

1 Elizabeth Ortiz, Bar No. 012838
2 Executive Director
3 Arizona Prosecuting Attorneys'
4 Advisory Council
5 1951 West Camelback Road, Suite 202
6 Phoenix, AZ 85015-3407
7 (602) 542-7222 / FAX (602) 274-4215
8 Elizabeth.Ortiz@apaac.az.gov

9 **IN THE SUPREME COURT**
10 **STATE OF ARIZONA**

11 In the Matter of:

Supreme Court No. R-17-0027

12 **PETITION TO MODIFY RULE**
13 **15.1 AND RULE 15.4, ARIZONA**
14 **RULES OF CRIMINAL**
15 **PROCEDURE**

16 **COMMENT OF**
17 **THE ARIZONA PROSECUTING**
18 **ATTORNEYS' ADVISORY**
19 **COUNCIL**

20 **I. BACKGROUND OF PETITION**

21 The Maricopa County Attorney has filed a petition to modify Rules 15.1 and
22 15.4, Arizona Rules of Criminal Procedure. The effect of the petition is to adapt the
23 disclosure rules to the practical considerations and current practice related to the
24 proliferation of body-worn camera video evidence in criminal matters. The proposal
25 would create new rules that require a prosecutor to create a list of any police officers
who created a video in a case, allow the defense to view unredacted copies of the
video within thirty days of a written request, provide for protection of confidential
victim information, and require that redacted copies of the video be provided to the

1 defense within 90 days of a written request.

2 The Arizona Prosecuting Attorneys' Advisory Council ("APAAC") has
3 considered the proposed changes in the petition and generally supports them, with
4 some exceptions. The number of body-worn camera videos that increasingly are
5 being produced by law enforcement has been overwhelming prosecutors' offices
6 across the state. Attorney and staff efforts involved in reviewing and redacting
7 confidential information from these videos is consuming enormous amounts of time,
8 while most offices do not have the staff or budgets to effectively perform this
9 function. The petition is designed to prevent these offices from violating the
10 criminal disclosure rules if redacted copies of body-worn camera videos is not
11 available in the time limits set by the rules.

12 **II. DISCUSSION / ANALYSIS**

13 The prosecutor is required to disclose to the defendant all materials and
14 information listed in Ariz. R. Crim. P. 15.1(b) in his or her possession not later than
15 30 days after arraignment (for cases in Superior Court) or at the first pre-trial
16 conference (for cases in limited jurisdiction courts). Rule 15.1(c). This disclosure
17 obligation extends to material and information in the possession or control of any
18 law enforcement agency that participated in the investigation of the case. Rule
19 15.1(f)(2). Arguably, that requirement, in turn, extends to videos obtained from
20 body-worn cameras operated and used by police agencies during the investigation.

1 In addition, under Rule 15.1(e) the prosecutor is required to make available for
2 examination, testing and reproduction other information with thirty days of a
3 defendant's written request.
4

5 In the United States, there has been a "dramatic increase in the criminal justice
6 use of body-worn cameras (BWC) in the past few years." Hung, Vivian, Babin,
7 Steven, Coberly, Jacqueline, *A Market Survey on Body Worn Camera Technologies*.
8 Department of Justice, National Institute of Justice, p. 3-10, November, 2016.
9 <https://www.ncjrs.gov/pdffiles1/nij/grants/250381.pdf>. A study published in early
10 2016 reported that "[n]early every large police department in a new nationwide
11 survey said it plans to move forward with body-worn cameras, with 95 percent
12 either committed to body cameras or having completed their implementation."
13 Maciag, Mike, "Survey: Almost All Police Departments Plan to Use Body
14 Cameras." *Governing the States and Localities*, January 26, 2016.
15 www.governing.com/topics/public-justice.../gov-police-body-camera-survey. In
16 February, 2016, the Maricopa County Sheriff's Office issued 700 body cameras to
17 its deputies, with a report that more than 75 percent were in operation. Quijada,
18 Danielle (2016, February 12), "Maricopa County Sheriff Joe Arpaio Deploys the
19 First of 530 Body Cameras for Deputies." *The Arizona Republic*.
20 [http://www.hometownlife.com/story/news/local/phoenix/2016/02/12/maricopa-
22 county-sheriff-joe-arpaio-body-cameras-deputies/80273224/](http://www.hometownlife.com/story/news/local/phoenix/2016/02/12/maricopa-
21 county-sheriff-joe-arpaio-body-cameras-deputies/80273224/).
23
24
25

1 With this proliferation in body-worn camera use, the evidence produced from
2 body-worn camera video footage has increased dramatically. For example, a two-
3 hour police investigation involving 5 officers, each operating a body-worn camera,
4 would produce 10 hours of video. Petitioner is correct that law enforcement and
5 prosecuting agencies are required to redact from information disclosed to the
6 defendant a victim's "identifying and locating information." A.R.S. § 13-4434.B.
7 This requires police and prosecuting agencies to review and redact identifying and
8 locating information on each video produced during an investigation involving a
9 victim. To achieve this, these agencies must acquire special "redaction" software
10 for body-worn camera videos, receive training on video redacting, and devote
11 immense amounts of time completing the redactions. The review and processing
12 time for these videos is enormous, estimated to be at least double the length of the
13 video itself. U.S. Department of Justice, Bureau of Justice Assistance "BWC Expert
14 Panel", p. 25, February 26-27, 2015. https://www.bja.gov/bwc/pdfs/bwc_faqs.pdf.
15 The Phoenix City Prosecutor's Office reported that for every 100 cameras added by
16 the Phoenix Police Department, the prosecutor's office had to hire or reassign a new
17 staff member. *Id.*

18
19
20
21
22
23 It is with this background that petitioner has proposed to extend the disclosure
24 deadline in Rule 15.1(e) for officer body-worn camera video to within 90 days of a
25 written request and no more than seven days before trial, whichever is sooner.

1 APAAC supports this extended deadline for dealing with body-worn camera
2 evidence. It is a practical, realistic response to both acknowledging the difficulties
3 presented to law enforcement and prosecution agencies when dealing with body-
4 worn camera evidence and recognizing the prosecutor's disclosure requirements.
5

6 Along with its support, APAAC suggests two modifications to the proposal.
7 First, the proposed new subsection (12) to Rule 15.1(b) should be eliminated.
8 Requiring the prosecutor to create a "list" of officers wearing body-worn cameras
9 accomplishes nothing and is superfluous where existing rules already require
10 disclosure of law enforcement reports and information in the possession of law
11 enforcement agencies that participated in the investigation of the case. Moreover,
12 in limited jurisdiction courts, where tens of thousands of cases may be handled by
13 an office in any given year, requiring the prosecutor to create a "list" of all officers
14 who created a body-worn camera video in every case would overwhelm prosecutors
15 and their staff. That requirement would benefit no one and create unnecessary time-
16 consuming work.
17
18
19

20 Second, the proposed addition to Rule 15.1(e) uses the term
21 "defense investigator." There is no definition for this term in the criminal rules or
22 statutes. To avoid having defendants designate friends, relatives, or other persons
23 as their defense investigator, APAAC suggests adding a definition for that term, as
24 follows:
25


1 “Defense investigator” is defined as a person who meets the definition
2 of a “private investigator” pursuant to Title 32, Chapter 24 of the
3 Arizona Revised Statutes, and who is in full compliance with that title
4 and chapter, or who meets the definition of a “peace officer” as defined
5 by A.R.S. 13-105(29) and is in full compliance with the Arizona Peace
6 Officer Standards and Training certification requirements.

7 By providing this definition, defendants making a written request would be able to
8 review unredacted body-worn camera video without delaying their case and with
9 safeguards in place to protect against disclosure of confidential victim information.

10 III. CONCLUSION

11 The Arizona Prosecuting Attorneys’ Advisory Council recognizes the
12 proliferation of body-worn camera usage by law enforcement agencies and the vast
13 amounts of evidence produced by those cameras. In order to meet the prosecutor’s
14 disclosure requirements while still acknowledging the workload created by these
15 videos, the proposal in R-17-0027 is a common-sense practical approach to dealing
16 with an ever-growing issue. APAAC urges this Court to support the requested rule
17 change, with the modifications suggested in this comment.
18

19 RESPECTFULLY SUBMITTED this 24th day of April, 2017.
20

21
22 
23 Elizabeth Ortiz, #012838
24 Executive Director
25 Arizona Prosecuting Attorneys’
Advisory Council

1 Electronic copy filed with the
2 Clerk of the Arizona Supreme Court
3 this 24 day of April, 2017.

4 by: Mooney

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25