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## NAACP - SAINT PAUL - CHAPTER #4052

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9/28/16 Response of the Saint Paul Chapter NAACP and the Minnesota/Dakotas Area Conference NAACP -- Regarding the Saint Paul Police Dept. Draft Body-Worn Cameras (BWC) Policy. This response is consistent with testimony offered in opposition to the body camera bill that became law this session at the Minnesota Legislature (SF 498), because we (the MN/Dakota Area Conference of the NAACP; the Saint Paul Chapter of the NAACP; the African American Leadership Council of Saint Paul; and the Saint Paul Interdenominational Black Ministerial Alliance) believe it did not strike the appropriate balance between public access, the potential to invade privacy and the strong benefit in promoting police accountability.

The leadership of the Saint Paul NAACP has been engaged in regular, on-going conversations with Sr. Commander Axel Henry and Sgt. Jeff Stiff over the past year with regard to issues and concerns related to a Saint Paul Body Worn Camera Policy. These conversations have been straightforward, candid, and mutually beneficial and have provided both parties with a greater understanding of the needs, concerns and perspectives of our respective organizations and their constituents. We also recognize that the department has honored its responsibility to enter in to the same discussion with numerous other groups and individuals representing varying perspectives in our community—and that it would be impossible to satisfy the needs and concerns of all of these groups within any one given policy.

We are grateful that SPPD has chosen to develop its body worn camera policy in public, with the input of civil rights advocates and the local community. We trust that our concerns—presented respectfully—will provide lasting mutual benefit to the citizens of Saint Paul, their elected and volunteer representatives and the Saint Paul Police Department.

Many recent incidents of law enforcement misconduct and of officer-involved killings of unarmed young men of color across our nation would

have gone unnoticed had they not been caught on cell phone cameras. These actions have sadly created what Vice President Joe Biden calls “a breach of trust between law enforcement and communities of color in America.” Unfortunately, these incidents have tarnished the credibility of law enforcement as a whole—even in communities that have enjoyed positive police/community harmony—like the City of Saint Paul. It is out of this breach that community members—not law enforcement—have called for officer worn body cameras and mutually beneficial legislative policies concerning their use and deployment, in order to ensure ongoing trust, access, transparency and public accountability.

Mobile cameras operated by law enforcement could play a valuable role in the present and future of policing. Whether they are worn by an officer or mounted on police equipment, cameras could help provide accountability, transparency and greater public trust in law enforcement practices, by providing first-hand evidence of public interactions. However, we implore the Saint Paul Police Department (SPPD) to ask—and answer honestly—the all-important question: “Who are the intended beneficiaries? The SPPD (as intended by Rep Cornish and Sen Latz in the legislative process)? Or the citizens and taxpayers of Saint Paul—who law enforcement personnel have sworn to serve and protect? We ask simply, “why not a mutually beneficial policy that is good for the citizenry and law enforcement?”

The Minnesota/Dakotas and Saint Paul Chapters of the NAACP have the utmost respect for the SPPD and commend many parts of the proposed BWC draft policy. However, because we believe a mutually beneficial Body Worn Camera Policy is the objective of the SPPD, the Minnesota/Dakotas and Saint Paul Chapters of the NAACP offer the following recommendations for your consideration:

- With body cameras, officers will have far greater visibility in heavily policed, low-income, rental areas and communities of color in Saint Paul—than in other affluent parts of our community where cameras will be rare. This policy when implemented must ensure that we do not unintentionally create or amplify any existing disparities (real or

perceived) that might exist in law enforcement practices within the Capitol city.

- SPPD must commit to a specific set of narrow and well-defined purposes for which body worn cameras and their footage may be used. In particular, facial recognition and other biometric technologies must be carefully limited and not used at events such as political rallies and demonstrations, or any generalized activity except where emergency, criminal or exigent and potentially evidentiary circumstances exist.
- **Page 9, Section B., Subsection B. (Mandatory/Discretionary/Prohibited Use Of The BWC)** states, “Understanding that sworn personnel encounter tense, uncertain and rapidly evolving situations, to the extent practical without compromising officer safety, the BWC shall be activated in preparation for, when initiating, or under the following circumstances and conditions:” Traffic Stops; Vehicle Pursuits; Arrests; Vehicle Searches; Physical or verbal instances involving sworn personnel response to resistance and aggression; In-custody transports (prisoner, DKP, EDP, curfew, etc.); Victim, witness or suspect interviews except as noted in Section D #6 below.; When ordered by a supervisor for a proper purpose.; Frisks or search of a citizen; In response to any call or incident where the sworn personnel may reasonably expect BWC activation will be required by one of the 9 scenarios listed above. If the activation of the BWC may reasonably be expected, the sworn personnel shall activate the BWC as soon as is practical and safe to do so while responding, and not later than when having arrived on scene.”

Further, we are in complete agreement with the MN American Civil Liberties Union, who testified, “Police should activate their body cameras at the inception of every law enforcement encounter with a member of the public, and turn them off only at the conclusion of the entire encounter. These police-civilian encounters include stops, frisks, searches, arrests, consensual interviews and searches,

enforcement actions, and any encounter that becomes in any way hostile or confrontational. If police officers are given discretion over when to activate their body cameras, their value will be severely undermined.”<sup>1</sup>

Page 11 Section 9 “WHEN RECORDING MAY BE STOPPED- Subsection A. States: The incident or event is of such duration that the BWC is stopped to conserve power or storage capacity.”

We believe that “conserving power or storage capacity” is a vague and unreasonable justification for stopping a recording and that this rationale could be mis-used inappropriately to prevent a required or valid recording, prior to the conclusion of an interaction/contact between the SPPD and a citizen.

- Section 15, “REVIEW OF RECORDED MEDIA- this is the heart of the policy, Subsection A. Nothing in this policy shall restrict sworn personnel from review of recorded media captured on a BWC issued to and operated by the sworn personnel, excepting department policy 235.20 Administrative Lockdown. Furthermore, sworn personnel are entitled to access audio and video recorded media derived from BWC equipment to him/her worn by him or her or; in which his/her voice or image appears for any purposes relating to their employment including but not limited to report writing unless the corresponding case file is locked down pursuant to department policy 235.20 Administrative Lockdown.”

Any audio or video footage of an event presents a partial—and sometimes misleading—perspective of how events unfolded. Pre-report viewing is not only preferential treatment of law enforcement officers, but could result in an officer conforming his or her written statement or recorded report to only what the video appears to show—rather than what the officer(s) motivation was or what they actually thought, saw or did. Further, because we believe that SPPD

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<sup>1</sup> MN ACLU Statement on Body Worn Cameras by Benjamin Feist 9/26/16

personnel are both competent and adequately trained, their initial statements or reports should bear no less weight or accuracy than those they have been filing without the benefit of body-worn or dash mounted cameras over the past 150 yrs. To ignore this reality is a real “trust buster.”

Because the legislative discussion on whether officers should be allowed full and prior review of body-worn camera footage surfaced significant controversy that nearly derailed the bill, we would strongly recommend—as the MN Bureau of Criminal Apprehension (BCA) did—that SPPD must fully preserve the independent evidentiary value of officer reports by prohibiting officers from viewing footage before making an initial statement or prior to filing their reports.

Law enforcement personnel should be able to review the footage/data when legally required and/or when necessary to amend their earlier reports or statements, should it become necessary and/or legally permissible after the initial statement or report has been filed.

- With regard to the retention of BWC audio and video footage (data), SPPD’s storage plans would allow for unlimited data storage, so there is no financial burden on the City for keeping such data for a longer period of 1 year—which is the statutory time limit in Minnesota for citizens to file a Human Rights complaint. In fact, there is a financial benefit associated with keeping the footage for a year: Citizens who realize that there is a video/audio recording of their contact with SPPD, rarely if ever would file a complaint, pursue charges or file a costly lawsuit when the evidence could potentially support the actions of law enforcement during their contact.
- Section 10. “DUTY TO NOTIFY CITIZENS OF RECORDING, Subsection A. Minnesota law is a “one-party consent” state, which means that only one party to a communication needs to consent for a recording of the communication to be legal – unless the recording is made for the purpose of committing a criminal or tortious act. See

Minn. Stat. § 626A.02, Subd. 2(d). Therefore there is not a duty to notify citizens when recording.”

The NAACP is in full concurrence with the Minnesota Coalition On Government Information (MNCOGI) regarding their testimony on recording without consent in private residences. As they have pointed out, “Local law enforcement policy could be improved by specifically addressing the question of when recording is permitted or barred in private residences, and by law enforcement officers providing notice of the use of body cameras in all such circumstances. . . and recognizing when they may use recording devices in private homes on their own volition or in exigent circumstances.<sup>2</sup>”

We believe that in spite of MN being a “one-party consent state,” notification is important in order to ensure that individuals interacting with the SPPD are on their best behavior. Further, as stated earlier, Citizens who realize that there is a video/audio recording being made of their contact with SPPD, rarely if ever would file a complaint, (either formal or informal) pursue charges or file a costly lawsuit when the evidence could potentially support the actions of the SPPD during that recorded interaction. We believe this would result in significant legal and personnel cost savings to the department far into the future.

BWC footage should be made available to promote accountability with appropriate privacy safeguards in place. At a minimum: (1) Footage that captures police use of force should be made available upon notarized request. (2) Footage should be made available in a timely manner to any filmed subject (or their notarized representative or civil rights representatives). (3) When seeking to file a complaint, to criminal defendants, and to the next-of-kin of anyone whose death is related to the events captured on video. Departments must consider individual privacy concerns before making footage available to broad audiences.

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<sup>2</sup> Statement by Matt Ehling - Chair, Legislative Issues Committee, MN Coalition On Government Information (MNCOGI)

- The NAACP recommends that the training or pilot period for BWC's be at least 3 months in each district, prior to final implementation and that the same time period should be used for cadets and new employees of SPPD required to wear BWC's. This will ensure consistent implementation across SPPD at implementation and in the future. We also recognize that the BWC policy will need to be evaluated, reviewed periodically and updated to incorporate changes in technology, training, public policy and BWC utilization/experience, officer and public trust and acceptance in the general community.

We would be happy to respond to any questions, clarification or concerns regarding this response. Thank you for the invitation to participate in this important public dialogue—in the past—and continuing it in the future.