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Help needed on time-consuming police footage

Public defenders are no strangers to long hours. But as police departments continue to adopt use of body-worn cameras, lawyers are seeking help to maintain an ever-growing workload.

“Going through body-worn footage takes a tremendous amount of time that’s an addition to what [lawyers] have already been doing,” said David Johnson, executive director of the Virginia Indigent Defense Commission.

To put it in perspective, Virginia has 120 commonwealth’s attorneys, 613 assistant commonwealth’s attorneys and 504 paralegal and support staff positions. Of the state’s 120 localities, 84 have implemented BWCs. Of the 84 jurisdictions with body-worn cameras, or BWCs, there are approximately 7,486 cameras deployed, according to a report by the Virginia Department of Criminal Justice Services.

Johnson said the VIDC has requested more support from Gov. Ralph Northam in hope that additional staffing will be discussed in the next General Assembly session.

“There’s a critical need for more attorneys and more support staff in public defender’s offices to go through all the [BWC] footage,” Johnson said.

Come January, attorneys will start receiving some of that support. Last year the General Assembly set aside money for 20 paralegals to start working for the VIDC in 2020. Paralegals will not be able to view BWC footage for the lawyers; however, they can assist by downloading video, logging footage, reviewing content with clients and other “logistical tasks,” Johnson said.

Though these hires are a “positive development,” Johnson noted that for a staff of 320 public defenders, 20 paralegal positions can only go so far.

This spring, the Virginia Criminal Justice Conference surveyed nearly 500 public defenders and court-appointed attorneys on the impact that BWCs have on their workloads.

The results found that 93% of public defenders have difficulty in finding time to review all the footage, and 73% said they were unable to do other case-related work.

The responses from court-appointed attorneys were similar, as 85% of respondents said it was hard to find time to review the footage and 68% said it was hard to do other case-related work. This can become an issue for court-appointed counsel, who are paid up to $120 per misdemeanor charge regardless of how many hours that case takes.

“It’s just a disaster the way they’re doing it,” said John Zwerling, an Alexandria criminal defense attorney. “It’s kind of like the government going into a warehouse and seizing a company’s documents and just dumping on you without identifying what they want to use.”

Zwerling is currently defending Kevin Zeese, one of four activists who was forcibly removed from the Venezeulan embassy in May after living there for 37 days, The Washington Post reported. The defendants are now facing misdemeanor charges for interfering with State Department diplomatic functions. More than  700 hours of footage was collected during the defendants’ stay – all of which Zwerling is responsible for going through.

“In a misdemeanor case, it’s insane,” Zwerling said. “But there may be some very important evidence for the defense, we just don’t know how to find it necessarily without having to go through hundreds of hours of videos.”

According to Zwerling, two of the defendants are being represented by court-appointed counsel.

“You can imagine the problem that creates,” Zwerling said.

Elliot Bender has been a criminal defense attorney in Richmond for more than 20 years. He said since the rise of BWCs, his workload has increased by at least 20%. He said this time is often spent going through “completely unrelated” footage he receives of a client from a previous case they were involved in years ago.

“There’s just not a consistency in how [BWC footage] is titled,” Bender said. “But I’ve got to watch it because I don’t know what it is until I see it.”

Though Bender has had to add more nights and weekends to his schedule, he said BWC footage has been “tremendously helpful” for defendants and police officers alike. For many of his clients, evidence found on camera has helped them win a case.

Todd Jones, a captain of the Virginia Beach police department, said his officers have been able to use BWCs as an “extension of their memory.”

“If I’m filling out a report and want to remember exactly what a witness or a victim or a suspect said, it’s a great tool,” Jones said, noting that the only time police officers are not allowed to review BWC footage is when filling out a “use of force” report.

“We want to know what was in the officer’s mind when [the incident] happened,” Jones said. Still, Jones understands the difficulties that come with BWCs for prosecutors. As of last week, the Virginia Beach police department had over 82,000 hours of BWC footage stored in its database, according to Jones. And as the department continues to distribute BWCs to officers – an implementation process that should be complete by next summer – that number will only grow.

“That’s the unintended consequences of these cameras,” Jones said.

Despite frustration over the increased workload, most attorneys agree that BWCs are a positive development. According to the criminal justice department report, several respondents expressed strong support for the use of BWCs. Many comments highlighted that BWCs can help regardless of the situation, whether the footage demonstrates a client’s innocence and causes a case to be dismissed, or proves a client’s guilt, in which they may be more willing to quickly resolve a case through plea negotiations.

However, attorneys also commented that BWCs have lowered their job satisfaction.

“The increased workload coupled with the stagnant pay structure…Is causing attorneys to re think taking court-appointed work,” according to the report. Johnson said these comments make him concerned that they will begin to “lose the wrong lawyers.”

“The lawyers that understand their ethical responsibility are the ones who are going to stop taking cases. It’s the lawyers who don’t have a problem with [the increased workload] that’s concerning because I wonder if they’re watching the video,” Johnson said. “They need help. They can’t work for free.”

Last year, the Compensation Board, who creates the budgets for all commonwealth attorney’s offices in Virginia, presented a report to the General Assembly in response to “major concerns expressed by localities” to provide more staff to view BWC footage. The board studied areas of “viewing, redaction and the prosecutor’s ethical obligations” of BWC footage but said not enough information is available to determine whether more funds should be allocated to support staff.

“Consequently, a recommendation is included that the group be continued for a two-year period for the purposes of gathering and analyzing data to develop more comprehensive measures to quantify workload,” according to the report.

Though it’s still too soon to tell, Johnson is hopeful that the General Assembly will approve providing more support staff in 2020.

“We’ve asked for additional positions. But it’s still early in the process,” Johnson said. “We’ll have to wait and see what happens.”