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**Testimony to the Joint Committee on Corrections and Juvenile Justice Oversight  
Opposing the Original SB18, HB2137, and State Capture of Forfeiture Funds  
Regarding Body Cameras  
November 3, 2015**

Chairman Rubin, Vice Chair McGinn and Committee Members,

The members of our associations want you to know we are not opposed to the use of body worn cameras by our law enforcement officers. But we are ardently opposed to unfunded mandates requiring an immediate implementation of all officers; statutorily setting of what should be local decisions on policies such as retention periods; and the “gotcha” clause providing the law enforcement officer is guilty of any accusation if there is no video. To be clear, there are a couple of things in this bill that need addressed by the legislature while many other provisions should be left to law enforcement policy decisions. There are also other ways to accomplish an expansion of the use of video, but to do it in a responsible and orderly way. We intend to cover all of these points in our testimony today.

To be certain, many Kansas law enforcement agencies are in the process of implementing or expanding their video camera programs. But they are not cheap. While cheap cameras can be obtained, we have found they are prone to failure and produce low picture quality. Low picture quality is sometimes worse than if we had no video at all because it leaves too much up to interpretation and application of what the viewer wants to see in it. Even quality cameras appear to have a 3-5 year life expectancy. Ongoing maintenance and replacement costs must also be considered, along with storage costs which is the highest overall cost factor.

A different approach might be to help local agencies implement these programs with assistance and encouragement, including state bids on various body camera classes that local agencies can use to reduce costs. Local budgets, like the state budget, are very tight right now. Each local agency needs to work with their local governing body to determine appropriate policies as well as the appropriate purchasing and deployment options.

There have been many studies on the use of video by officers. Those studies are pretty conclusive of the benefits. But those studies also include some of the pitfalls of implementation. Two significant reports on this topic were released last year. One, titled “Police Officer Body-Worn Cameras: Assessing the Evidence” by the Office of Justice Programs. Another titled, “Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned” released by the Community Oriented Policing Services of the US Department of Justice and the Police Foundation.

First, we would like to address a provision in the bills that we believe is worth legislative exploration. That is the issue of Open Records and its effect on privacy. This is one area where the law has been behind the curve of law enforcement video implementation. If you look at page 2 line 34 through page 3 line 29 the bills attempt to address this important issue. This is not an easy area to address since it would not be proper to entirely close access to the video but is critical to the privacy of the public and particularly the victims and

witnesses of crime. Law enforcement is provided a great deal of information that we are expected to hold in confidence. Clearly not everything we are told on video is accurate. Sometimes that is by bad intent, and sometimes it is what a person actually believes to be factual, but a more thorough investigation reveals is a mistaken perception. If that information is on a recording and is not subject to any of the exceptions in place today it could be devastating to the person giving the information, the person the information is about, and sometimes their families. It will surely lead to people being hesitant to provide us the information we need to do our jobs. We need provisions in open records laws to further reduce unnecessary disclosure of information that would be personally harmful to the public we are trying to serve.

Undoubtedly the most troublesome is the “gotcha” provision in these bills found on page 3, lines 30-36. In this provision, if there is no video, regardless of the reason, the officer or agency is presumed guilty of any allegation in a civil case and a criminal defendant will have the presumption of truth to anything they want to put forth. There are no provisions of a reasonable explanation of why there is not video.

The aforementioned studies recognize these potential issues and include the following information:

“There may be times when an officer fails to record an event or activity that is otherwise required by agency policy to be recorded. This may arise under the following circumstances:

- When conditions make it unsafe or impossible to activate the camera
- When an officer exercises discretion, per agency policy, to not record because doing so would be detrimental to other agency priorities (e.g., protecting privacy rights, preserving community relations, or facilitating intelligence gathering)
- When the camera malfunctions or otherwise fails to capture the event/activity

In these situations, officers should document in writing and/or on camera their reasons for not recording. This holds officers accountable, allows supervisors to investigate recording irregularities, and documents the absence of video footage for investigations and court proceedings.

Implementation tips:

- The failure to record should be noted in the officer’s written report.
- If the officer deactivates the camera in the middle of recording, the officer should state on camera the reasons why.”

How many of you have been taking videos of your families and thought you had the record on only to learn you didn’t. How many of you have had a battery run down on your camera when you didn’t expect it.

We also have several other concerns with the provision in this bill:

Section 2, subsection (a): A quick implementation date is impractical. When the legislature enacts laws requiring local expenditures we cannot adopt budgets at the local level, which are based on the calendar year, for a July 1 implementation. We are finding the purchasing process combined with implementation is taking around a year. Implementation time includes installation of the systems and training the officers.

Section 2, subsection (b)(1): The continuous recording is both unnecessary and creates an additional cost burden as it will multiply the amount of storage capacity significantly. It also will make the indexing of the videos nearly impossible. It makes no sense to be recording while sitting at the court house waiting to testify, while sitting at a desk writing reports, or many other situations. It doesn’t even make sense to have it running while out in public with no interaction with the public taking place. Recommendations from the aforementioned reports state:

“Regardless of the general recording . . . officers should have the discretion to keep their cameras turned off during conversations with crime witnesses and members of the community who wish to report or discuss criminal activity in their neighborhood.”

“Agencies should prohibit recording other agency personnel during routine, non-enforcement-related activities unless recording is required by a court order or is authorized as part of an administrative or criminal investigation.”

“Prohibited recordings should include the following:

- Conversations with confidential informants and undercover officers to protect confidentiality and officer safety
- Places where a reasonable expectation of privacy exists (e.g., bathrooms or locker rooms)
- Strip searches
- Conversations with other agency personnel that involve case tactics or strategy.”

Section 2, subsection (b)(4): To have to ask permission to record in a residence is leaving a huge hole in the advantage of the cameras. Think of domestic disturbance calls as an example. These are some of the most dangerous calls we go on and they very frequently take place in a residence. They are calls ripe with non-compliance and prone to assault on officers, resulting in use of compliance or defensive tactics by the officer. We need the unfettered ability to record in these situations. If we have to ask permission to record we will encounter one person saying yes and the other saying no.

Section 4, subsection (a): The decision of video retention needs to be a local decision based on cost of storage, liability defense concerns, and the will of the local citizens. This is best left in the hands of the local governing bodies. Defense of lawsuits is a critical consideration and most of those cases have a two-year statute of limitation for filing. These determinations are best left to agency policy than to a cookie cutter approach in statute.

It is easy to believe that video will answer all of the questions of police actions and restore trust between the public and law enforcement. But it isn't always that simple. And do we really believe that trust starts with a video tape of every minute an officer is on duty? Many cases are documented where even an event on video is not clearly defined.

We respectfully ask this committee to not move forward with the mandates as outlined in these bills.

However, there are two steps we do believe you should consider:

1. Initiate a new bill to address the open records issue independently of the other provisions of this bill.
2. Help us find ways to make implementation of body worn cameras more feasible for our agencies through statewide bids or other methods for funding and minimizing costs.

### **Use of Forfeiture Funds for Body Camera Purchases**

There have been discussions about the state capturing the local forfeiture funds then redistributing the funds to local agencies for the purchase of body cameras. We strongly disagree with this strategy.

Local governing bodies have control of the state forfeiture funds today and we strongly encourage you to leave it this way. These forfeiture funds are typically used to support investigative operations, task force costs, and other anti-crime and public safety needs. The use of these funds are guided by statute and are reportable to the local governing body for oversight.

The state control of these funds for the use of body cameras would also be imbalanced approach taking funds away from the local agencies, many of whom have already purchased body cameras, without the potential benefit of such a funding program. We have found that a large number of Kansas law enforcement agencies, both large and small, have either already implemented or are well into an implementation program for body cameras.

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