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April 16, 2020

Evaluation of LASD's Proposed Body Worn Camera Policy

From: Rob Bonner for the Ad Hoc Committee re: Body Worn Cameras

To: Patti Giggans, Chair

cc: Brian Williams, Executive Director

At our meeting on January 18, 2020 Los Angeles Sheriff's Department's Body Worn Camera (BWC) Program spokesperson Commander Chris Marks presented the Department's proposed BWC Policy to the Civilian Oversight Commission (COC). At that meeting, COC Chair Patti Giggans requested the Ad Hoc Committee¹ on BWCs to review and evaluate the LASD's proposed policies. This report is intended to respond to the Chair's request.

Many of the LASD proposed policies are consistent with the COC's recommendations made in the Final Report of the Ad Hoc Committee of the Civilian Oversight Commission Regarding Body Worn Cameras and Recommendations of the Sheriff Civilian Oversight Commission of July 26, 2018 (COC Report), copy attached. Based on Commander Marks' presentation and our review of the proposed policies, the COC believes that the LASD should proceed with the plan to implement BWCs for the patrol divisions with all deliberate speed, but as explained below, we have recommendations regarding several of LASD's proposed policies surrounding BWCs.

1. Policy 3-06/200.55, Category 3 Use of Force Incidents, Including Deputy-Involved Shootings. (p. 9)

The proposed policy would prohibit viewing of BWC video by deputies involved in or witnessing Category 3 uses of force *unless* authorized by the IAB lieutenant assigned, or where IAB is not handling the matter, by the pertinent Homicide Bureau lieutenant or watch commander. In other words, under the LASD's proposed policy, as we understand it, the relevant supervisory investigator has discretion to permit viewing by the involved deputy or deputy witness *before* making a statement. The Ad Hoc Committee perceives this approach as problematic for two reasons: (1) it is unclear

¹ The Ad Hoc Committee that reviewed BWCs in 2018 is the ad hoc committee also reviewing Use of Force within the Patrol Division of the LASD. It is made up of the following Commissioners: Xavier Thompson, Sean Kennedy, Rob Bonner and J.P. Harris.

what would guide the supervisory investigator in authorizing a pre-statement viewing, and (2) because we believe that the best policy and practice is to obtain a statement from deputies before allowing them to view recordings where Category 3 use of force (including deputy-involved shootings) is involved (see COC Report, pp. 36-37 and Recommendation No. 8.)² If the LASD proceeds with its proposed policy, the Ad Hoc committee suggests that the COC, through the Chair, request a more defined set of criteria be developed regarding when and how supervisory investigators would authorize pre-statement viewing.

2. Civilian Access to Recordings: Public Records Act Requests

Civilians wishing to file complaints often will have reasonable justification for viewing BWC footage. One of the main reasons that the COC supported the use of BWCs in its July 26, 2018 Report is the ample research showing a reduction in civilian complaints, a faster resolution of complaints, a reduction in workload and costs associated with the investigation of such complaints, and fewer lawsuits and judgments (see, e.g., COC Report, pp.27-30). LASD will only reap the full benefits of BWCs by a policy allowing civilians to access video recordings regarding their interactions with deputies. Indeed, the viewing of BWC video has been shown to reduce the filing of complaints and leads to better informed decisions whether or not to file such complaints. At the very least the Chair should urge the LASD to consider a policy allowing civilian complainants to view BWC footage in the presence of a watch commander.

3. Policy 3-06/200.53, Viewing of Body Worn Camera Recordings. *“Recordings shall not be routinely or randomly viewed solely for the purpose of searching for policy violations where no independent allegation or evidence of a policy violation exists.” (p. 8)*

In light of recent events at the Los Angeles Police Department (LAPD) relating to reporting inaccuracies uncovered when comparing officers' written documentation with their BWC footage, it becomes even more imperative that LASD conduct random audits, not only for identifying needed improvements in deputy performance, but also to ensure that deputies are not engaging in biased policing and inaccurate reporting. The new policy of random audits recently adopted by the LAPD is promising and has the potential to better ensure that its officers' reports are accurate and comply with policy. The Ad Hoc committee understands that LASD intends to conduct field audits on BWCs, but we recommend that these audits be thorough and focused on improving deputies' performance and preventing a repeat of similar occurrences when policy has not been complied with as well as ensuring accurate reporting. To the extent that the proposed policy inhibits this, we recommend it be modified.

² The latter is consistent with its current policy of LASD MPP 3-10/115.00 - Video Review and Admonishment, which states that “Department members shall prepare all necessary written reports related to a force incident prior to reviewing a video recording of the incident.” We are not certain why this policy was loosened.

4. Policy 3-06/200.58 Guidelines for Administrative Reviews of Body Worn Camera Recordings. *“When supervisory and management personnel conduct audits, inspections, or reviews of BWC recordings and discover activity that may constitute misconduct, the Department member’s actions in the BWC recordings alone should not result in the initiation of an administrative investigation. Rather, the member should receive counseling, training, or a performance log entry to alert them and correct their behavior. However, the foregoing does not apply where the activity discovered would likely result in suspension or termination.”* (p. 10).

We view this policy section as problematic. At a minimum, it should be made clear that deputies will be appropriately held accountable for engaging in misconduct. It is critical that LASD actively follows up on any actual wrongdoing by deputies that is discovered in BWC recordings. Accordingly, we recommend that misconduct appearing on BWC video recordings be investigated and appropriate action taken, be this counselling, discipline or changes in the way deputies are trained. To the extent that the proposed policy precludes this, we recommend that it be changed.

5. Policy 3-06/200.58 Guidelines for Administrative Reviews of Body Worn Camera Recordings: Demonstrably False Allegations. *“When a BWC recording clearly establishes that an allegation of misconduct is false, the watch commander may terminate the WCSCR under the authority of “Watch Commander Discretion.” The watch commander should mark the box; “Watch Commander has personal knowledge the complaint is false.” The watch commander shall state in the memorandum they have reviewed the video and specifically why the video is the basis for the “false complaint” disposition.”* (p. 12).

This policy provision leaves the Watch Commander wide latitude in determining if a civilian’s allegation of misconduct is a “false complaint” and therefore closing the complaint without providing the complainant justification for doing so. The Chair should request that the COC be provided with more clarity around how this discretion would be applied. This also underscores the Ad Hoc’s recommendation in paragraph 2, above, regarding the value of showing recordings to a civilian who has made a complaint or intends to assert one based on his/her interaction with a deputy. An explanation why a complaint is being closed, supported by a video recording, would be helpful in such situations.

6. Policy 3-06/200.75 Public Release of Critical Incidents. *“Notwithstanding any other statutory or policy provision, the Department shall retain the sole discretion to publicly release any portion of body worn camera (BWC) recordings upon the approval of the Sheriff, or his designee....”* (p. 14).

The language around the Department’s maintaining sole discretion to release BWC recordings runs counter to its obligation to release video on critical incidents under AB 748. The wording should be revised to reflect its adherence to the legislation.

As stated in the COC 2018 Report, the COC believes that having a BWC program in place will benefit both the LASD and the communities it serves. Therefore, we do not wish the Ad Hoc Committee's recommended changes to and clarifications of the LASD's proposed policies to slow down the rollout of BWCs.

In furtherance of the COC's oversight function, the Ad Hoc recommends that the Chair transmit a letter to the Sheriff that relays the foregoing recommendations and concerns regarding the LASD's proposed BWC policies and request a response.