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TO SERVE AND PROTECT: AN ANALYSIS OF RECENT LAW ENFORCEMENT LEGISLATION IN ILLINOIS AND A CALL FOR REFORM

INTRODUCTION

Due to an increase in the number of individuals killed by law enforcement officers since 2010,¹ and the increase in public awareness of these events made possible by the proliferation of smart phone recordings and other video recorded evidence,² public perception is that police misconduct is ever present.³ This perception has not only deeply fractured the relationship between law enforcement officers and the citizens they are tasked to protect,⁴ but is also highly problematic because public trust in law enforcement and belief in its legitimacy are vital to maintaining an ordered, law-abiding society.⁵ Increased transparency within law enforcement agencies may restore the legitimacy and the public's trust of law enforcement. One way to achieve transparency is to increase the availability of objective evidence of law enforcement's interactions with the public by equipping law enforcement officers with body cameras. Objective recordings of

1. *Expanded Homicide Data Table 14*, FBI: UNIFORM CRIME REPORTING, https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/offenses-known-to-law-enforcement/expanded-homicide/expanded_homicide_data_table_14_justifiable_homicide_by_weapon_law_enforcement_2009-2013.xls (last visited Aug. 15, 2016).

2. Michael Wines & Sarah Cohen, *Police Killings Rise Slightly, Though Increased Focus May Suggest Otherwise*, N.Y. TIMES (Apr. 30, 2015), <http://www.nytimes.com/2015/05/01/us/no-sharp-rise-seen-in-police-killings-though-increased-focus-may-suggest-otherwise.html>. “[A]ny perception that higher numbers of unarmed African Americans are being killed by the police in recent months is driven by citizens’ postings of unsettling cellphone videos and pictures, like that of police officers dragging Freddie Gray, his legs apparently not working, into a van.” *Id.*

3. *Id.* (“[S]o many unarmed black males have died in police confrontations that even President Obama noted this week that ‘it comes up, it seems like, once a week now, or once every couple of weeks.’”).

4. Susan Page, *Poll: Whites and Blacks Question Police Accountability*, USA TODAY (Aug. 26, 2014, 4:42 AM), <http://www.usatoday.com/story/news/nation/2014/08/25/usa-today-pew-poll-police-tactics-military-equipment/14561633> (“USA TODAY/Pew Research Center Poll finds Americans by 2-to-1 say police departments nationwide don’t do a good job in holding officers accountable for misconduct, treating racial groups equally and using the right amount of force.”).

5. Loretta J. Stalans, *Community Attitudes Toward the Police*, in 1 THE ENCYCLOPEDIA OF POLICE SCIENCE 192 (Jack R. Greene ed., 3d ed. 2007).

law enforcement officers' interactions with the public are currently lacking because of the Illinois eavesdropping statute.⁶

Illinois was once well known for having one of the strictest eavesdropping statutes in the United States.⁷ Most state statutes require only one party's consent for a recording to be lawful.⁸ However, Illinois required the consent of all parties to a recording.⁹ For many years, Illinois required the consent of all parties to a recording—even in the context of a citizen recording their own public encounter with law enforcement.¹⁰ In 2014, the Illinois eavesdropping statute was invalidated on First Amendment grounds.¹¹ The Illinois legislature responded and reformulated the eavesdropping statute in 2014.¹² Additionally, in reacting to the recent nationwide outcry against police misconduct,¹³ the Illinois legislature amended the statute again in 2015.¹⁴ In addition to amending the eavesdropping statute, the Illinois legislature passed the Law Enforcement Officer-Worn Body Camera Act (the Act),¹⁵ which merely regulates state law enforcement agency's use of police body cameras within the law enforcement agencies that choose to use them; however, use of police body cameras is not mandatory.¹⁶ Though the Illinois legislature made important progress in increasing transparency within law enforcement agencies when it enacted these changes, the reforms do not go far enough.

Though the reforms under the Act are a step in the right direction, these changes do not go far enough to thoroughly foster transparency

6. Eavesdropping, 720 ILL. COMP. STAT. 5/14-1 to -9 (2014 & Supp. 2016).

7. Don Terry, *Eavesdropping Laws Mean that Turning On an Audio Recorder Could Send You to Prison*, N.Y. TIMES (Jan. 22, 2011), http://www.nytimes.com/2011/01/23/us/23cncceavesdropping.html?_r=0 (“[Two individuals] audio-recorded their separate nonviolent encounters with Chicago police officers without the officers’ permission, a Class 1 felony in Illinois, which, along with Massachusetts and Oregon, has one of the country’s toughest, if rarely prosecuted, eavesdropping laws.”).

8. *Civil Rights Law – Protection of Rights: Surveillance, Recording & Interception*, in LEXIS-NEXIS 50-STATE SURVEYS, STATUTES & REGULATIONS, LexisNexis (database updated June 2016).

9. *Id.*

10. 720 ILL. COMP. STAT. 5/14 (2014), *invalidated by* Illinois v. Melongo, 2014 IL 114852, 6 N.E.3d 120, *and* Illinois v. Clark, 2014 IL 115776, 6 N.E.3d 154.

11. *Clark*, 2014 IL 115776, ¶ 25.

12. *See* S.B. 1342, 98th Gen. Assemb., Reg. Sess. (Ill. 2014).

13. Kim Geiger & Jeremy Gorner, *Rauner Signs Police Body Camera Bill into Law*, CHI. TRIB. (Aug. 12, 2015, 6:06 PM), <http://www.chicagotribune.com/news/local/politics/ctbruceraunerpolicebodycamerabillmet071320150812story.html> (“The legislation comes after a series of officer involved deaths generated momentum behind a nationwide push for recording officer encounters with the public.”).

14. *See* S.B. 1304, 99th Gen. Assemb., Reg. Sess. (Ill. 2015).

15. 50 ILL. COMP. STAT. 706/10-1 to -35 (2014 & Supp. 2016).

16. *Id.* § 10-15.

in law enforcement. Given the complexities of the Illinois eavesdropping statute discussed above and the history of prosecutions under the law, citizens fear recording their interactions with law enforcement officers. As a result, citizens often do not have available recordings of their interactions with law enforcement when problems arise. This perpetuates the view that there is a lack of transparency in police and community relations. Compulsory use of body cameras by law enforcement officers in Illinois can bridge the gap left by the lack of citizen recordings and can promote much needed transparency between police and the communities they serve. Currently, very few states have implemented comprehensive police body camera legislation.¹⁷ Thus, Illinois has the opportunity to be at the forefront of nationwide change.

The transparency that cameras provide can reveal and reduce police misconduct of all types, such as, abuse of power, brutality, excessive use of deadly force, stealing, and more. Thus, this Comment advocates for mandatory implementation of police body cameras throughout Illinois in order to restore public trust in law enforcement. Part II of this Comment discusses the background of (A) recent high profile police misconduct in Illinois and in other states;¹⁸ (B) the challenges presented by the Illinois eavesdropping statute that was in effect in 2013 and in prior years;¹⁹ (C) the United States Court of Appeals, Seventh Circuit case *ACLU v. Alvarez*,²⁰ which expressed concerns regarding the validity of the Illinois eavesdropping statute in 2012;²¹ (D) the eventual invalidation of the Illinois eavesdropping statute by the Illinois Supreme Court in 2014;²² (E) the Illinois legislature's response to this invalidation;²³ (F) the Illinois legislature's most recent reforms made effective as of 2016, which respond to the current national crisis of deaths by the hands of law enforcement officers;²⁴ and (G) the regulatory compliance with the statute.²⁵

Part III posits that current Illinois legislation may dissuade law enforcement agencies from initiating police body camera programs because the law makes police body camera programs optional, while

17. Michael Obrien, *Police Body Cams—States Balance Privacy vs the Public's Right to Know*, BILL TRACK 50 (Sept. 30, 2015), <https://www.billtrack50.com/blog/in-the-news/police-body-cams/>.

18. See *infra* notes 30–46 and accompanying text.

19. See *infra* notes 47–73 and accompanying text.

20. 679 F.3d 583 (7th Cir. 2012).

21. See *infra* notes 74–87 and accompanying text.

22. See *infra* notes 88–109 and accompanying text.

23. See *infra* notes 110–16 and accompanying text.

24. See *infra* notes 117–26 and accompanying text.

25. See *infra* notes 127–49 and accompanying text.

imposing significant and costly regulations only on those law enforcement agencies that choose to begin a program.²⁶ Part III argues that the legislation should instead mandate and fund police body camera programs in order to achieve the legislature's goal of increased transparency in law enforcement.²⁷ Part III also suggests that the costs of mandating police body camera programs may be offset by savings from deterring police misconduct and assisting in the exoneration of police officers who are falsely accused, which would save millions of tax dollars that would otherwise be spent investigating, defending, and settling claims of police misconduct.²⁸ Part IV emphasizes the effect and importance of taking steps to restore public trust in law enforcement because it promotes compliance with the law.²⁹ Part V concludes that only by amending the Act to mandate universal use of officer-worn body cameras in Illinois will the goal of transparency in law enforcement truly be achieved.

II. BACKGROUND

This Part examines several recent, high-profile instances of police misconduct in Illinois and nationwide. It then explains the recent amendments to the Illinois eavesdropping statute and how the Illinois eavesdropping statute affected recording government officials, such as police officers. Next, this Part explains the Illinois Supreme Court's eventual invalidation of the former Illinois eavesdropping statute and provides the General Assembly's amended statute. Finally, this Part examines the legislature's enactment of the Act, which appears to be in response to recent high-profile instances of police misconduct as well as the uncertain parameters of the previous eavesdropping statutes insofar as they regulated recording police officers.

A. *Recent High-Profile Police Misconduct in Illinois and Nationwide*

Recent instances of police misconduct in Illinois, and throughout the nation, underscore the need for reforms aimed at abating police misconduct.³⁰ These instances of police misconduct also demonstrate the pivotal role that video footage serves in uncovering and resolving

26. See *infra* notes 150–57 and accompanying text.

27. See *infra* notes 158–76 and accompanying text.

28. See *infra* notes 177–205 and accompanying text.

29. See *infra* notes 206–29 and accompanying text.

30. See Sarah Freishtat, *Protestors Rally to Raise Awareness of 'Brutality of Police,'* CHI. TRIB. (Oct. 3, 2015, 6:44 PM), <http://www.chicagotribune.com/news/local/breaking/ctcommunityrenewalsocietypolicerallymet20151003story.html>.

incidents of misconduct.³¹ On October 20, 2014, a Chicago police officer shot Laquan McDonald, a car burglary suspect, as he walked away from police.³² The officer continued shooting even after critically injuring Mr. McDonald who lay motionless on the ground.³³ Mr. McDonald died as a result of the gunshot wounds.³⁴ Dashboard cameras mounted in police squad cars recorded the events preceding the shooting and the shooting itself.³⁵ Without dash camera footage, the true circumstances surrounding the shooting might never have been revealed. Due in part to the availability of dash camera footage, the Cook County State's Attorney filed first-degree murder charges against Officer Jason Van Dyke.³⁶

Available video recording footage was also instrumental in discovering the true circumstances that transpired in the death of Walter Scott in South Carolina. Police officer Michael Slager shot Mr. Scott in the back as he was running away following a traffic stop for a broken brake light.³⁷ The officer's actions were out of view of his dashboard camera.³⁸ A concerned bystander captured the only existing video footage with a cell phone.³⁹ The bystander's video footage showed the officer shooting Mr. Scott, who was unarmed, eight times in the back.⁴⁰ Based largely in part on the availability of video recording footage, a grand jury indicted Officer Michael Slager on murder charges.⁴¹

Video footage recorded as part of a security system has also uncovered police misconduct. On July 31, 2013, Chicago police officers

31. *Timeline: Eric Garner Death*, NBC N.Y. (Dec. 5, 2014, 9:44 AM), <http://www.nbcnewyork.com/news/local/Timeline-Eric-Garner-Chokehold-Death-Arrest-NYPD-Grand-Jury-No-Indictment-284657081.html> (discussing how bystander cell phone footage captured the true circumstances surrounding the death of Eric Garner as a result of an officer's use of an illegal chokehold).

32. Zusha Elinson & Dan Frosch, *Cost of Police-Misconduct Cases Soars in Big U.S. Cities*, WALL ST. J. (July 15, 2015, 10:30 PM), <http://www.wsj.com/articles/cost-of-police-misconduct-cases-soars-in-big-u-s-cities-1437013834>.

33. *Id.*

34. *Id.*

35. *Id.*

36. *Alvarez Defends Herself, Mayor Emanuel in Timing of Charges in Laquan McDonald Case*, NBC CHI. (Nov. 24, 2015, 3:20 PM), <http://www.nbcchicago.com/blogs/ward-room/Alvarez-Opponents-Question-Timeline-of-Release-of-McDonald-Video-353183351.html>.

37. Dana Ford, *South Carolina Ex-Police Officer Indicted in Walter Scott Killing*, CNN (June 8, 2015, 5:30 PM), <http://www.cnn.com/2015/06/08/us/south-carolina-slager-indictment-walter-scott>.

38. *Id.* ("Dash cam video from that stop shows the two men talking before Scott gets out of the car and runs. Slager gives chase. They run out of range of the dash cam.").

39. *Id.*

40. *Id.*

41. *Id.* "If convicted of murder, the former officer could face up to life in prison." *Id.*

raided the tanning salon business of Jessica Klyzek for suspected prostitution services.⁴² During the raid, police officers hurled racially charged expletives and epithets at the woman, and struck her even after she was handcuffed in a kneeling position.⁴³ The law enforcement officers did not realize they were being filmed at the time, and it was not until after the beating that the officers discovered that the salon was equipped with security cameras.⁴⁴ Based largely on this security footage, investigators from the City of Chicago's Independent Police Review Authority recommended that the officers who were involved be suspended.⁴⁵ Additionally, the victim received a substantial settlement.⁴⁶

The Klyzek, McDonald, and Scott cases illustrate the important role that video footage can serve in exposing potential police misconduct. Video footage of police conduct obtained from dash cameras, security cameras, and bystander cell phone footage is an invaluable means toward achieving greater transparency in law enforcement. However, individuals may hesitate to record their interactions with police due to fear and continued confusion over Illinois' recently changed eavesdropping statute.

B. *The Illinois Eavesdropping Law in 2013 and in Prior Years*

The Illinois eavesdropping statute as it existed prior to the 2014 amendments has adversely influenced the availability of bystander video footage of public interactions with law enforcement. This is because until recently, Illinois had one of the harshest eavesdropping laws in the United States.⁴⁷ Under the Illinois eavesdropping statute

42. Odette Yousef, *Three Police Officers in Asian Salon Raid Recommended for Suspension*, WBEZ 91.5 CHI. (Sept. 1, 2015, 1:30 PM), <https://www.wbez.org/shows/wbez-news/three-police-officers-in-asian-salon-raid-recommended-for-suspension/c0f0e729-21e8-4a49-8f4a-9244866956> 42 (“The investigation by the Independent Police Review Authority centered on twelve named and one unknown officer alleged to have raided the salon on July 31, 2013.”).

43. Robert Wildeboer, *IPRA Fails to Pursue Potential Crime by Cops Caught on Video*, WBEZ 91.5 (Sept. 21, 2015), <http://www.wbez.org/print/113018>.

44. *Id.* (“[A cop] notices a computer screen below the counter. He looks at it and realizes there’s a video camera. He points two fingers at his own eyes and calls out to everyone quote, ‘Hey! Hey! There’s eyes!’”).

45. Yousef, *supra* note 42 (“The agency that reviews allegations of police misconduct in Chicago has recommended suspension for three officers in a racially-charged police raid of a West Town tanning salon.”).

46. *City Approves Settlement for Tanning Salon Manager in Police Abuse Case*, NBC CHI. (Sept. 9, 2014, 8:33 AM), <http://www.nbcchicago.com/news/local/City-Approves-Settlement-for-Tanning-Salon-Manager-in-Police-Abuse-Case-274400761.html> (“[The City] approved a \$150,000 settlement of a lawsuit filed by a tanning salon manager who claims she was struck by a police officer and verbally abused.”).

47. *See* Terry, *supra* note 7.

that was in effect prior to the 2014 amendments, it was illegal for an individual to record anyone without first obtaining their permission.⁴⁸ The law was amended in 2014 and 2015;⁴⁹ however, because the law has been in flux, there are signs that the public continues to not understand whether or not it is lawful to record on-duty police officers in public.⁵⁰ The public's misapprehension of their rights may cause bystanders to avoid recording the police in order to avoid violating the law.⁵¹

As of 2013, the Illinois eavesdropping statute prohibited anyone from “(1) [k]nowingly and intentionally us[ing] an eavesdropping device for the purpose of hearing or recording all or any part of any conversation or intercepts, retains, or transcribes electronic communication unless he does so . . . with the consent of all of the parties to such conversation.”⁵² Additionally, the Illinois eavesdropping statute imposed a more significant sentence when the subject of the prohibited eavesdropping was a law enforcement officer.⁵³ A first-time eavesdropping offense against a member of the general public was a Class 4 felony, while a second offense was a Class 3 felony.⁵⁴ Meanwhile, the same eavesdropping offense committed against a law enforcement officer “while in the performance of his or her official duties,” called for an elevated punishment as a Class 1 felony.⁵⁵ In 2013, a Class 4 felony in Illinois was punishable by a term of imprisonment “of not less than one year and not more than 3 years”⁵⁶ and a Class 3 felony was punishable by a term of imprisonment of “not less than 2 years and not more than 5 years.”⁵⁷ By contrast, a Class 1

48. 720 ILL. COMP. STAT. 5/14-2 (2013), *invalidated by* Illinois v. Melongo, 2014 IL 114852, 6 N.E.3d 120, and Illinois v. Clark, 2014 IL 115776, 6 N.E.3d 154.

49. See Monique Garcia, *Quinn Signs New Illinois Eavesdropping Rules into Law*, CHI. TRIB. (Dec. 30, 2014, 5:53 PM), <http://www.chicagotribune.com/news/ct-quinn-signs-illinois-eavesdropping-law-met-1231-20141230-story.html>.

50. Joseph Erbentraut, *No, Illinois Did Not Just Pass a Law Making It Illegal to Record Police Officers*, HUFFINGTON POST (Dec. 10, 2014, 4:46 PM), http://www.huffingtonpost.com/2014/12/10/illinois-eavesdropping-law_n_6303454.html (“Contrary to what you may have recently read on your Facebook feed, the state of Illinois’ new eavesdropping legislation will not prohibit the recording of police officers.”).

51. See generally John E. Calfee & Richard Craswell, *Some Effects of Uncertainty on Compliance with Legal Standards*, 70 VA. L. REV. 965 (1984). “If the legal standard is uncertain, even actors who behave ‘optimally’ in terms of overall social welfare will face some chance of being held liable because of the unpredictability of the legal rule. . . . [T]hese actors can usually reduce that chance by ‘overcomplying.’” *Id.*

52. 720 ILL. COMP. STAT. 5/14-2(a)(1) (2013).

53. *Id.* § 14-4.

54. *Id.* § 14-4(a).

55. *Id.* § 14-4(b).

56. 730 ILL. COMP. STAT. 5/5-4.5-45 (2013).

57. *Id.* § 5-4.5-40.

felony imposed a term of imprisonment of “not less than 4 years and not more than 15 years.”⁵⁸ Therefore, the same illegal act carried nearly two times the punishment simply because of the identity of the victim.

The heightened punishment clause for illegal eavesdropping offenses committed against law enforcement officers was added to the Illinois eavesdropping statute in 1999.⁵⁹ The original bill was supported by law enforcement groups.⁶⁰ These proponents of the bill intended that the statutory amendments served a crime-fighting function by addressing “the problem of street gangs’ use of cloned electronic devices, such as pagers, to gather information on law enforcement investigations.”⁶¹

Despite the legislative intent of discouraging interference with police investigations, the Illinois eavesdropping statute that was in effect prior to 2014 was used to arrest and prosecute individuals who, for the purpose of documenting their own interaction with police, recorded law enforcement officers in the operation of their duties.⁶² Many of these arrests and prosecutions were high-profile cases that attracted extensive news coverage.⁶³ Given that deterrence has historically been considered one of the main objectives of criminal law,⁶⁴ criminalizing the act of recording police intrinsically discouraged such conduct.

The ACLU of Illinois estimated that the State of Illinois prosecuted no less than fourteen individuals between 2004 and 2012 for recording police officers in violation of the Illinois eavesdropping statute.⁶⁵ In one instance from 2009, police arrested Christopher Drew and charged him with a Class 1 felony under the Illinois eavesdropping statute for audio-recording his own arrest for selling art on the street

58. *Id.* § 5-4.5-30.

59. H.B. 526, 91st Gen. Assemb., Reg. Sess. (Ill. 1999). Compare 720 ILL. COMP. STAT. 5/14-4 (1998), with 720 ILL. COMP. STAT. 5/14-4 (1999).

60. H.R. Transcript, 91st Gen. Assemb., Reg. Sess. 21–22 (Ill. May 19, 1999), <http://ilga.gov/house/transcripts/htrans91/t051999.pdf>.

61. S. Transcript, 91st Gen. Assemb., Reg. Sess. 200 (Ill. May 13, 1999), <http://ilga.gov/senate/transcripts/strans91/ST051399.pdf>.

62. Terry, *supra* note 7.

63. See *infra* notes 65–72 and accompanying text.

64. See Isaac Ehrlich, *The Deterrent Effect of Criminal Law Enforcement*, 1 J. LEGAL STUD. 259, 259–60 (1972) (“The idea that law enforcement—the apprehension and punishment of law breakers—serves partly as a means of deterring future crimes by those apprehended and by others is basic to crime control legislation, ancient and modern.”).

65. See *Court Issues Order Barring Controversial Enforcement of Illinois’ Eavesdropping Law*, ACLU ILL. (July 9, 2012, 10:46 AM), <http://www.aclu-il.org/court-issues-order-barring-controversial-enforcement-of-illinois-eavesdropping-law/>.

without a permit.⁶⁶ Likewise in 2010, Tiawanda Moore was arrested and charged with a felony under the Illinois eavesdropping statute.⁶⁷ Moore was arrested and prosecuted for making audio-recordings of her interactions with law enforcement officers as she attempted to file a sexual harassment complaint against another officer in the department.⁶⁸ In 2010, a police officer arrested Louis Frobe for felony eavesdropping for recordings that he created during a routine traffic stop.⁶⁹ Unconvinced that he was actually in an area with a 35 mile per hour speed limit, Mr. Frobe decided to record his location as well as his interaction with the police officer.⁷⁰ The police officer, upon noticing the recording, arrested Mr. Frobe.⁷¹ Mr. Frobe spent the night in jail and was released on bond the following day; ultimately, however, the local prosecutor did not charge Mr. Frobe.⁷² Though Drew, Moore, and Frobe recorded their encounters with law enforcement, their arrests and prosecutions were permissible under the Illinois eavesdropping statute that was in effect prior to 2014.⁷³

C. *The Seventh Circuit Questions the Validity of the Illinois Eavesdropping Statute*

The Illinois eavesdropping statute, as it existed prior to 2014, eventually fell under judicial scrutiny. Notably, civil liberties groups opposed the law.⁷⁴ The ACLU eventually filed a complaint in the United States District Court for the Northern District of Illinois, alleging that the Illinois Eavesdropping law violated the First Amendment

66. Terry, *supra* note 7.

67. Eugene Volokh, *Woman Jailed Two Weeks for Recording Chicago P.D.'s Internal Affairs Officers Can Sue for a Fourth Amendment Violation*, WASH. POST (May 1, 2014), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/05/01/woman-jailed-two-weeks-for-recording-chicago-p-d-s-internal-affairs-officers-can-sue-for-a-fourth-amendment-violation>.

68. *Id.*

69. Paul Meincke, *Special Segment: Felony Eavesdropping*, ABC 7 CHI. (Sept. 27, 2011, 8:30 PM), <http://abc7chicago.com/archive/8370540/>.

70. *Id.*

71. *Id.*

72. *Id.*

73. See *supra* notes 52–61 and accompanying text.

74. *ACLU Seeks End to Prosecutions for Recording Public Conversations with Police*, ACLU (Aug. 19, 2010), <https://www.aclu.org/news/aclu-seeks-end-prosecutions-recording-public-conversations-police> (“The media reported that Chicago police were conducting random searches of bags and backpacks of individuals who were passing by Chicago beaches. . . . When the ACLU investigated, it could not use widely available audio/video recording devices . . . to document police activity and conversations, because doing so would risk arrest or prosecution.”).

of the United States Constitution.⁷⁵ The case was appealed to the United States Court of Appeals for the Seventh Circuit.⁷⁶

In *ACLU v. Alvarez*, the ACLU sued then-current Cook County State's Attorney, Anita Alvarez, in a pre-enforcement action.⁷⁷ The ACLU wanted to initiate a "police accountability program" that would involve making "audiovisual recordings of police officers performing their duties in public places and speaking at a volume audible to bystanders."⁷⁸ In order to pursue such a program, the ACLU sought declaratory relief stating that the ACLU would not be prosecuted under the Illinois eavesdropping statute for engaging in such a program.⁷⁹ The Seventh Circuit granted a preliminary injunction preventing the State's Attorney from enforcing the Illinois eavesdropping statute against the ACLU's "police accountability program."⁸⁰ The court determined that the law constrained "a medium of expression commonly used for the preservation and communication of information and ideas, thus triggering First Amendment scrutiny."⁸¹ The court found that the law "criminalized the nonconsensual recording of most any oral communication, including recordings of public officials doing the public's business in public and regardless of whether the recording is open or surreptitious" and was thus inconsistent with its narrow purpose of protecting "conversational privacy."⁸² Accordingly, the Seventh Circuit indicated that the Illinois eavesdropping law was almost certainly unconstitutional because it "restricts far more speech than necessary to protect legitimate privacy interests."⁸³

The court in *Alvarez*, also made several observations. First, the court noted that Illinois maintained the most far-reaching eavesdropping statute that the court was aware of because it completely ignored the distinction between conversations conducted with and without an expectation of privacy.⁸⁴ Second, the court cautioned that allowing police recordings is not without limits, noting that "police may take all reasonable steps to maintain safety and control, secure crime scenes

75. Complaint, *ACLU v. Alvarez*, 679 F.3d 583 (7th Cir. 2012) (No. 10-cv-05235), 2010 WL 3409777.

76. *Alvarez*, 679 F.3d at 586.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Alvarez*, 679 F.3d at 586.

83. *Id.* at 586–87.

84. *Id.* at 595 n.4. ("As best we can tell, the Illinois statute is the broadest of its kind; no other wiretapping or eavesdropping statute prohibits the open recording of police officers lacking any expectation of privacy.")

and accident sites, and protect the integrity and confidentiality of investigations.”⁸⁵ The court further stated, “While an officer surely cannot issue a ‘move on’ order to a person *because* he is recording, the police may order bystanders to disperse for reasons related to public safety and . . . other legitimate law-enforcement needs.”⁸⁶ Thus, the court recognized that there was a legitimate need for law enforcement to maintain order, but the court determined that the scope of the eavesdropping law exceeded that goal.⁸⁷

D. The Illinois Supreme Court Invalidates the Illinois Eavesdropping Statute in 2014

Ultimately, the validity of the Illinois eavesdropping statute came before the Illinois Supreme Court, which held the statute unconstitutional in the two concurrent opinions of *Illinois v. Clark*⁸⁸ and *Illinois v. Melongo*⁸⁹ —both released in March 2014. In *Illinois v. Melongo*, the defendant was charged with violating the Illinois eavesdropping law for surreptitiously recording her telephone conversation with a Cook County court administrator and posting that recording online.⁹⁰ The defendant moved to dismiss the case, asserting that the Illinois eavesdropping law violated the First Amendment and due process.⁹¹ The court acknowledged that the purpose of the law was “to protect conversational privacy.”⁹² However, the court pointed out that then-current law “deem[ed] all conversations to be private and, thus, not subject to recording absent consent, even if the participants have no expectation of privacy.”⁹³ Under this formulation, the court reasoned that the law “criminalize[d] a wide range of innocent conduct.”⁹⁴ To illustrate this point, the court set forth examples of acts that would be criminal under the law, such as, recording a loud argument in public or recording fans cheering at a sporting event.⁹⁵ The court stated that because the Illinois eavesdropping statute “burden[ed] substantially more speech than is necessary to serve a legitimate state interest in protecting conversational privacy,” it failed to pass an intermediate

85. *Id.* at 607.

86. *Id.*

87. *Id.*

88. 2014 IL 115776, 6 N.E.3d 154.

89. 2014 IL 114852, 6 N.E.3d 120.

90. *Id.* ¶ 7.

91. *Id.* ¶ 8.

92. *Id.* ¶ 22.

93. *Id.*

94. *Id.* ¶ 29.

95. *Melongo*, 2014 IL 114852, ¶ 29.

scrutiny test and was therefore unconstitutional.⁹⁶ The companion case, *Clark*, reached a substantially similar conclusion.

In *Clark*, the defendant was prosecuted under the Illinois eavesdropping statute for recording his conversations with opposing counsel and a judge, without their consent, who were involved in the defendant's child support case.⁹⁷ The defendant asserted that the law violated the First Amendment of the Constitution.⁹⁸ In analyzing the law, the court applied the overbreadth doctrine "whereby a law may be invalidated as overbroad if a substantial number of its applications are unconstitutional."⁹⁹

The Illinois Supreme Court's overbreadth analysis first required it to determine what the challenged statute covered,¹⁰⁰ and second, what conduct the challenged statute was intended to protect.¹⁰¹ In its analysis, the court found that the challenged statute was extremely broad and criminalized "recording of all conversations except in limited circumstances specifically allowed by the statute."¹⁰² The court reiterated the rule that a content-neutral law will be upheld against a First Amendment challenge "if it advances important governmental interests unrelated to the suppression of free speech and does not burden substantially more speech than necessary to further those interests."¹⁰³ Given that the law criminalized all nonconsensual recordings, the court found that the law's purpose was to "protect conversational privacy."¹⁰⁴

Thus, the court formulated the final question as "whether the means the legislature has chosen to further this interest in conversational privacy places a substantially greater burden on speech than is necessary to further the interest."¹⁰⁵ In answering this question, the court determined that individuals hold a "valid interest in the privacy of their communications and a legitimate expectation that their private conversations will not be recorded by those not privy to the conversation."¹⁰⁶ In such instances, the statute properly criminalizes such recordings.¹⁰⁷ However, the court maintained that the law addition-

96. *Id.* ¶ 31.

97. *Illinois v. Clark*, 2014 IL 115776, ¶ 1, 6 N.E.3d 154, 156–57.

98. *Id.*

99. *Id.* ¶ 11.

100. *Id.* ¶ 14.

101. *Id.* ¶ 20.

102. *Id.* ¶ 14.

103. *Clark*, 2014 IL 115776, ¶ 19.

104. *Id.* ¶ 22.

105. *Id.* ¶ 20.

106. *Id.* ¶ 21.

107. *Id.*

ally criminalized recording in a multitude of nonprivate scenarios that do not implicate a privacy interest, such as, recording a public argument or recording a public encounter with the police.¹⁰⁸ Accordingly, the court held that the Illinois eavesdropping statute was unconstitutional in light of the First Amendment’s overbreadth doctrine because it failed an intermediate scrutiny test and “burden[ed] substantially more speech than [was] necessary to serve the interests the statute may legitimately serve.”¹⁰⁹

E. Illinois Legislature’s Response to Court Decision

In response to the Illinois Supreme Court’s invalidation of the Illinois eavesdropping statute, the Illinois legislature amended the statute in 2014.¹¹⁰ These changes were signed into law by former Governor Pat Quinn on December 30, 2014.¹¹¹ The amendments are more verbose than the previous version of the statute, providing in pertinent part that:

(a) A person commits eavesdropping when he or she knowingly and intentionally:

(1) Uses an eavesdropping device, in a surreptitious manner, for the purpose of overhearing, transmitting, or recording all or any part of any private conversation to which he or she is not a party unless he or she does so with the consent of all of the parties to the private conversation;

(2) Uses an eavesdropping device, in a surreptitious manner, for the purpose of transmitting or recording all or any part of any private conversation to which he or she is a party unless he or she does so with the consent of all other parties to the private conversation;

(3) Intercepts, records, or transcribes, in a surreptitious manner, any private electronic communication to which he or she is not a party unless he or she does so with the consent of all parties to the private electronic communication.¹¹²

In effect, the amendment decriminalized public recordings by expressly defining an eavesdropping offense as involving “private” conversation and communication. Therefore, under the amended statute, recording a public conversation was no longer deemed criminal, no matter if you were a party to that conversation or not. The statute further enumerated what was deemed criminal and lawful in terms of

108. *Id.*

109. *Clark*, 2014 IL 115776, ¶ 23.

110. *Garcia*, *supra* note 49.

111. *Id.* (“Gov. Pat Quinn on Tuesday signed a measure into law that puts in place new rules regarding how private conversations can be recorded following an Illinois Supreme Court decision that struck down the state’s eavesdropping law for being too broad.”).

112. 720 ILL. COMP. STAT. 5/14-2 (2014 & Supp. 2016).

recording private conversations. First, the statutory changes meant that you could record others having a private conversation without their consent if you recorded them in an open manner. However, you could only record them “surreptitiously” if you had consent. Second, you could record others with whom you were conversing if you did so in an open manner. However, you could only record that conversation “surreptitiously” with the other parties’ consent.

The phraseology of the law is confusing for many reasons. First, it seems unlikely that a recording could simultaneously be both consensual and surreptitious. This makes parts of the statute redundant. Examining the statute practically, to obtain consent to record a conversation would bring the fact of recording out of secret, thus making the recording non-surreptitious by definition. Second, the amendment did not contain express language stating that public recordings were lawful. Additionally, because there are many conceivable scenarios in which an individual may encounter law enforcement officers in a place that is not necessarily public, uncertainties remained in this iteration of the law insofar as recording encounters with law enforcement were concerned.

Furthermore, even after these amendments, the statute retained heightened punishment for eavesdropping offenses committed against law enforcement officers.¹¹³ The sentencing structure was only slightly altered.¹¹⁴ A first offense of eavesdropping committed against a member of the general public continues to be a Class 4 felony and a second such offense is a Class 3 felony.¹¹⁵ A first-time offense of eavesdropping against a law enforcement officer is a Class 3 felony, rather than a Class 1 felony, and a second such offense is a Class 2 felony.¹¹⁶

F. Illinois Legislature’s Response to Current Events

In August 2015, the Illinois legislature responded to public discontent against the Illinois eavesdropping statute as amended in 2014, and

113. 720 Ill. Comp. Stat. 5/14-4.

114. Compare 720 ILL. COMP. STAT. 5/14-4 (2013), with 720 ILL. COMP. STAT. 5/14-4 (2014 & Supp. 2016).

115. Compare 720 ILL. COMP. STAT. 5/14-4(a) (2013), with 720 ILL. COMP. STAT. 5/14-4(a) (2014 & Supp. 2016). As of 2016, a Class 4 felony carries a term of imprisonment of “not less than one year and not more than 3 years.” 730 ILL. COMP. STAT. 5/5-4.5-45 (2016).

116. Compare 720 ILL. COMP. STAT. 5/14-4(b) (2013), with 720 ILL. COMP. STAT. 5/14-4(b) (2015 & Supp. 2016). As of 2016, a Class 1 felony carries a term of imprisonment of “not less than 4 years and not more than 15 years.” 730 ILL. COMP. STAT. 5/5-4.5-30 (2016). Whereas, as of 2016, a Class 3 felony is punishable by a term of imprisonment of “not less than 2 years and not more than 5 years.” *Id.* § 5-4.5-40. A Class 2 felony carries a term of imprisonment of not less than 3 years and not more than 7 years. *Id.* § 5-4.5-35(a).

recent high-profile cases of police misconduct, by once again amending the statute.¹¹⁷ The relevant statutory changes, which took effect January 1, 2016, added a clause that had the potential to quell public concerns that the Illinois eavesdropping statute may unfairly suppress recordings of police misconduct by stating outright that, “[n]othing in this Article shall prohibit any individual, not a law enforcement officer, from recording a law enforcement officer in the performance of his or her duties in a public place or in circumstances in which the officer has no reasonable expectation of privacy.”¹¹⁸ The statute attempts to balance an individual’s right to record law enforcement officers in the performance of their duties with the latitude law enforcement officers require to perform their jobs by providing that law enforcement officers “may take reasonable action to maintain safety and control, secure crime scenes and accident sites, protect the integrity and confidentiality of investigations, and protect the public safety and order.”¹¹⁹ The amendment clarifies the circumstances in which the public may lawfully record law enforcement officers by including descriptive language, such as “in the performance of his or her duties,” “in a public place,” and “[when] the officer has no reasonable expectation of privacy.”¹²⁰

In August 2015, the Illinois General Assembly continued to respond to the national concern of police misconduct by enacting the Law Enforcement Officer-Worn Body Camera Act (the Act).¹²¹ The purpose of the legislation was to achieve “trust and mutual respect between law enforcement agencies and the communities they protect and serve [which] are essential to effective policing and the integrity of [the] criminal justice system.”¹²² According to the Act:

The General Assembly recognizes that officer-worn body cameras have developed as a technology that has been used and experimented with by police departments. Officer-worn body cameras will provide state-of-the art evidence collection and additional opportunities for training and instruction. Further, officer-worn body cameras may provide impartial evidence and documentation to settle disputes and allegations of officer misconduct. Ultimately, the uses of officer-worn body cameras will help collect evidence while improving transparency and accountability, and strengthening public trust.¹²³

117. Geiger & Goner, *supra* note 13.

118. S.B. 1304, 99th Gen. Assemb., Reg. Sess. (Ill. 2015).

119. *Id.*

120. *Id.*

121. *Id.*; see 50 ILL. COMP. STAT. 706/10-1 to -35 (2016).

122. 50 ILL. COMP. STAT. 706/10-5.

123. *Id.*

In addition, the Act provides mandatory rules regulating the use of optional police body cameras.¹²⁴ The legislation applies to “[a]ny law enforcement agency which employs the use of officer-worn body cameras . . . whether or not the agency receives or has received monies from the Law Enforcement Camera Grant Fund.”¹²⁵ It must be pointed out that the Act does not mandate the use of officer-worn body cameras. Rather, the Act merely subjects those law enforcement agencies that do utilize body cameras to various regulations, some of which are very stringent and potentially costly.¹²⁶

G. *Regulatory Compliance with the Act*

The Act requires compliance with extensive technological and procedural standards.¹²⁷ Technological compliance requires, at minimum, that the officer-worn body camera must have the capability to record “at least the 30 seconds prior to camera activation” and for at least ten hours.¹²⁸ Procedurally, the officer-worn body camera must be activated whenever an officer is in uniform, on duty, and engaged in any law enforcement-related activity.¹²⁹ Recordings must be kept by the law enforcement agency for ninety days under ordinary circumstances, for two years if a recording has been flagged, or until “final disposition and order from the court” if the recording has been flagged and used in a “criminal, civil, or administrative proceeding.”¹³⁰ Prior to disclosure pursuant to a Freedom of Information Act request, the law enforcement agency must also redact the recording.¹³¹

124. *Id.* § 10-15.

125. *Id.*

126. *See infra* notes 127–48 and accompanying text.

127. 50 ILL. COMP. STAT. 706/10-20.

128. *Id.* § 10-20(a)(1)–(2). The ten hour requirement does not apply if the officer-worn camera was purchased prior to July 1, 2015. *Id.* § 10-20(a)(2).

129. *Id.* § 10-20(a)(3).

130. *Id.* § 10-20(a)(7).

131. *Id.* § 10-20(b) (“Any recording disclosed under the Freedom of Information Act shall be redacted to remove identification of any person that appears on the recording and is not the officer, a subject of the encounter, or directly involved in the encounter.”). Redaction of a requested video recording involves:

review[ing] the video in its entirety . . . identifying images and information that should not be released, including . . . biographical information, juvenile faces, undercover officers, [and] informants . . . as determined by the staff attorney. Any items that need to be redacted are identified by the officer by providing a description and time stamp of the selected images. The request is then forwarded to the MPD Video Services Unit (VSU) for action.

MICHAEL D. WHITE, U.S. DEP’T OF JUSTICE, POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE 33 (2014), <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>.

A recording is flagged under numerous circumstances.¹³² A recording is flagged when a complaint against an officer is filed; when an officer discharges a weapon or uses force; when anyone in the recording dies or suffers great bodily harm; when an arrest results; when an officer is the subject of a misconduct investigation; when a “supervisor of the officer, prosecutor, defendant, or court determines that the encounter has evidentiary value in a criminal prosecution”; or when the officer so requests.¹³³ Given the myriad circumstances under which a recording is deemed to be flagged, the two year retention requirement is likely to be elicited frequently and at great cost.¹³⁴

The technology costs are not limited to the price of the officer-worn cameras, but the costs of data storage as well.¹³⁵ Notwithstanding whether a law enforcement agency decides to store its camera-collected data in-house or with a third party, the costs are substantial.¹³⁶ In-house data storage involves purchasing new computer equipment, hiring technical staff, and obtaining data security software.¹³⁷ Meanwhile, working with a third-party vendor involves hiring a vendor for data management and obtaining various technical assistance services as needed.¹³⁸ To put these figures in context, it may cost approximately \$3,570 to purchase one officer-worn body camera and store its data for two years.¹³⁹ With 12,100 full-time police officers in the City of Chicago alone, as of October 2016, the collective costs would be substantial.¹⁴⁰

In addition to the costs of purchasing cameras and managing camera data, there are administrative compliance costs. Studies of law enforcement agencies that have undertaken officer-worn body camera programs in Mesa and Phoenix, Arizona have found that there is a

132. 50 ILL. COMP. STAT. 706/10-20(a)(7)(B).

133. *Id.* The flagging requirement for arrests does not pertain to minor traffic or business offenses. *Id.* § 10-20(a)(7)(B)(2).

134. Lindsay Miller & Jessica Toliver, U.S. Dep’t of Justice, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* 17, 34 (2014), http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf. “Although the initial costs of purchasing the cameras can be steep, many police executives said that data storage is the most expensive aspect of a body-worn camera program.” *Id.* at 32.

135. *Id.* at 32–33.

136. *Id.* at 32.

137. *Id.*

138. *Id.* at 16, 32.

139. *Id.* at 32 (“Another department spent \$67,500 to purchase 50 cameras and will spend approximately \$111,000 to store the video on a cloud for two years.”).

140. Cecilia Reyes, *To Grow Size of Police Department, Chicago Will Need Twice What Is Planned*, CHI. TRIB. (Oct. 17, 2016, 10:37 AM), <http://www.chicagotribune.com/news/data/ct-police-retirement-mayors-plan-20161002-htlm1story.html>.

significant time-cost involved.¹⁴¹ Officers must download their videos, make reports, manage disclosure requests, and redact videos as necessary.¹⁴²

Law enforcement agencies are daunted by the many costs associated with initiating an officer-worn body camera program that complies with the Act.¹⁴³ Facing these regulations, law enforcement agencies have, at times, stopped pursuing officer-worn body camera programs.¹⁴⁴ The executive director of the Illinois Association of Chiefs of Police has indicated that more police chiefs were considering obtaining officer-worn body cameras *before* the Act went into effect.¹⁴⁵

Though the Act is a powerful first step in seeking to achieve transparency in law enforcement, as currently written, the statute may actually dissuade law enforcement agencies from implementing officer-worn body camera programs. This is because the statute imposes costly and extensive regulations while leaving use of officer-worn body cameras optional.¹⁴⁶ If law enforcement agencies decline to initiate officer-worn body camera programs due to their high costs, the goals of transparency in law enforcement and regaining the public's trust through use of officer-worn body cameras will not be achieved.

It is well-observed that when an activity is highly regulated, actors tend to decline to participate.¹⁴⁷ This phenomenon seems to be occur-

141. CHARLES M. KATZ ET AL., *EVALUATING THE IMPACT OF OFFICER WORN BODY CAMERAS IN THE PHOENIX POLICE DEPARTMENT 3* (2014), https://publicservice.asu.edu/sites/default/files/ppd_spi_feb_20_2015_final.pdf. A study of the Phoenix Police Department's officer-worn body camera pilot program reported that "officers were dissatisfied with long down load times [and] increased amount of time that it took to complete reports." *Id.* A study of the Mesa Arizona Police Department's program found that officers experienced an "increase to their administrative workload . . . [and] that they were spending so much time, after their shifts were over, downloading and tagging their videos." MILLER & TOLIVER, *supra* note 134, at 33.

142. See MILLER & TOLIVER, *supra* note 134, at 33.

143. Tobias Wall, *Body Cameras to 'Stay in Their Boxes' as Local Top Cops Pan New Law*, BELLEVILLE NEWS-DEMOCRAT (Aug. 12, 2015, 11:51 AM), <http://www.bnd.com/news/local/article30873633.html#>! ("The Shiloh Police Department's stash of a dozen new body cameras will stay in the boxes they came in . . . [Police Chief James Stover of The Shiloh Police Department] said that while much of the law 'is very good,' some portions of it are 'ridiculous.'"). Sheriff Rick Watson of St. Clair County said that the law is "too cumbersome" and that "Legislators don't take the time to actually talk to the police and ask 'If we pass this law, how will you institute it? How much will it cost? How much manpower will you use?'" *Id.*

144. *Id.*

145. John Reynolds, *Springfield Police Chief Bemoans Illinois Police Body Cam Law*, J. STAR (Nov. 25, 2015, 10:00 PM), <http://www.pjstar.com/article/20151125/NEWS/151129591>.

146. 50 ILL. COMP. STAT. 706/10-15 (2016).

147. See, e.g., *Over-Regulated America*, ECONOMIST (Feb. 18, 2012), <http://www.economist.com/node/21547789> (explaining that the Sarbanes-Oxley, for example, created such extensive and costly regulations for listing shares on the stockmarket in the United States that "America's share of initial public offerings fell from 67% in 2002 (when Sarbox passed) to 16% last year").

ring with respect to the current body camera law. When law enforcement agencies are confronted with complex regulatory standards, they tend towards opting out of participation in the regulated program, if allowed to do so.¹⁴⁸ Such is the case with the Act. In practice—and contrary to its originally designed intent—the Act deters officer-worn body cameras programs.¹⁴⁹ Given the importance of the legislative purpose behind the Act, implementation should be pursued on a mandatory, rather than optional basis.

III. ANALYSIS

Video footage provided by bystanders, dash cameras, or security footage can be highly influential in uncovering police misconduct.¹⁵⁰ Cases such as that of Laquan McDonald, Walter Scott, and Jessica Klyzek illustrate the need for a mandatory and uniformly implemented police body camera program.¹⁵¹ Bystander and security camera footage will not always be available. Likewise, dash camera footage may fail to record officers outside the view of their vehicles.¹⁵² Individuals may also be deterred from recording interactions with police due to fear of arrest or prosecution under the Illinois eavesdropping law.¹⁵³ Accordingly, law enforcement misconduct may go undetected. In order to protect the public and law enforcement officers as well as build mutual trust between the two, a reliable source of video recording footage is needed in Illinois.

Illinois must mandate and fund officer-worn body cameras in order to achieve the legislative purpose announced in the Act of effectuating “trust and mutual respect between law enforcement agencies and the communities they protect and serve.”¹⁵⁴ This Part argues that: (A) the use of officer-worn body cameras must be mandated uniformly because it deters misconduct by law enforcement officers and the public¹⁵⁵; (B) use of officer-worn body cameras must be mandated because it exonerates law enforcement officers who are falsely accused¹⁵⁶; and (C) officer-worn body cameras have the potential to

148. Wall, *supra* note 143.

149. *Id.*

150. See *supra* notes 30–46 and accompanying text.

151. See Dana Ford et al., *Chicago Protestors March as Police Release Video of Officer Shooting Teen*, CNN (Nov. 24, 2015, 10:49 PM), <http://www.cnn.com/2015/11/24/us/laquan-mcdonald-chicago-shooting-video/>; see also Ford, *supra* note 37; Yousef, *supra* note 42.

152. See, e.g., Ford, *supra* note 37.

153. See *supra* notes 53–61 and accompanying text.

154. 50 ILL. COMP. STAT. 706/10-5 (2016).

155. See *infra* notes 158–71 and accompanying text.

156. See *infra* notes 173–76 and accompanying text.

save millions in tax dollars that would otherwise be spent to investigate, defend, and settle claims of misconduct by law enforcement.¹⁵⁷

A. Officer-Worn Body Cameras Deter Misconduct

The current legislation must be amended to mandate use of officer-worn body cameras because camera programs deter misconduct by law enforcement officers and the general public. It is a well-known, scientifically studied fact that individuals behave better when they know they are being watched.¹⁵⁸ The experiences of law enforcement agencies that have undertaken officer-worn body camera programs have also confirmed this behavior.¹⁵⁹

Improvements in the conduct of law enforcement officers when wearing body cameras have been experienced by law enforcement agencies and have been observed in numerous empirical studies.¹⁶⁰ A study involving the Rialto Police Department in Rialto, California, attempted to measure the impact of officer-worn body cameras on law enforcement officers' use of force and the number of complaints filed against them.¹⁶¹ Over a period of one year, officers were randomly assigned to experimental shifts in which they used officer-worn body cameras and control shifts in which they did not.¹⁶² When officers did not utilize officer-worn body cameras they were more than twice as likely to exercise use-of-force.¹⁶³ The results also identified an 87.5% reduction in the number of complaints filed against law enforcement officers who wore body cameras.¹⁶⁴

157. See *infra* notes 177–205 and accompanying text.

158. See Sander van der Linden, *How the Illusion of Being Observed Can Make You a Better Person*, SCI. AM. (May 3, 2011), <http://www.scientificamerican.com/article/how-the-illusion-of-being-observed-can-make-you-better-person>; see also Jason G. Goldman *How Being Watched Changes You—Without You Knowing*, BBC (Feb. 10, 2014), <http://www.bbc.com/future/story/20140209-being-watched-why-thats-good>. Psychology experiments have shown that children take less Halloween candy when nobody else is present if they can see their reflection in a mirror and bicycle thefts are reduced by 62% when “We Are Watching You” signs are posted. *Id.* “Humans . . . care a great deal about being watched. We change our behaviour and choices without even realising.” *Id.*

159. See KATZ ET AL., *supra* note 141, at 5–7.

160. See *infra* notes 161–71 and accompanying text.

161. Barak Ariel et al., *The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial*, 31 J. QUANTITATIVE CRIMINOLOGY 509, 509–10 (2015).

162. *Id.* at 510.

163. *Id.* at 523 (“During the experimental period a total of 25 incidents of police use-of-force were recorded . . . of which 17 occurred during control shifts and 8 during experimental shifts.”).

164. *Id.* at 524. (“We did, however, observe a significant, overall reduction of citizen’s complaints, from 24 complaints filed in the 12 months before the trial to three during the trial period.”).

Similar results have been observed in other studies. In Plymouth, United Kingdom, complaints filed against law enforcement officers fell by 14.3% after initiation of an officer-worn camera program.¹⁶⁵ A study of the officer-worn body camera program in Mesa, Arizona, revealed that law enforcement officers utilizing officer-worn body cameras received 60% fewer complaints than officers not utilizing cameras.¹⁶⁶ A study of the Phoenix, Arizona officer-worn body camera program observed a 23% reduction in complaints against law enforcement officers utilizing officer-worn cameras.¹⁶⁷ Given the promising findings observed by numerous law enforcement agencies, the use of officer-worn body cameras in Illinois should be pursued on a mandatory basis.

Anecdotal and empirical evidence showing that the public's conduct improves along with the use of officer-worn body cameras, and cameras in general, support more vigorous implementation of officer-worn body cameras in Illinois.¹⁶⁸ A Scotland study showed that areas where officer-worn body cameras were utilized experienced a 26% decline in crime.¹⁶⁹ Similarly, a study of visible, closed-circuit security cameras in the United Kingdom observed a reduction in crime levels in the areas where security cameras were utilized.¹⁷⁰ Law enforcement officers in Illinois have noted that the public has reacted positively to officer-worn cameras and that the cameras have had a beneficial and corrective impact on public conduct.¹⁷¹ Given the beneficial impact of officer-worn cameras on the conduct of both law enforcement officers and the public, optional use of officer-worn cameras is insufficient to achieve the restoration of trust between the public and law enforcement.

165. KATZ ET AL., *supra* note 141, at 5.

166. *Id.* at 6–7.

167. *Id.* at 40–41.

168. *See infra* notes 169–76 and accompanying text.

169. *Id.* at 6 (“[T]he study reported that breach of peace offenses declined 19%, vandalism 29%, minor assaults 27%, and serious assaults declined 60%.”).

170. Brandon C. Welsh & David P. Farrington, *Effects of Closed-Circuit Television on Crime*, 587 ANNALS AM. ACAD. POL. & SOC. SCI. 110 (2003) (“CCTV had a significant desirable effect on crime, although the overall reduction in crime was a rather small 4 percent. All nine studies showing evidence of a desirable effect of CCTV on crime were carried out in the United Kingdom.”)

171. Reynolds, *supra* note 145 (“Patrolman Barringer . . . said he recently stopped a man for speeding, and as he walked up to the car, he could hear that the man was upset. ‘As I approached his car, he started ranting right away that I was stopping him from arriving at work on time and he was going to be late because of me I told him the video camera was running [and] he immediately calmed down.’”).

B. Camera Footage Exonerates Falsely-Accused Officers

The use of officer-worn body cameras must be mandated because it exonerates law enforcement officers who are falsely accused.¹⁷² The results of the Scotland study also showed that officer-worn body camera footage facilitated law enforcement in effectively responding to complaints filed against officers.¹⁷³ In the Scotland study, officer-worn camera footage exonerated law enforcement officers against all claims made during the study period.¹⁷⁴ The Phoenix study likewise showed that officer-worn camera footage was a key tool to clear officers of unfounded claims because the footage could often corroborate that officers had acted appropriately.¹⁷⁵ Additionally, officers in the Phoenix study contended that individuals often declined to file complaints at all due to the presence of officer-worn body cameras.¹⁷⁶

C. Officer-Worn Body Cameras as a Cost-Saving Measure

One of the chief concerns of those opposing officer-worn body cameras is the potentially high costs.¹⁷⁷ Given the State of Illinois' recent budgetary crises, financial concerns are not unjustified.¹⁷⁸ However, amending the Act to provide for mandatory use of officer-worn body cameras is not cost-prohibitive. Under optimal conditions, uniform utilization of officer-worn body cameras in Illinois can save millions of dollars in tax revenues that would otherwise be spent investigating, defending, and settling officer misconduct claims.

Law enforcement misconduct cases present a crippling burden to the budgets of Illinois municipalities.¹⁷⁹ Studies show that the use po-

172. See *infra* notes 173–76 and accompanying text.

173. See KATZ ET AL., *supra* note 141, at 6.

174. *Id.* Seven complaints were logged during the study period. *Id.* After the law enforcement agency reviewed the footage, three complaints were immediately deemed unfounded and the remaining four complaints were cleared after evaluating officer accounts of the incidents in conjunction with the video footage. *Id.*

175. *Id.* at 41 (“[D]ata showed that those officers who wore cameras and received a complaint were significantly less likely to have the complaint sustained when compared to the comparison group This suggests . . . the video file was likely to provide support to the officer.”).

176. *Id.* (“[O]fficers self reported a 300 percent increase in the number of times that an individual was going to file a complaint but did not further pursue the complaint because of the presence of a body camera.”)

177. See Wall, *supra* note 143.

178. Elizabeth Campbell & Brian Chappatta, *Illinois Downgraded by Fitch as State Budget Crisis Worsens*, BLOOMBERG (Oct. 19, 2015, 4:57 PM), <https://www.bloomberg.com/news/articles/2015-10-19/illinois-cut-by-fitch-as-fiscal-crisis-worsens-without-budget>. On October 19, 2015, Fitch Ratings downgraded Illinois' bond rating from A- to BBB+, which is the worst rating among all states. *Id.*

179. Jonah Newman, *Chicago Police Misconduct Payouts Topped \$50 Million in 2014*, CHI. REP. (Feb. 25, 2015), <http://chicagoreporter.com/chicagopolicemisconductpayoutstopped50mil>

lice body cameras results in a reduction of excessive force by law enforcement as well as a reduction in citizen complaints.¹⁸⁰ Reduction in both the uses of force and number of complaints filed have the potential to correspond with reductions in costs incurred by municipalities throughout Illinois. Savings could result because claims of excessive use of force by law enforcement are sometimes legitimate, but other times they are unfounded.¹⁸¹ In either instance, video evidence clearly and quickly demonstrates whether there was in fact wrongdoing by the police. Litigation costs would be kept low because unfounded cases would never go to court, while legitimate cases could be settled efficiently.

Since 2004, Chicago, alone, has paid out more than \$500 million in response to law enforcement misconduct cases.¹⁸² In 2014, City of Chicago settlements and verdicts in law enforcement misconduct cases totaled \$54.2 million.¹⁸³ Despite the enormity of this figure, it does not reflect the total costs of law enforcement misconduct cases.¹⁸⁴ Salaries paid to City of Chicago lawyers paired with fees paid to outside counsel contribute an additional \$11.7 million dollars to the overall costs of combatting law enforcement misconduct cases each year.¹⁸⁵

Even if officer-worn body cameras do not prevent officer misconduct and reduce the number of misconduct cases, the footage provided by officer-worn body cameras could put municipalities in a better position to assess the evidence against them, take responsibility early, and settle cases swiftly, thereby cutting investigation, litigation, and judgment costs. Predominately, cases of law enforcement misconduct are brought under 42 U.S.C. § 1983.¹⁸⁶ One such case was *Regalado v. City of Chicago*.¹⁸⁷ *Regalado* was a law enforcement misconduct case brought under to section 1983 prior to the advent of dash

lionin2014/ ("Police misconduct complaints accounted for just 15 percent of all cases brought against [Chicago] that were settled last year, but more than half of all payouts.").

180. See, e.g., KATZ ET AL., *supra* note 141, at 5–6.

181. See *infra* notes 220–24 and accompanying text.

182. Nick Wing, *We Pay a Shocking Amount for Police Misconduct, and Cops Want Us Just to Accept It. We Shouldn't*, HUFFINGTON POST (May 29, 2015, 9:59 AM), http://www.huffingtonpost.com/2015/05/29/police-misconduct-settlements_n_7423386.html.

183. Newman, *supra* note 179.

184. *Id.*

185. *Id.* "Chicago paid nearly \$63 million to 11 outside law firms to defend the city and its police officers against allegations of misconduct from 2003 to 2012, or an average of \$7.1 million per year." *Id.* "[T]he city's civil rights litigation division, which defend the city and police officers . . . [has] a budget of \$4.6 million this year." *Id.*

186. Richard G. Schott, *Qualified Immunity: How It Protects Law Enforcement Officers*, FBI, <https://leb.fbi.gov/2012/september/qualified-immunity-how-it-protects-law-enforcement-officers> (last visited Apr. 20, 2017).

187. 40 F. Supp. 2d 1009 (N.D. Ill. 1999).

camera or officer-worn camera technology.¹⁸⁸ After a jury verdict, the case resulted in one of the largest payouts for law enforcement misconduct in Illinois history.¹⁸⁹

The case involved a man, Joseph Regalado, who had an outstanding arrest warrant.¹⁹⁰ When police approached Mr. Regalado, he ran.¹⁹¹ An officer caught up to Mr. Regalado and hit him in the back and the head with a police flashlight.¹⁹² Though Mr. Regalado fell to the ground motionless, a witness reported that an officer pinned Mr. Regalado down in a prone position, lifted his head, and repeatedly struck him in the head and face.¹⁹³ Several of Mr. Regalado's friends arrived at the scene, whereupon the officers instructed the bystanders to awaken the unconscious Mr. Regalado by spraying him with a water hose. The officers ultimately left Mr. Regalado unconscious on the ground without rendering aid.¹⁹⁴ Mr. Regalado's friends called for an ambulance when Mr. Regalado could not be revived.¹⁹⁵ Due to the beating, Mr. Regalado's vertebral arteries were severed, he suffered a stroke, and he was paralyzed.¹⁹⁶ Though Mr. Regalado's counsel offered to settle the case for \$16 million, the City of Chicago refused.¹⁹⁷ Ultimately, the jury awarded Mr. Regalado \$28 million.¹⁹⁸

Conversely, when video footage is available, cases are settled promptly.¹⁹⁹ The recent settlement following the death of Laquan McDonald in Chicago exemplifies this concept.²⁰⁰ Given the clear evidence provided by dash camera footage, the City of Chicago accepted civil responsibility within six months and paid a \$5 million settlement the McDonald family before a lawsuit was even initiated.²⁰¹ In addition to the civil settlement, the available video footage contributed to

188. *Id.* at 1010–11.

189. Tim Hrenchir, *Largest Payouts for Police Misconduct Lawsuits in Illinois*, NEWSMAX (Aug. 10, 2015, 11:18 PM), <http://www.newsmax.com/FastFeatures/policemisconductlawsuitpayoutIllinois/2015/08/10/id/669473> (“A federal jury awarded \$28 million in 1999 to the family of Joseph Regalado, who suffered a paralyzing injury when he was allegedly beaten by a Chicago police officer.”).

190. *Regalado*, 40 F. Supp. 2d at 1011.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.* at 1012.

196. *Regalado*, 40 F. Supp. 2d at 1012.

197. Matt O'Connor & Lola Smallwood, *Jury Awards Paralyzed Man \$28 Million*, CHI. TRIB. (Oct. 26, 1999), http://articles.chicagotribune.com/1999-10-26/news/9910260090_1_police-misconduct-case-chicago-police-verdict.

198. *Id.*

199. Elinson & Frosch, *supra* note 32.

200. *Id.*; see also *supra* notes 32–36 and accompanying text.

201. See Elinson & Frosch, *supra* note 32.

the Cook County State's Attorney's decision to charge Jason Van Dyke with first-degree murder.²⁰² When compared to *Regalado*, which took nearly three years and cost the City of Chicago \$28 million and countless man-hours,²⁰³ the Laquan McDonald incident shows how additional cameras can expedite the process. Similar prompt and efficient civil settlements have been observed throughout the country when video footage is available.²⁰⁴

Detractors against officer-worn body cameras claim that they are cost-prohibitive.²⁰⁵ However, use of officer-worn body cameras has the potential to save tax dollars by preventing law enforcement misconduct in the first place, reducing complaints against officers, and facilitating expeditious settlements rather than costly litigation. Accordingly, legislation should be amended to mandate compulsory and uniform use of officer-worn body cameras in Illinois.

IV. IMPACT

Now more than ever, it is imperative that officer-worn body camera programs be initiated uniformly throughout Illinois because Illinois is facing surging crime rates²⁰⁶ and profound social unrest that has erupted in response to recent cases of law enforcement misconduct.²⁰⁷ Officer-worn body cameras will provide footage of law enforcement officer conduct thereby making the system transparent. If the footage captured by officer-worn body cameras largely shows officers conducting themselves fairly, a body camera program will restore the legitimacy of the system.²⁰⁸ Additionally, by promoting the legitimacy of the criminal justice system, the implementation of a compulsory

202. Ford et al., *supra* note 151.

203. O'Connor & Smallwood, *supra* note 197.

204. See, e.g., Elinson & Frosch, *supra* note 32. Similar prompt settlements were recently achieved on the basis of video evidence in San Bernardino County, California and Dallas, Texas. *Id.*

205. See Wall, *supra* note 143.

206. Monica Davey & Mitch Smith, *Murder Rates Rising Sharply in Many U.S. Cities*, N.Y. TIMES (Aug. 31, 2015), http://www.nytimes.com/2015/09/01/us/murder-rates-rising-sharply-in-many-us-cities.html?_r=1.

207. *Thousands March Around Country Protesting Against Police Violence*, NBC NEWS (Dec. 13, 2014, 10:25 PM), <http://www.nbcnews.com/storyline/michael-brown-shooting/thousands-march-around-country-protesting-against-police-violence-n267966>. Thousands of individuals have marched in protest against police brutality in cities throughout the United States including but not limited to: Washington D.C., Ferguson, New York City, Cleveland, and Chicago. *Id.*

208. See Jason Sunshine & Tom R. Tyler, *The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing*, 37 L. & SOC'Y REV. 513, 534–36 (2003). Studies show that procedural fairness provides a foundation for the development of legitimacy and how procedural fairness is demonstrated by “quality of decisionmaking, quality of treatment, and overall assessments of procedural justice.” *Id.* at 531.

officer-worn body camera program will also foster compliance with the law.²⁰⁹

A. Transparency Legitimizes the Criminal Justice System and Promotes Compliance

The use of officer-worn body cameras should be implemented uniformly throughout Illinois because the transparency they provide promotes the legitimacy of the criminal justice system and compliance with the law. Studies demonstrate that legitimacy is a crucial component needed to foster an environment in which citizens comply with the law.²¹⁰ A leading view defines legitimacy as “the recognition of the right to govern.”²¹¹ Scholars Anthony Bottoms and Justice Tankebe have advanced a theoretical framework for viewing legitimacy in the law enforcement context as an interaction between “claims to legitimacy by power-holders and responses by audiences.”²¹² Within this framework, the public is viewed as the audience and law enforcement officers are viewed as the power-holders.²¹³ Bottoms and Tankebe posit that if “the power-holder is routinely using power to engage in corrupt practices, it is very likely that the public’s recognition of his or her right to rule will be gradually withdrawn.”²¹⁴ Applying the Bottoms and Tankebe framework to the current strained relationship between the public and law enforcement, suggests that the public’s acknowledgment of law enforcement’s authority is threatened by frequent, high-profile instances of misconduct by law enforcement.

Bottoms and Tankebe argue that an important criterion for legitimacy from the audience’s vantage point is the power-holder’s “conformity to [r]ules.”²¹⁵ Bottoms and Tankebe suggest that “blatant illegality can diminish perceived legitimacy.”²¹⁶ They point to studies demonstrating that “obvious illegalities seriously undermine the legitimacy of the police among citizens.”²¹⁷ In applying these theories to police and community relations, it appears that incidents of police brutality fall squarely within this framework as “obvious illegalities”

209. Anthony Bottoms & Justice Tankebe, *Beyond Procedural Justice: A Dialogic Approach to Legitimacy in Criminal Justice*, 102 J. CRIM. L. & CRIMINOLOGY 119, 120–21 (2012).

210. See generally Bottoms & Tankebe, *supra* note 209.

211. *Id.* at 125.

212. *Id.* at 119–20.

213. *Id.*

214. *Id.* at 125.

215. *Id.* at 133.

216. Bottoms & Tankebe, *supra* note 209, at 138.

217. *Id.*

capable of diminishing law enforcement's legitimacy. Officer-worn body cameras have the ability to demonstrate explicitly that law enforcement officers are exercising their power appropriately and complying with the law. Therefore, the reassurance and transparency made available by officer-worn body cameras has the potential to strengthen the public's view of law enforcement's legitimacy. Bottoms and Tankebe express that legitimacy is vital to a criminal justice system because it leads to "improvements in legal compliance by citizens . . . and a greater willingness on the part of the public to empower criminal justice agencies."²¹⁸ Cities like Chicago are facing severe violent crime issues;²¹⁹ therefore, the need for fostering compliance with the law is paramount.

B. Officer-Worn Cameras Protect Law Enforcement Officers from False Claims

Officer-worn body cameras also protect law enforcement officers by providing video recording footage from a vantage point that is unavailable from dash cameras or bystander cell phone footage. Dash camera footage is inevitably limited to what can be seen from the dashboard area of a police vehicle. Additionally, bystander cell phone footage is limited to the moment when a bystander decides to begin recording, which may be long after a given interaction between an individual and an officer begins. The ability to record a law enforcement officer's full interaction with an individual becomes an attainable goal with the use of officer worn body cameras.

Agencies that utilize officer worn body cameras have already noticed that the cameras successfully protect not only individuals, but also law enforcement officers.²²⁰ In Albuquerque, New Mexico, an officer's body camera recorded his entire interaction with an intoxicated woman who had been pulled over for drunk driving.²²¹ The woman later claimed that the officer sexually assaulted her.²²² Body camera footage cleared the law enforcement officer from the woman's false claims because the video showed that no inappropriate conduct had occurred.²²³

218. *Id.* at 155.

219. Davey & Smith, *supra* note 206.

220. *Video: Body Cam Refutes Sexual Assault Claim Against NM Officer*, POLICEONE (Oct. 20, 2014), <https://www.policeone.com/police-products/body-cameras/articles/7691006-Video-Body-cam-refutes-sexual-assault-claim-against-NM-officer/>.

221. *Id.*

222. *Id.* The woman claimed that the officer was "inappropriately touching [her] while [she] was waiting in the car." *Id.*

223. *Id.*

In Selma, Alabama, a law enforcement officer responded to a call regarding an individual who was exhibiting disorderly conduct.²²⁴ On the scene, the law enforcement officer fatally shot the individual.²²⁵ The law enforcement officer's body camera footage cleared him of wrongdoing because it showed the individual wielded an ax and refused to relinquish it even when asked to do so more than a dozen times.²²⁶ Ultimately, the officer used deadly force when the individual lunged at him with the ax.²²⁷ As demonstrated by the success of active officer worn body camera programs, these programs have the potential to protect the people of Illinois as well as the dedicated law enforcement officers who serve Illinois communities.

C. *Chicago's Example Demonstrates Public Support for Comprehensive Body Camera Programs*

Communities in Illinois are demonstrating support for police reforms that go beyond the those set forth in the Act. Following the shooting death of Laquan McDonald by police officer Jason Van Dyke in Chicago, the public voiced their support for widespread use of officer-worn body cameras.²²⁸ As a result, Mayor Rahm Emanuel and the City of Chicago responded by recognizing the importance of mandatory and uniform use of officer-worn body cameras, and the Chicago Police Department has begun implementing a comprehensive, citywide, camera program, which is anticipated to be fully implemented by the end of 2017.²²⁹ As this program rolls out in 2017, it will serve as an example for other Illinois communities pursuing police and community relations reforms.

V. CONCLUSION

Amending legislation so that it implements mandatory and uniform use of officer-worn body cameras throughout Illinois will have a bene-

224. *Video: Ala. Officer Cleared After Body Cam Shows Shooting*, POLICEONE (Jan. 2, 2015), <https://www.policeone.com/police-products/body-cameras/articles/8068034-Video-Ala-officer-cleared-after-body-cam-shows-shooting/>.

225. *Id.*

226. *Id.*

227. *Id.*

228. William Lee, *Police Body Cameras To Be Implemented Citywide a Year Early: Officials*, CHI. TRIB. (Dec. 28, 2016), <http://www.chicagotribune.com/news/local/breaking/ct-body-cameras-chicago-police-20161228-story.html>.

229. *Mayor Emanuel, Chicago Police Department Announce Expedited Expansion of Body Worn Cameras Program*, CITY CHI. (Dec. 28, 2016), https://www.cityofchicago.org/city/en/depts/mayor/press_room/press_releases/2016/december/Police_Expedite_Expansion_Body_Worn_Cameras_Program.html (“[T]he Chicago Police Department (CPD) will expedite its body worn camera expansion to every patrol officer in the City.”).

ficial impact by improving citizen and law enforcement officer conduct, reducing the numbers of complaints against law enforcement officers, saving tax dollars spent combatting allegations of misconduct, and improving public compliance with the law. Illinois can achieve transparency in law enforcement by amending the Law Enforcement Officer-Worn Body Camera Act to mandate universal use of officer-worn body cameras in Illinois.

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