

INTERAGENCY WORKING GROUP
ON
BODY WORN CAMERAS



REPORT
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SUMMARY OF RECOMMENDATIONS

The Interagency Working Group on Body Worn Cameras unanimously agreed upon the following recommendations for the Governor’s Office and the Attorney General pursuant to Executive Order 201:

Recommendation #1: Review and Evaluation of a Long-Term Migration Plan for a Statewide BWC Storage System

Recommendation #2: State Negotiation of an Increase in Volume Discounts from State Contract Vendors

Recommendation #3: Migration to Cloud-Based Storage, with Requisite Privacy and Data Security Protections

Recommendation #4: Expansion of Officers Who Should Wear BWCs

Each of the four recommendations are discussed in detail in the “Recommendations” section of this Report, followed by policy considerations identified by the Working Group for future contemplation.

INTRODUCTION

Among the biggest changes to law enforcement technology in recent years is the advent of body worn cameras (“BWCs”), which can capture police-public encounters in real time. Agencies across the country have endeavored to employ these devices to both protect themselves and the public, and New Jersey is no exception. On November 24, 2020, Governor Philip D. Murphy enacted historic legislation, P.L. 2020, Chapters 128 and 129, requiring “every uniformed State, county, and municipal patrol law enforcement officer” wear a BWC that electronically records audio and video while acting in the performance of their duties, as well as providing parameters for BWC operations.¹

Chapter 128 mandates all “uniformed State, county, and municipal patrol law enforcement” officers wear BWCs by June 1, 2021. Prior to enactment of the law, fewer than half of the agencies throughout the State were equipped with the technology.² In a survey of these agencies, they reported that this implementation rate was not due to lack of interest, but rather, cost. The potential expense was especially challenging for smaller, and, in many cases, less-resourced, agencies. To fully put these concerns into context, the price-tag for launching a fully-equipped BWC program goes beyond the cost of the device itself; it includes storage, licensing, and maintenance fees that can reach hundreds of thousands of dollars for a mid-sized police department for a three-year contract term. This is in addition to the personnel costs associated with the classification and redaction of the footage for public release when necessary.

Thus, to address the various issues in facilitating implementation of BWCs across the State, Governor Murphy signed Executive Order 201 on November 24, 2020, the same day he enacted the BWC legislation. Executive Order 201 established the Interagency Working Group on Body

Worn Cameras (“Working Group”) to provide recommendations to the Governor’s Office and the Attorney General “regarding technology solutions to facilitate the implementation of body worn cameras in law enforcement agencies.” Specifically, the Executive Order identified the Working Group’s objectives to include the following:

- a. Consulting with law enforcement agencies to identify barriers to the adoption of body worn camera systems;
- b. Identifying and recommending potential technology solutions to facilitate the adoption of body worn camera systems by police departments, including the potential provision of centralized statewide or regional storage systems;
- c. Developing recommended strategies for implementation of a body worn camera solution for police departments, including any actions that must be taken by agencies of state government; and
- d. Recommending any necessary changes to existing policies, whether by executive action or legislation, related to the deployment of body worn camera systems or the storage and handling of body worn camera footage.³

The fourteen-member Working Group, which includes law enforcement, State government members from the Department of Treasury, Office of Information Technology, as well as representation from the Office of Innovation, and members of the legal and social justice communities, discussed broad-sweeping topics related to the statewide implementation of BWCs, which ranged from software to policy considerations. Given the limited timeline for its work, however, the Working Group focused its efforts on finding ways to reduce the initial cost of implementing BWCs, which members identified as the largest barrier to adoption of BWC systems. Focusing on overcoming this barrier dominated much of the Working Group’s discussion as its solution would help ensure the BWC program can be viable from a cost-savings perspective for years to come (it is important for some members to note that this does not diminish the need for additional policy changes to ensure the BWC program serves the public interest). Thus, the

recommendations contained in this Report represent those for which the Working Group reached a broad consensus.⁴

Due to the limited time for which the Working Group was convened, however, further policy recommendations beyond those directly related to cost and technology barriers of BWC implementation in the agencies are identified in the “Further Considerations” section of this Report.

BACKGROUND AND LEGAL FRAMEWORK

In early 2015, law enforcement agencies began equipping their officers with BWCs, beginning New Jersey's foray into this emerging police technology. By the end of that Summer, only a small number of agencies were deploying BWCs routinely in the course of their duties. By 2016, grant programs allowed for additional expansion, and, by Fall 2020, almost half of the law enforcement agencies in the State were outfitted with BWC technology, including most of the largest and busiest departments. As a general matter, the increase in BWC implementation has gained general support by both law enforcement and members of the public.

A. Law & Directives Governing Implementation and Use of BWCs

Currently, BWC use in New Jersey is governed by a collection of laws and Attorney General Law Enforcement Directives that outline the permissible use of the technology, as well as the proper handling and storage of BWC footage.

On November 24, 2020, Governor Murphy signed legislation enacting two new laws governing BWCs, P.L. 2020, Chapters 128 and 129. Chapter 128 concerns who must be equipped with BWCs, while Chapter 129 governs BWC operations and use. In 2015, prior to the passage of these laws, a growing number of law enforcement agencies in New Jersey were implementing BWCs with little formal guidance. In response, the former Acting Attorney General had promulgated Attorney General Directive 2015-1.⁵

For the last six years, Attorney General Directive 2015-1 had governed law enforcement BWC use and provided substantial guidance on BWC implementation and practice. The Directive covers, among other things, activation and deactivation protocols, special considerations and restrictions on BWC use, BWC footage retention periods, and restrictions on access to BWC

recordings. Specifically, the Directive describes the types of police-civilian encounters that trigger activation of BWCs, including when the officer:

- (a) initiates an investigative detention;
- (b) is responding to a call for service and is at or near the location to which the officer has been dispatched;
- (c) is conducting a motorist aid or community caretaking check;
- (d) is interviewing a witness in the course of investigating a criminal offense;
- (e) is conducting a custodial interrogation of a suspect, unless the interrogation is otherwise being recorded in accordance with Rule 3:17;
- (f) is making an arrest;
- (g) is conducting a protective frisk for weapons;
- (h) is conducting any kind of search (consensual or otherwise);
- (i) is engaged in a police response to any type of civil disorder in circumstances where the officer is engaged with or in the presence of civilians and the officer or any other officer on the scene may be required to employ constructive authority or force;
- (j) uses constructive authority or force, or reasonably believes that constructive authority or force may be used in any encounter or situation not otherwise listed in this subsection based on specific and articulable facts warranting heightened caution that are documented by narration on the recording and/or in any investigation or incident report;
- (k) is transporting an arrestee to a police station, county jail, or other place of confinement, or a hospital or other medical care or mental health facility; or
- (l) reasonably believes that any other officer on the scene has undertaken or is engaged in any of the foregoing police actions/activities.⁶

Despite this list of circumstances for activation, the Directive did not specifically mandate who should wear BWCs in the first instance. Rather, it left the decision up to each agency to “tailor their BWC policies and procedures to address local concerns and needs.”⁷ Much of what was

included in Directive 2015-1 was codified in P.L. 2020, Chapter 129, although some of which altered the provisions in the Directive, including retention periods, deactivation protocols, and report-writing processes.

Chapter 128 also went beyond Directive 2015-1 to require all uniformed State, county, and municipal patrol law enforcement officers be equipped with BWCs. Specifically, P.L. 2020, Chapter 128, provides that “every uniformed State, county, and municipal patrol law enforcement officer shall wear a body worn camera that electronically records audio and video while acting in the performance of the officer’s official duties,” except:

- (a) while engaging in an undercover assignment;
- (b) when assigned to non-uniformed duties;
- (c) while serving in an administrative position within the department;
- (d) while meeting with a confidential informant;
- (e) while engaging in union representation of a member of the collective bargaining group;
- (f) when directed by the Chief or a superior officer for a lawful purpose;
- (g) a detective or investigator of a county prosecutor’s office or Division of Criminal Justice when authorized by the County Prosecutor or Attorney General; or
- (h) as may be otherwise provided in accordance with guidelines or directives promulgated by the Attorney General.⁸

In addition to requiring the most efficient placement of the device, Chapter 129 specifies the situations that trigger activation and those circumstances where deactivation is permissible or mandatory. As to the former,

video and audio recording functions of a body worn camera shall be activated whenever the officer is responding to a call for service or at the initiation of any other law enforcement or investigative

encounter between an officer and a member of the public, in accordance with applicable guidelines or directives promulgated by the Attorney General; provided however, if an immediate threat to the officer's life or safety makes activating the body worn camera impossible or dangerous, the officer shall activate the body worn camera at the first reasonable opportunity to do so. The body worn camera shall remain activated until the encounter has fully concluded and the officer leaves the scene.⁹

And as to the latter, an officer is permitted to deactivate the BWC under the following circumstances:

- (a) when a civilian conversing with the officer requests that the device be deactivated where it reasonably appears that the person will not provide information or otherwise cooperate with the officer unless that request is respected;
- (b) when a person, other than an arrestee, is seeking emergency medical services for themselves or another person and requests that the device be deactivated;
- (c) while the officer is participating in a discussion pertaining to criminal investigation strategy and planning, provided that the discussion is not conducted in the immediate presence of a civilian and further provided that the officer is not actively engaged in the collection of physical evidence; or
- (d) when specifically authorized to do so by an assistant prosecutor or an assistant or deputy attorney general for good and sufficient cause as determined by the assistant prosecutor or assistant or deputy attorney general.¹⁰

Chapter 129 also provides for the mandatory deactivation of the BWC when an officer is in certain locations, such as schools, inpatient care and medical facilities, or places of worship, unless that officer is actively engaged in investigating criminal offenses, responding to an emergency call for service, or reasonably believes they will be required to use constructive authority or force.¹¹ BWCs must also be deactivated if the officer is in court or in an area where electronic alcohol testing is being conducted.¹² Crucially, an officer may not activate the device

if the officer knows or reasonably believes that the recording would risk revealing the identity of an individual as an undercover officer or confidential informant or otherwise would pose a risk to the safety of an undercover officer or confidential informant, unless such activation is expressly authorized by a supervisor, or unless the exigency of the situation and danger posed to an officer require that the encounter or incident be recorded, in which event the officer shall inform his or her supervisor that the recording risks revealing the identity of an individual as an undercover officer or confidential informant.¹³

The law also provides for when an officer must notify a civilian that they are equipped with a BWC, and what circumstances require that a civilian be permitted to request that the BWC be deactivated.¹⁴

Chapter 129 also sets the law for the permissible use and storage of BWC footage. It expressly prohibits the footage to be used to gather intelligence based on protected First Amendment rights or to record activity unrelated to a call for service or other law enforcement purpose.¹⁵ A 180-day retention period¹⁶ is required for all footage, regardless of content, after which it must be deleted, except for the following enhanced retention periods:

- (a) a body worn camera recording shall automatically be retained for not less than three years if it captures images involving an encounter about which a complaint has been registered by a subject of the body worn camera recording;
- (b) subject to any applicable retention periods established in paragraph (3) of this subsection to the extent such retention period is longer, a body worn camera recording shall be retained for not less than three years if voluntarily requested by:
 - 1. the law enforcement officer whose body worn camera made the video recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value;
 - 2. a law enforcement officer who is a subject of the body worn camera recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value;

3. any immediate supervisor of a law enforcement officer whose body worn camera made the recording or who is a subject of the body worn camera recording, if that immediate supervisor reasonably asserts the recording has evidentiary or exculpatory value;
 4. any law enforcement officer, if the body worn camera recording is being retained solely and exclusively for police training purposes;
 5. any member of the public who is a subject of the body worn camera recording;
 6. any parent or legal guardian of a minor who is a subject of the body worn camera recording; or
 7. a deceased subject's next of kin or legally authorized designee.
- (c) Notwithstanding the provisions of paragraph (1) or (2) of this subsection, a body worn camera recording shall be subject to the following additional retention requirements:
1. when a body worn camera recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period for evidence in a criminal prosecution;
 2. when a body worn camera records an arrest that did not result in an ongoing prosecution, or records the use of police force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer or the employing law enforcement agency; or
 3. when a body worn camera records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.¹⁷

Chapter 129 also provides that a “law enforcement officer shall not review or receive an accounting of a body worn camera recording . . . prior to creating any required initial reports, statements, and interviews regarding the recorded event” when the recording:

- (a) captures images involving an encounter about which a complaint has been registered by a subject” of the recording;¹⁸

- (b) pertains to a criminal investigation or otherwise records information that may the recording has evidentiary or exculpatory value be subject to discovery in a prosecution;¹⁹
- (c) records an arrest that did not result in an ongoing prosecution;²⁰
- (d) records the use of police force;²¹ or
- (e) records an incident that is the subject of an internal affairs complaint.²²

Failure to comply with these new requirements will subject an officer to discipline and may impact any civil and/or criminal investigations related to the footage.²³

Also relevant is Attorney General Directive 2019-4, which directs law enforcement agencies, in any case that involves police use of deadly force, to make available upon request, any footage from BWCs that were deployed at the time of the incident.²⁴ Noted in Directive 2019-4 is a balance between the need for transparency in the interest of public trust and the need to protect the integrity of sensitive investigations. The Directive addresses this by limiting the prompt release requirement to only those police encounters that include the use of deadly force, and only after the substantial completion of the initial investigation.²⁵ The new laws governing public inspection of BWC footage in all circumstances, including when lethal force is not used, are outlined in P.L. 2020, Chapter 129.

Prompt release of deadly-force incident footage under Directive 2019-4 and of footage generally Chapter 129 is relevant to the instant inquiry into the costs and other barriers of implementation of statewide BWCs. In fact, personnel costs – for example, manual redaction of recordings subject to public inspection – were identified by Working Group members as one of the hidden expenses of the implementation of BWCs. While some redaction software programs may help reduce these costs, the Working Group is not providing any recommendations related to

use of those systems at this time, as the cost, availability, accuracy, and broader public interest consideration of such software has not yet been fully investigated.

Ultimately, however, the new legal requirement for statewide BWC usage means not only that more agencies will have to equip additional officers with BWCs, but that the agencies will also have to devise and promulgate policies for their use, retention, and public release. Thus, although not a formal recommendation, Directives 2015-1 and 2019-4 should be revisited to reflect the new laws, and the Attorney General should provide detailed guidance beyond what is outlined in the new laws, which are effective June 1, 2021.

Another important piece of enacted legislation affecting the statewide implementation of BWCs is P.L. 2020, Chapter 142, which was approved December 23, 2020, a month after the Governor signed Executive Order 201, establishing this Working Group. Chapter 142 appropriated \$58,000,000 out of the General Fund for the New Jersey Statewide Body Worn Camera Program and went into effect immediately. This appropriation is separate and apart from the Working Group's mandate of providing solutions for implementation of a BWC program statewide.

B. State Contract for Purchase of BWCs

Beyond the statutory framework for the implementation of BWCs and associated storage, another framework underpinning the State's BWC program is the current State Contract for BWCs ("State Contract").²⁶ This contract (T0106/Law Enforcement Firearms, Equipment and Supplies), entered into in May 2019, allows State and local agencies to purchase BWCs from five approved vendors. The contract extends until May 2023 and contains an option for up to three, one-year extensions.

The contract includes the purchase of BWC devices and the storage required for the footage. Until recently, the storage offered was only "on-premises," that is, physical servers

maintained at the agencies' offices, which are used to hold the data from the BWCs. The advent of "cloud-based" storage presents another option for storing the data without the need for physical equipment, provided appropriate privacy and data security systems are in place. At the moment, only one vendor on the contract has chosen to sign an amendment allowing for the sale of cloud-based storage of BWC footage through the State Contract. All remaining State Contract vendors will be permitted to offer cloud-based storage solutions once they sign a similar amendment. While State agencies are required to use this contract, New Jersey law does not mandate that local agencies purchase their BWCs through this contract. However, as discussed in the recommendations that follow, there may be cost-saving advantages to encouraging local agencies to use one of the approved vendors through the State Contract.

RECOMMENDATIONS

What follows is a series of recommendations aimed at addressing the barriers facing local, county, and State law enforcement agencies as they begin to equip their officers with BWCs. These recommendations represent those ideas for which there was broad, general consensus among the Working Group members. Because members identified cost as a significant barrier, the Working Group paid special attention to the costs required to start up a BWC program in an agency where there were no BWCs prior to the new laws, as well as the costs associated with the long-term sustainability of the statewide BWC program itself. The first three recommendations focus on the potential for cost-saving methods, while the fourth recommendation provides for a more policy-based consideration regarding who should be required to wear a BWC. All of the recommendations, however, directly impact the overall cost of BWC implementation. By considering these recommendations, the Governor and Attorney General will enable New Jersey's law enforcement agencies to be better positioned to implement a robust BWC program that can be sustained over time, including all that is involved related to technology, costs, and BWC policies that impact the public interest.

Recommendation #1: Review and Evaluation of a Long-Term Migration Plan for a Statewide BWC Storage System.

Executive Order 201 contemplated the establishment of a “centralized solution for the storage and retrieval of BWC footage [that] could leverage the State’s purchasing power to significantly reduce the costs associated with doing so, which would lower the financial and logistical barriers to system adoption for law enforcement agencies.”²⁷ The Working Group has determined that for the short and medium term, a single statewide BWC storage system would be

time and cost prohibitive, and thus, does not have significant advantages justifying its creation. As a threshold matter, such a system or database would need to be built from the ground up, and may need to accommodate a diverse array of BWC technologies from many vendors, which would be a significant technological undertaking.

The largest barrier in any effort to comingle storage of BWC footage from across the State is that, regardless of the proposed system, it would need to integrate data from each individual vendor into a single database. Although BWC footage may appear to be similar across platforms, the software and metadata behind each video varies significantly depending on the vendor. As part of any BWC contract, the purchasing agency must agree to buy a license that allows access to the proprietary software that underpins the system. Thus, a statewide data storage system that collects videos from multiple vendors would require licensing fees from each, which will substantially increase the cost and effectively cut against the overarching purpose of the Working Group's recommendations regarding implementation barriers, which is to lower cost and increase accessibility to BWCs.

Further, a statewide storage system would require additional resources to create the technology capable of integrating all of the different software into a single system. The costs associated with such an endeavor would quickly outpace any savings in the short run. Fundamentally, however, it is unlikely that all of the vendors would agree to provide access to their software to be used for this purpose. Storage fees, which are typically bundled with licensing and maintenance fees on a recurring annual basis, are, depending on the agency's size, a considerable portion of the overall cost for an agency to implement BWCs, and vendors are unlikely to give up this lucrative revenue source without significantly raising the costs to do so. Although the storage costs for larger agencies may not have a significant impact because of the

sheer volume being purchased at a given time, it is still a large cost for small- to mid-sized agencies, especially those that have yet to purchase BWCs and are now required to comply with P.L. 2020, Chapter 128.

Several members of the Working Group expressed an interest in the creation a countywide, as opposed to a statewide, storage system for BWC footage. This would allow for more local control that could adapt to the needs of the specific county. With a countywide storage system, smaller agencies or those with limited funding will be able to share the costs with other agencies within the county. Of course, the same concerns about integration would need to be addressed in the building of such a system, but there may be benefits to leveraging existing county infrastructure, including prosecutor's offices and sheriff's departments, to respond to needs of local law enforcement. Creating incentives to move to a countywide single system would have advantages, such as allowing for multiple vendors, while still potentially achieving the benefits of a single vendor. Of course, however, if agencies have existing BWC systems that are tied to their other data systems (Computer-Aided Dispatch/Record Management System), it may be difficult to encourage the agency to change vendors.

That said, the Working Group could not identify any real advantages to the creation of countywide or a statewide system. And therefore, at this time, the Working Group does not affirmatively recommend implementing a countywide or statewide storage system as noted in Executive Order 201. However, there may be significant changes in the BWC landscape and associated technology in the future, such that creation of such a system will prove to be more feasible, cost effective, and otherwise beneficial to the public interest. As more agencies select a vendor, the State will have a better picture of the integration needs required to build such a system. It may be the case that the vast majority of new BWC programs are all with a single vendor, which

would create a de facto statewide system, as they would each have their data stored on a single cloud-based server. Additionally, there may be technological advancements to make such a system more tenable in ways the Working Group is unable to predict at this time. Therefore, the Working Group recommends that the Office of Information Technology continue to monitor these variables over time for possible review and reconsideration.

Recommendation #2: State Negotiation of an Increase in Volume Discounts from State Contract Vendors.

The Working Group recommends the New Jersey Department of the Treasury aggressively negotiate with the multiple BWC vendors currently on the State Contract for an increased volume discount based on statewide purchasing for both BWCs, as well as the storage to hold the data, specifically focusing on cloud-based storage solutions. As agencies seek to comply with P.L. 2020, Chapters 128 and 129, there will be a significant increase in BWC purchases. Given that, the State may be able to drive per-unit and storage costs down to reflect the volume of new statewide business, provided that vendors can be given reasonable estimates of the BWC storage volumes that will be purchased. The Department of the Treasury should leverage this opportunity to encourage vendors to offer significant volume discounts based on expected statewide spending for equipment and cloud-based storage, discussed in further detail below.

To achieve this end, the Working Group recommends the Office of the Attorney General, in consultation with the Department of the Treasury, Office of Information Technology, and the New Jersey State Police, distribute a statewide survey to all law enforcement agencies to retrieve the agencies' anticipated needs and estimated expenditure so that negotiations between the Department of the Treasury and the vendors can be specific and productive. The Working Group notes, however, that such a survey may be more beneficial once the agencies have a better

understanding of which officers are required to wear BWCs under the new law and what other units may be required, or encouraged, to also wear BWCs based on an updated Attorney General Directive governing BWC use.

Once the needs of the agencies are known, the Attorney General should encourage local agencies to purchase their BWCs and storage through the State Contract, assuming the vendors participating in the contract offer cloud-based storage solutions, to secure the volume discounts. The Working Group notes, however, that a portion of local agencies may choose to continue with, and purchase, on-premises storage rather than migrate to cloud-based storage.

In general, the Working Group concluded that it would be advantageous for State and local agencies to purchase BWCs and necessary storage through the State Contract to expedite the implementation of the new laws, with additional negotiation with vendors to reduce costs. Additionally, encouraging uniformity among the agencies has practical advantages, including the ease of sharing footage as appropriate or necessary, and the ability to more easily coordinate BWC use for multi-agency operations.

Uniformity also allows for the purchase of bulk storage where practical. For example, if all agencies within a particular county purchased BWCs from the same vendor, then county officials could make one purchase of storage that could be shared among smaller agencies that may not be in the same financial position as larger agencies. However, the Working Group would caution the State to be mindful of potential pitfalls that may arise if the marketplace for BWCs becomes dominated by a single vendor, as a sudden increase in price for licensing fees or storage could threaten the long-term viability of the bulk pricing benefit. Any migration toward a single vendor also comes with other pitfalls, such as data breaches, hacking, and the long-term viability of one

single vendor. The Working Group also acknowledges that each local agency has the ability to negotiate and enter into BWC contracts with vendors apart from those on the State Contract.

In all, the Working Group recommends the Department of the Treasury attempt to negotiate larger volume discounts based on anticipated statewide purchasing to potentially realize lower prices.

Recommendation #3: Migration to Cloud-Based Storage, with Requisite Privacy and Data Security Protections.

The Working Group recommends that law enforcement agencies seek to purchase, through the State Contract, cloud-based storage over on-premises storage options, provided appropriate privacy and data security systems are in place. Cloud-based storage is, in the long run, the most economical way to store the data from BWCs. Cloud-based storage security configuration can be implemented to meet different security requirements. Each agency must implement the appropriate level of security to protect the data being stored. Although additional examination of the potential privacy and data security implications of cloud-based solutions is necessary, the Working Group preliminarily recommends that, at a minimum, the agency meet the applicable requirements that are part of the FBI Criminal Justice Information Services (CJIS) Security Policy.²⁸ While on-premises storage may cost agencies less in the short run, these systems will inevitably require updating and refreshing not only of the software, but storage hardware, as well. These costs can be considerable, and, as additional officers are equipped with BWCs, significantly more storage will be required to hold the data, which in turn will necessitate upgrades on a more frequent basis. The Working Group determined that most law enforcement agencies in the State would be unable to grow their on-premises assets fast enough to keep up with the demand.

Keeping costs stable and predictable is important to the longevity of the BWC program, as local budgets need time to adjust to the new mandate and provide adequate funding after the initial allocation of resources from the State is expended. Cloud-based storage is therefore the more cost-effective storage solution that will promote sustainability of the BWC program from a cost-savings perspective.

If the Department of the Treasury succeeds in achieving significantly discounted prices for BWCs, the Working Group expects to see a large number of agencies purchasing from the select vendors on the State Contract. If those agencies also choose to use cloud-based storage, the result would be the closest the State could get to having a single database for BWC storage, without having to build one from the ground up. Essentially, a majority of agencies would be contracting with only a few vendors, which would in turn mean that all of the BWC data was stored on those vendors' cloud-based systems.

Recommendation #4: Expansion of Officers Who Should Wear BWCs.

The Working Group came to the general consensus that there are officers beyond those required by P.L. 2020, Chapter 128, who should wear BWCs (please note the Working Group is not attempting to define “all uniformed State, county, and municipal patrol law enforcement officers” as used in P.L.2020, Chapter 128, in this Report). To that end, the Working Group recommends that the Attorney General issue guidance related to additional groups of officers who should wear BWCs beyond the “floor” set by Chapter 128, pursuant to his authority under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State.

The Working Group, therefore, offers the following as a preliminary, and non-exhaustive, list of functions and/or operations that would require officers to wear BWCs. This expansion should include officers who are serving on two types of teams, whether uniformed or not: “tactical teams” and “proactive enforcement teams.” There was a general consensus to equip these tactical teams with BWCs, provided, however, that there are appropriate mechanisms put in place to protect sensitive tactics and techniques to ensure officer safety. It is imperative that these protections be implemented as these teams use some of the most sophisticated and technical training and equipment to successfully complete their missions.

A “tactical team” is a group of officers who are specially selected, trained, and equipped to handle high-risk incidents, such as those involving snipers, barricaded persons, hostage-takers, warrant services, apprehensions, acts of terrorism, and other situations or activities as deemed necessary by command leadership. A “proactive enforcement team” includes officers who are typically assigned to target vice, drugs, organized street crime, and/or any other target areas. Unlike officers who are responsible for responding to traditional calls for service, these officers are typically assigned the singular responsibility of addressing the aforementioned activities, and they are sometimes referred to as crime suppression units. The nature of their work is varied and may include being dressed in traditional uniform, modified uniform, or plain clothes. These officers may work alongside undercover officers, conduct surreptitious surveillance, engage in high intensity enforcement via motor vehicle/pedestrian stops and/or interact with confidential informants or witnesses who wish to remain anonymous.

Although members of the Working Group identified these functions as ones where an officer should wear a BWC, as noted above, additional guidance from the Attorney General will be necessary to establish protections for when these officers are actively conducting undercover

investigations or when BWC activation would create a risk to undercover officers, confidential witnesses, or tactical security. Thus, those officers performing the functions outlined above should wear, and activate, their BWCs as a general matter, subject to appropriate footage redactions and public release exemptions, as well as deactivation protocols, as provided by Chapters 128 and 129 and any future guidance by the Attorney General.

Ultimately, determining who should be required to wear BWCs is foundational to the successful rollout of the BWC program across the State, not only to engender public support and increase accountability, but also from a practical standpoint. This guidance will be critical for agencies to make informed decisions about how many BWCs must be purchased to fully equip their officers, as well as provide for contingencies – such as the availability of additional devices – when officers who might not usually wear a BWC are called upon to engage in one of the aforementioned law enforcement functions.²⁹

With this recommendation, the Working Group acknowledges that an expansion of officers who wear BWCs by function will also promote transparency, accountability and public trust, by ensuring that all officers who engage in critical law enforcement encounters with civilians – such as conducting searches and making arrests – are equipped to wear BWCs as appropriate. Thus, the Attorney General should continue to consult with stakeholders in the community, including but not limited to those groups represented by, and participating in the discussions with, this Working Group, in providing future guidance on this issue.

FUTURE CONSIDERATIONS

With the implementation of new legislation requiring all uniformed State, county, and municipal patrol law enforcement officers be equipped with BWCs, and the related requirements under P.L. 2020, Chapter 129, New Jersey is beginning a new chapter in law enforcement, one that brings with it new technological and cost challenges, but also the potential for greater transparency, accountability, and public trust. This Working Group has endeavored to identify the barriers to universal BWC implementation across all 563 local law enforcement agencies, but acknowledges that for many local agencies just starting up their BWC program, issues will invariably surface that will drive additional examination of policy and practice, beyond what is contemplated at this early stage.

The Working Group's members and participants represent a diverse array of stakeholders in the BWC conversation. As such, the Working Group discussed a multitude of issues concerning the policies surrounding current and future BWC use in New Jersey. These included protocols regarding viewing BWC footage by officers, use of BWC footage for training purposes, and nuances surrounding BWC use when an officer is interviewing witnesses or collecting evidence. Various members of the Working Group expressed their belief that these policy considerations fell outside of the scope of Executive Order 201, while others indicated that such policy considerations were consistent with objective 2(d) of the Executive Order, "[r]ecommending any necessary changes to existing policies, whether by executive action or legislation, related to the deployment of body worn camera systems or the storage and handling of body worn camera footage." Regardless, however, the Working Group did not have sufficient time to thoroughly review and study further policy recommendations beyond what is addressed in this Report.

While the Working Group felt that there was more work to be done, there was not consensus as to what form that future work should take. Many members of the Working Group noted that Executive Order 201 explicitly disassembles the Working Group upon issuance of this Report, as noted in paragraph 9. These members also pointed out that the Attorney General, in issuing guidance and directives, works with various stakeholders, including community and social justice members, to discuss best practices and policies regarding all areas of the law. The Attorney General has consistently sought input from organizations represented in the Working Group, as well as other organizations and the public, in formulating policies and directives. Thus, those members recommend that the Attorney General continue to meet with those various interested parties in reviewing, analyzing, and issuing updated BWC Directives.

Other members request that this Working Group be reconvened or that another advisory body be established to examine additional policy recommendations regarding the implementation of a statewide BWC system under paragraph 2(d) of Executive Order 201, especially as it relates to racial justice, public access, and privacy concerns of both the public and law enforcement officers.³⁰ Although these members believe many policy recommendations could be made at this early stage, they also acknowledge that additional recommendations may be useful some period of time after June 1, when the statewide program may be meaningfully reviewed in practice. The members in favor of this continued work suggest that any future advisory group also include broad representation from the criminal defense bar, public interest groups, and civil rights organizations, including those that did not have formal membership on the Working Group.

Ultimately, all Working Group members acknowledge the importance of a well-thought out and effective BWC program as the universal implementation of BWCs is carried out across New Jersey.

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ENDNOTES

¹ Act of November 24, 2020, ch. 128, 2020 N.J. Laws (concerning implementation of BWCs); Act of November 24, 2020, ch. 129 N.J. Laws (concerning protocols governing BWC use).

² Office of the New Jersey Attorney General, 2020 Body-Worn Camera Survey Percentage of Departments with Body-Worn Cameras by County, https://www.nj.gov/oag/newsreleases20/2020-BWC-Survey_FULL.pdf (last visited March 30, 2021).

³ Exec. Order No. 201 (Nov. 24, 2020), <https://nj.gov/infobank/eo/056murphy/pdf/EO-201.pdf> (last visited March 30, 2021).

⁴ Although the recommendations primarily surround cost-saving measures for BWC implementation, some members of the Working Group would note that Executive Order 201 extends to policy implications not related to technology or cost (specifically objective 2(d) of Executive Order 201) that are not addressed in the Working Group's final recommendations.

⁵ Attorney General Directive 2015-1, Directive Regarding Police Body-Worn Cameras (BWCs) and Stored BWC Recordings, https://www.nj.gov/oag/dcj/agguide/directives/2015-1_BWC.pdf (last visited March 30, 2021).

⁶ Id. at 9-10.

⁷ Id. at 2.

⁸ N.J.S.A. 40A:14-118.3(1)(a).

⁹ N.J.S.A. 40A:14-118.5(c)(1).

¹⁰ N.J.S.A. 40A:14-118.5(c)(2).

¹¹ N.J.S.A. 40A:14-118.5(c)(3).

¹² N.J.S.A. 40:14-118.5(1)(c)(5) to (6).

¹³ N.J.S.A. 40A:14-118.5(1)(c)(4).

¹⁴ N.J.S.A. 40A:14-118.5(1)(d) to (f).

¹⁵ N.J.S.A. 40A:14-118.5(1)(h).

¹⁶ This is a 90-day expansion from what was required under Attorney General Directive 2015-1.

¹⁷ N.J.S.A. 40A:14-118.5(1)(j).

¹⁸ N.J.S.A. 40A:14-118.5(1)(j)(1).

¹⁹ N.J.S.A. 40A:14-118.5(1)(j)(3)(a).

²⁰ N.J.S.A. 40A:14-118.5(1)(j)(3)(b).

²¹ Id.

²² N.J.S.A. 40A:14-118.5(1)(j)(3)(c).

²³ N.J.S.A. 40A:14-118.5(1)(q) to (r).

²⁴ Attorney General Directive 2018-1, Directive Concerning Public Release of Video Recordings Depicting Police Deadly Force Incidents, <https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-1.pdf> (last visited March 30, 2021).

²⁵ Id. (providing Director of the Division of Criminal Justice or County Prosecutor with Director's approval, may delay release of footage with specific and compelling reasons).

²⁶ The State Contract can be found through the NJ Start "search" page <https://www.njstart.gov/bsso/external/advsearch/searchContract.sdo>, select "Contracts/Blankets," then search "T0106" in the "Contract/Blanket Description" field.

²⁷ Exec. Order No. 201 (Nov. 24, 2020), <https://nj.gov/infobank/eo/056murphy/pdf/EO-201.pdf> (last visited March 30, 2021).

²⁸ Criminal Justice Information Services, Security Policy, Version 5.9 (June 1, 2020), Federal Bureau of Investigation, U.S. Department of Justice, Criminal Justice Information Services Division, https://www.fbi.gov/file-repository/cjis_security_policy_v5-9_20200601.pdf/view (last visited March 30, 2021).

²⁹ The Working Group considered, but did not reach consensus on, a recommendation that each law enforcement agency have a supply of extra BWCs, and that all officers be trained to use them. The Working Group, however, is identifying this as a future consideration for the Attorney General in issuing statewide BWC guidance.

³⁰ Various members who did not otherwise endorse this recommendation for reconvening suggested that, should there be a future working group, it be empaneled by the Attorney General under his authority to issue directives and guidance to law enforcement across the State.