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**Testimony to the Senate Corrections and Juvenile Justice Committee  
Opposing SB18  
January 29, 2015**

Chairman Smith 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; the 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 is 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.

A different approach might be to help local agencies implement these programs with assistance instead of trying to beat us to compliance with a sledge hammer approach. Clearly the state does not have any funding to provide these cameras to every agency, nor does the state have any grant funds available for these purchases. Probably the one thing the state could do to help expedite our ability to implement these tools is to develop state bids on various systems which the local governments can buy from. Then give us time to budget for the purchases and to phase them in over time. This would likely produce the desired results voluntarily.

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 bill 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 bill attempts 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, but sometimes it is what a person actually believes to be factual. 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. While we do not believe these provisions are polished yet, they clearly show a path to provide the balance we need in this area.

Undoubtedly the most troublesome is the “gotcha” provision in this bill 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 on this matter:

“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): This requirement is impractical with the intent is an implementation date of July 1, 2015. Local budgets are set through this calendar year. This will make the purchase of these cameras very difficult for most agencies that have not already budgeted for their purchase. That time line is even challenging for an orderly RFP and bidding process to take place, let alone the unknown delivery period in this market with increasing demand. In addition, time is needed to install the systems and train 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): This also is problematic. There is no circumstances where a video of any encounter could be disposed of in two weeks. That is not the window of time many complaints are received. Even if there was no use of force or no problems in the encounter, a false complaint coming in later could not be properly cleared if the video is disposed of in this time frame. Not to mention the civil case being filed 2 years later just before the statute of limitations run out. These videos will need to be retained much longer than 2 weeks for any citizen contact we record. 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 that you not recommend this bill to move forward. 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.

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