

Overview of the Impact of Body Cameras on the Operations and Workload of Commonwealth's Attorneys Offices

**Michael Jay, Fiscal Analyst
House Appropriations Committee
January 21, 2019**

- Code Requirements and Current Staffing Levels**
- Review of Body Camera Usage in Virginia
- Policy Questions Going Forward

Commonwealth's Attorneys Offices are Required to Prosecute Felony Cases

- Section § 15.2-1627(B) of the Code of Virginia requires Commonwealth's Attorneys to prosecute all felony cases
 - Furthermore, the Code requires Commonwealth's Attorneys to enforce all forfeitures
- Code provides Commonwealth's Attorneys may prosecute at their discretion any misdemeanors or other violations which may carry a penalty of confinement in jail and/or a fine of at least \$500
 - Out of 110 Commonwealth's Attorneys offices that responded to a recent survey from the Commonwealth's Attorneys Association, only 2 offices limit prosecutions only to felonies
 - 53 offices stated they prosecute misdemeanors and traffic cases
 - 21 offices stated they prosecute all misdemeanors
 - 34 offices stated they prosecute certain specific types of misdemeanor cases
 - Arrest data for 2012 through 2014 shows that 60% of arrests in the Commonwealth are for misdemeanors, and 40% are for felonies

Staffing Standards for Commonwealth's Attorneys are Based on Felony Cases

- The staffing standards, recommended by the Virginia Association of Commonwealth Attorneys and approved by the State Compensation Board, are based on the number of felony defendants and felony sentencing events

of Attorneys Needed = Workload Calculation / Size Factor Adjustment

- Workload calculation = 3 year average number of felony defendants + 3 year average number of felony sentencing events

Size Factor Adjustment to Reflect Economies of Scale

| Office Size Based on Workload Calculation | Category Range Based on Workload Calculation | Adjustment Factor |
|---|--|-------------------|
| Super | 3,000 or more | 125 |
| Large | 1,000 – 2,999 | 100 |
| Mid | 300 - 999 | 85 |
| Small | 0 - 299 | 70 |

Ratio of Felony Defendants Per Prosecutor

Annual Number of Felony Defendants per
Number # of Attorneys Needed Based on Staffing Standards

| | Number of Localities | Minimum # of Felony Defendants | Maximum # of Felony Defendants | Average |
|--------|----------------------|--------------------------------|--------------------------------|---------|
| Super | 1 | 87.2 | 87.2 | 87.2 |
| Large | 16 | 53.7 | 67.8 | 61.3 |
| Middle | 45 | 42.8 | 61.4 | 50.7 |
| Small | 58 | 32.9 | 62.2 | 43.6 |

Notes:

- A report from the US Department of Justice in 2007 shows an average of 94 felony cases closed per prosecuting attorney for all offices across the country
- The American Bar Association has set a criminal annual caseload standard of no more than 150 felony cases or 400 misdemeanor cases per attorney for defense lawyers but has not established standards for prosecuting attorneys

Current Staffing Levels Through the Compensation Board

- The estimated cost of fully funding the current staffing standards is \$8.0 million GF annually

| | Staffing Standards | Compensation Board Funded | Difference |
|------------------------------|--------------------|---------------------------|--------------|
| Attorney Positions | 711 | 625.2 | 85.8 |
| Paralegals | 177 | 124.0 | 53.0 |
| Administrative Support Staff | <u>355</u> | <u>372.5</u> | <u>-17.5</u> |
| Total | 1,243 | 1,121.7 | 121.3 |

Note: The Compensation Board calculates a net need of 85.8 attorneys statewide, but also rounds up the calculation to full FTEs by locality which results in a net need of 108 attorney positions, as opposed to 85.8. After rounding up the total need for support staff including paralegals and administrative support staff is 57 positions

- Code Requirements and Current Staffing Levels
- Review of Body Camera Usage in Virginia**
- Policy Questions Going Forward

The Implementation of Body Cameras Increased the Workloads of Commonwealth's Attorneys Offices

- The Commonwealth's Attorneys Association sent a survey to all of the Commonwealth's Attorney's offices requesting information concerning the use of body cameras within their locality
 - 110 out of 120 Commonwealth's Attorneys offices replied to the survey
- 77 of the 110 localities that responded state that their local law enforcement agencies currently employ body cameras (with a total of 7,320 body cameras currently in use)
 - An additional 7 localities reported that their locality is considering implementing body cameras
 - Some localities currently using body cameras are in the process of increasing the number of cameras in use

Most Body Cameras are In Larger Localities

| # of Body Cameras in Locality | # of Localities | Total Number of Body Cameras |
|-------------------------------|-----------------|------------------------------|
| No Cameras | 43 | 0 |
| Less than 25 | 18 | 257 |
| 25 to 49 | 18 | 624 |
| 50 to 74 | 14 | 769 |
| 75 to 99 | 5 | 393 |
| 100 to 199 | 13 | 1,717 |
| 200 to 299 | 3 | 726 |
| 300 or More | <u>6</u> | <u>2,834</u> |
| Total | 120 | 7,320 |

- 79 Commonwealth's Attorneys offices, 2/3's of all offices, either have no body cameras in their jurisdiction or have less than 50 cameras
- 40% of body cameras are located within 6 localities: Chesterfield, Newport News, Henrico, Prince William, Richmond City & Norfolk
- Virginia Beach police currently have 106 body cameras in use but are increasing that number to 450

Some Localities Already Provide Additional Staff In Addition to the Compensation Board Funded Positions

| # of Body Cameras in Locality | # of Localities | Additional Attorneys | Additional Support Staff | Total Additional Staff |
|-------------------------------|-----------------|----------------------|--------------------------|------------------------|
| No Cameras | 43 | 10 | 50 | 60 |
| Less than 25 | 18 | 4 | 16 | 20 |
| 25 to 49 | 18 | 2 | 18 | 20 |
| 50 to 74 | 14 | 9 | 28 | 37 |
| 75 to 99 | 5 | 1 | 17 | 18 |
| 100 to 199 | 13 | 8 | 58 | 66 |
| 200 to 299 | 3 | 1 | 8 | 9 |
| 300 or More | <u>6</u> | <u>25</u> | <u>74</u> | <u>99</u> |
| Total | 120 | 60 | 269 | 329 |

- Data on these positions is self-reported to the Compensation Board
- Some localities have provided positions specifically to reflect the impact of body cameras on workload while other positions were in place prior to the use of body cameras

The Virginia State Police is Currently Undertaking a Pilot Program to Evaluate the Use of Body Cameras

- Beginning in 2017 the Virginia State Police initiated a pilot project to evaluate effectiveness of body worn cameras
- The body worn cameras pilot project is part of the new Next Generation System Project which also includes replacing the current cameras in the patrol vehicles with a system including 3 cameras within the vehicles
- Currently the pilot is limited to 5 patrol vehicles and one training vehicle in area 6 (Chesterfield, Amelia and Powhatan Counties)
- It is the intention of the State Police to move forward with the replacement of the cameras in the patrol cars regardless of any decision on the body worn cameras
- No other state agency with law enforcement responsibility currently uses body cameras

- Code Requirements and Current Staffing Levels
- Review of Body Camera Usage in Virginia
- Policy Questions Going Forward**

Policy Issues Influencing the Cost of Body Cameras

- The attorney handling a prosecution is ethically obligated to review all video footage potentially relevant to the case
 - Due to staffing concerns some offices delegate the bulk of review to support staff or otherwise limiting the amount of film reviewed
- When does information need to be redacted from the body camera footage?
 - Some other states have laws which require redaction in specific instances
 - In Virginia some offices redact footage for specific reasons; i.e. children, abuse victims, individuals with no or minimal clothes, police informants
 - Some offices do not redact footage
 - Estimates for the time it takes to redact ½ hour of video varies from 1 hour to 3 hours
 - The state police asserts that one FTE currently spends approximately 35% of their time redacting video even though there are only 5 cameras in patrol cars

Language Proposed During the 2018 General Assembly Session Aimed at Addressing Issue

- The House Appropriations Committee adopted language requiring localities that elect “to provide their local law enforcement personnel with body cameras, shall provide their Commonwealth's Attorneys office with additional staff, using local funds, as needed to accommodate the additional workload resulting from the requirement to process and review footage from the body cameras.”
 - This language amendment was rejected on the House Floor
- The Senate Budget included language requiring localities that elect to use body cameras to “hire one entry level Assistant Commonwealth's Attorney, at a salary established by the Compensation Board, at a rate of one Assistant Commonwealth's Attorney for up to 50 body worn cameras employed for use by patrol officers, and one Assistant Commonwealth's Attorney for every 50 body worn cameras employed for use by patrol officers, thereafter.”
 - This language amendment was not included in the Final Budget
 - Based on the information provided in the survey this proposed language would require 156 locally funded positions at a cost of approximately \$11 million

The Proposed 50 to 1 Ratio Based on Analysis From Virginia Beach Experience

- An analysis of calendar year 2014 arrests estimated that if all Virginia Beach Police officers were outfitted with body cameras there would have been over 14,000 hours of footage that would have been subject to review by the Commonwealth's Attorneys office
 - Assuming a 40-hour work week and 50 work weeks a year one FTE could review 2,000 hours of footage a year, resulting in an estimated need of 7 FTEs to review the 14,000 hours of footage
 - 7 FTEs equates to approximately 1 FTE per 50 body cameras

2018 Adopted Budget Included Language Convening a Workgroup to Develop Recommendations Going Forward

- Item 73.U of Chapter 2 requires the Executive Secretary of the Compensation Board to convene a working group comprised of representatives of the Supreme Court, Department of Criminal Justice Services, Commonwealth's Attorneys, local governments, and other stakeholders to investigate how body worn cameras have or may continue to impact the workloads experienced by Commonwealth's Attorneys offices
- The workgroup was required to examine processes, relevant judicial decisions, practices, and policies used in other states, potential financial and staffing challenges, and other related issues to determine workload impacts, and to develop recommended budgetary and legislative actions for consideration during the 2019 Session of the General Assembly
 - Workgroup met 3 times
 - A report was submitted to the Chairmen of the House Appropriations and Senate Finance Committees

Workgroup Report Included 4 Recommendations

- Recommends the Commonwealth fully fund the staffing standards
 - Estimated cost of \$8.0 million GF annually
- Recommends that budget language be included to for provide local agreements between localities and the Commonwealth's Attorneys to provide funding and staffing to support the added workload, with a requirement of with the localities providing a minimum of 1 staff person for every 75 body worn cameras in deployment if there is no agreement in place
 - Locally funded staff that were provided prior to the use of body cameras should be credited and included in any agreement/calculation of support
- The workgroup should be continued through December of 2020 to allow for additional data to be gathered and reported
- That any planning for new or expanded implementation of BWCs, whether among county or city law enforcement agencies, or whether among state law enforcement agencies, town police departments, or police departments of colleges and universities, must include the involvement of the Commonwealth's Attorney and an analysis of the workload impact on the Commonwealth's Attorney's office

Funding For Body Cameras

- Introduced budget includes \$723,420 GF the second year to fund 10 additional Assistant Commonwealth's Attorneys and 6 additional administrative support positions to assist select offices experiencing increased workloads as a result of local law enforcement's use of body-worn cameras
 - Funding of \$637,000 GF is also included under Judicial for the Indigent Defense Commission pursuant to the impact
- Based on the results of the survey providing staffing for body cameras at the 50 to 1 ratio would require between 156 and 166 attorneys depending on how partial positions are rounded
- Using the 75 to 1 ratio would require between 116 and 124 attorneys depending on how partial positions are rounded