

**MINNESOTA COALITION ON GOVERNMENT INFORMATION  
(MNCOGI)**

**Joint Hearing on body camera regulation, Dec. 16, 2015**

**Testimony of Matt Ehling  
Chair, MNCOGI Legislative Issues Committee**

Thank you for the opportunity to testify about Representative Scott's proposed body camera bill.

The debate over how to regulate body cameras has been going on for over a year here at the legislature, and has raised many intertwined questions about personal privacy, government oversight, and technological novelty.

Over that year, people have asked whether body cameras are mechanisms for government transparency ... whether they investigative tools ... or whether they are invasions of personal privacy.

As technology continues to advance, these sorts of questions will get more and more involved, across all sorts of platforms. We feel that this bill is an example of a thoughtful approach that can be brought to these kinds of issues. It is a framework that still faces some adjustment, I'm sure, but it is a very solid conceptual base that addresses the many differing and competing aspects of the body camera debate.

**Individual privacy**

As I've mentioned, body cameras have both transparency and privacy impacts. I want to begin our comments by addressing how the bill deals with questions of personal privacy. This has been a recurring theme, due to the fact that body cameras are highly portable, and can easily enter private places such as homes.

Our organization has noted that by controlling when and how body camera video can be collected - especially in private places - the legislature can address some of the thorny privacy concerns that surround body camera use. And we're pleased to see that this bill recognizes that approach.

Let me turn your attention to the second page of our packet. As you'll see, in subdivision 3, the bill sets out a regulatory framework for the collection of body camera video. This framework deals with the use of body cameras in

private places - places where there is a reasonable expectation of privacy.

### **Consent framework**

And so to do that, the bill looks to the traditional framework that governs other police functions as a starting place for regulating body cameras. Fourth Amendment case law has long recognized that government actors must either have legal authorization to undertake certain actions, or they must have the consent of individuals. This bill takes that concept, and applies it to the use of body cameras. It recognizes that body camera use is separate and discreet from police entry onto property, and it requires its own, discreet treatment.

As you see in the packet, the bill requires that when police enter private property, they must first notify those they encounter that body cameras may be used. Then, they must also seek consent in order to record.

This consent-based approach applies to a wide range of situations that police face every day - welfare checks, responding to complaints, writing reports in private homes, and so forth. We believe that given the option, many people will choose not be recorded in private places during consensual encounters with police. If they do permit recording, their decision will have been made voluntarily, and with notice. And so the net effect of having a consent requirement in law will be to reduce the amount of video that's recorded in private places, thus addressing privacy concerns, and also creating a smaller and more manageable pool of such data.

### **Exceptions**

Now while consent will be the rule for body camera recording, there are several exceptions in the bill. Again, following the logic of Fourth Amendment case law, the bill recognizes situations in which police may record body camera footage without consent. Just like home entries and searches, consent to use body cameras is not required if police have a valid search warrant, or if exigent circumstances exist. The exigent circumstances category is well defined by case law that already governs entry and searches, and includes scenarios such as hot pursuit, intervening to stop violence, and so forth.

In addition, the consent requirement of this bill does not apply when police are responding to a report of domestic abuse, in recognition that the victim may be coerced, and may not be free to consent in those situations.

## **Data classification**

Let's now turn to questions of data classification - the other key part of this bill. Data classification has been an issue of dispute, and those disputes have centered around how much data to make public, or how much to make private. We have long contended that if police oversight is a key reason for why we have body cameras in the first place, then the resulting data needs to be classified to meet that purpose. This necessitates that - at minimum - data involving core police activities needs to be accessible to the public, and not just to the subjects involved.

Over the past year, we have advocated for fairly broad public access to body camera video. Others have disagreed, and have sought tighter controls. We feel that this bill finds a reasonable compromise that still preserves public access to the most critical oversight-related footage.

As you can see on page three of our packet, the bill breaks body camera data down into two distinct batches - data that document "emergencies, investigations, incidents, or request for services" - and those that do not. In our materials, we label the former activities - such as investigations - "core activities."

## **Non-core activities**

As you can see on page three, body camera footage that does not capture core activities is classified as "private" or "nonpublic" data - that is, data that is only available to the subject of the data, and not to the general public.

So what kind of footage might this be? One example would be footage from a body camera incidentally left on by an officer over their lunch break. Or from a body camera that was left running after a call for service had already been completed. That kind of footage would be classified as private data.

## **Core activities in public places**

Moving down the page, let's now turn to body camera footage related to core activities - those activities that have the highest oversight value. Again, this data involves "emergencies, investigations, incidents, and calls for service." The bill classifies this data in two separate ways. First, if any of those activities occur in a public place, any body camera footage that captures them is classified as "public," and is available through data requests.

### **Core activities in private places**

Moving further down the page, body camera footage of core activities that's recorded in private places - places where individuals have a reasonable expectation of privacy - is treated separately. That footage is classified as "private" data, with one key exception. The exception applies to footage that documents police actions that involve a use of force that results in bodily harm. And so this two pronged-classification makes most footage recorded in private places "private" data. But importantly - it also recognizes that even in private places, events may occur that have a public oversight value. For instance, in the event of a controversial police shooting, related body camera footage should be available to the public no matter if that shooting occurred inside or outside. The public interest in that footage is not diminished by the change of location.

Let me speak briefly to how this section interfaces with existing law. As with much other police data, data that's made public by this section can be temporarily converted to a "not public" status during a criminal investigation. After the close of the investigation, the data would be public once again, but it would need to have image of protected persons - such as undercover officers - redacted before public release, as well as footage that is "clearly offensive to common sensibilities." Both of those procedures are addressed by current law, and still interact with this proposed body camera section.

### **Other data-related provisions**

There are some other data-related provision in this bill that I will briefly speak to as I close. The bill make a technical change to existing language in the Data Practices Act that I've already mentioned - language that allows material that is "clearly offensive to common sensibilities" to be redacted. Right now, that language says that "photographs" may be redacted. We've urged that the word "photographs" be replaced by "images" in order to cover body cameras and other recording devices. We are glad to see that the bill addresses this issue, and makes that change.

Finally, the bill makes it exceedingly clear that private vendors such as Taser International - the vendors that provide both the body camera systems and their data storage solutions - are covered by the Data Practices Act, including its provisions that allow for lawsuits and damages in the event of violations.

And so in closing, we are supportive of this proposal and what it seeks to

achieve, and I'd be happy to take any questions.