 50 ILL. COMP. STAT. 709/5-1 to 1-30 (2016).

114. See Kindly et al., *supra* note 12 (discussing the lack of data on the use of deadly force by police officers).

115. 50 ILL. COMP. STAT. 709/5-10.

116. *Id.* at 709/5-12.

117. *Id.* at 709/5-15.

118. Act of Aug. 12, 2015, 2015 Ill. Legis. Serv. Pub. Act 99-352 (S.B. 1304 West) (amending 55 ILL. COMP. STAT. 5/3-9008); see also *Bill Status of SB1304*, *supra* note 41.

119. See H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Flowers) (audio tape on file with author) (commenting on how a *Chicago Tribune* article reported that young black men are often stopped for unjustified means as pedestrians on the south side of Chicago and are stopped in traffic at an increased rate on the mostly white north side of Chicago); Jeremy Gerner, *Street Stops by Chicago Police Far Surpass New York*, *ACLU Finds*, CHI. TRIB. (Mar. 23, 2015, 5:15 AM), <http://www.chicagotribune.com/news/ct-stop-and-frisk-chicago-police-met-20150323-story.html> (stating that Chicago police made street stops at a higher rate in the summer of 2014 than the New York City police at the 2011 height of the latter city’s stop-and-frisk policy); ACLU OF ILL., STOP AND FRISK IN CHICAGO 3, 20 (2015), http://www.aclu-il.org/wp-content/uploads/2015/03/ACLU_StopandFrisk_6.pdf (stating that “Chicagoans were stopped more than [four times] as often as New Yorkers during the height of New York City’s stop and frisk practice,” which was later ruled unconstitutional, and that African American Chicagoans constituted 72% of all stops despite only making up 32% of the population).

receipt” that details the reason for the detention and contains the officer’s name and badge number.¹²⁰ If a person does not wish to wait while the officer fills out this paperwork, they are free to leave at any time.¹²¹ The police officer must then fill out a “uniform pedestrian stop card,” which details the officer’s subjective view of the detainee’s race, if a protective pat down or frisk took place, if any contraband was found, and whether the officer conducted a search beyond the protective pat down.¹²² The information and statistics based on the uniform pedestrian stop card will then be transmitted to the Illinois Department of Transportation monthly in the same manner traffic stops are already reported.¹²³

Public Act 99-0352 also added legislation that expands the basic training curriculum to include courses on procedural justice, cultural competency, implicit bias, proper use of force and law enforcement authority, dealing with the disease of addiction, the mentally ill, sexual assault victims, and more.¹²⁴ Furthermore, officers will now be required to complete annual in-service training on law updates and use of force, as well as training every three years on procedural justice, civil rights, cultural competency, and proper use of force.¹²⁵

120. 725 ILL. COMP. STAT. 5/107-14(b) (2016). The information the legislation requires be given to pedestrians in a stop receipt is different than the information required to be reported on the “uniform pedestrian stop card” that will be transmitted to the Illinois Department of Transportation. *Compare id.* (requiring inclusion of “the reason for the stop and . . . the officer’s name and badge number”), with 625 ILL. COMP. STAT. 5/11-212(b-5) (2016) (requiring inclusion of the gender of the person stopped, the reason for the stop, when the stop occurred, whether a search was conducted and if so with or without consent, any contraband discovered, any ticket issued or arrest made and the alleged violation, and the officer’s name and badge number). The section under the Illinois Code of Criminal Procedure requires that police issue stop receipts when they “stop” a pedestrian in a public place after they reasonably infer from the circumstances that the person is committing or is about to commit a crime. 725 ILL. COMP. STAT. 5/107-14. Conversely, the section referring to when a police officer has to fill out a uniform pedestrian stop card uses—and defines—the word “detention” instead of “stops.” 625 ILL. COMP. STAT. 5/11-212(b-5). Detention, in this section, is defined as “all frisks, searches, summons, and arrests.” *Id.* It is not improbable to predict a future police officer argument that the word “summons” is vague in this context, and thus a stopping of someone with provision of a stop receipt in compliance with 725 ILL. COMP. STAT. 5/197-14, did not require further reporting of the stop to the Department of Transportation for the study because it did not qualify as a “detention.”

121. H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Sims) (audio tape on file with author).

122. 625 ILL. COMP. STAT. 5/11-212(b-5).

123. *Id.* at 5/11-212(d); H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Sims) (audio tape on file with author).

124. See 50 ILL. COMP. STAT. 705/7(a) (2016) (identifying minimum standards for police training schools).

125. *Id.* at 705/7(g)–(h); cf. ACLU OF ILL., *supra* note 119, at 4 (illustrating the need for training in stop and frisks because “the City was not able to identify a single officer who received follow-up training (post- police academy) on how to lawfully conduct a stop and frisk since May

Lastly, the legislation addressed the use of chokeholds by police officers, which comes merely a year after the death of Eric Garner in New York.¹²⁶ Police officers are now outlawed from using chokeholds, except in situations where deadly force is warranted.¹²⁷ A chokehold is defined as “applying any direct pressure to the throat, windpipe, or airway of another with the intent to reduce or prevent the intake of air.”¹²⁸ The key point of this definition is *intent* because the definition does not include “any holding involving contact with the neck that is not intended to reduce the intake of air.”¹²⁹ The debate in the House implies that, in the original draft of the legislation, the use of a chokehold by police officers was criminalized, but that portion was later taken out at the request of law enforcement.¹³⁰

IV. CONCLUSION

After a tumultuous year that revealed a deep sense of mistrust between law enforcement and the public, reform measures were a priority for both Illinois lawmakers and the law enforcement community alike. Many saw police body cameras as the solution, and the Illinois legislature agreed and created a uniform statewide framework for local law enforcement agencies to implement body camera programs instead of allowing differing policies to be adopted on a local level. Significantly, Illinois’s legislature went beyond merely police body cameras and also attempted to reform other law enforcement behaviors hindering transparency and accountability. Only time will tell if the reform measures will work as intended and increase law enforcement transparency and accountability, but, at the very least, identifying the problems and working to fix them is a step in the right direction.

2011”).

126. 720 ILL. COMP. STAT. 5/7-5.5 (2016). *See generally* Ford et al., *supra* note 6.

127. 720 ILL. COMP. STAT. 5/7-5.5.

128. *Id.*

129. *See id.* (specifically stating that such contact does not constitute a chokehold).

130. *See* H., Rec. of Debates, 99th Gen. Assemb., 57th Sess. (Ill. May 28, 2015) (statement of Rep. Sims) (audio tape on file with author) (referring to how there was “no criminal component left in the bill”).