

VICKI A. HILL, #014968  
Phoenix City Prosecutor  
P.O. Box 4500  
Phoenix, Arizona 85030-4500  
(602) 256-3506/FAX (602) 534-2693

IN THE SUPREME COURT

STATE OF ARIZONA

In the Matter of:	)	Supreme Court No. R-17-0027
	)	
MARICOPA COUNTY	)	COMMENT OF THE PHOENIX
ATTORNEY'S PETITION TO	)	CITY PROSECUTOR'S OFFICE
MODIFY RULE 15.1 AND RULE	)	
15.4, ARIZONA RULES OF	)	
<u>CRIMINAL PROCEDURE</u>	)	

**I. Introduction**

The Phoenix City Prosecutor's Office (Phoenix) has reviewed proposed amendments to Rule 15 of the Arizona Rules of Criminal Procedure by the Maricopa County Attorney's Office (MCAO), as well as the accompanying comments. Phoenix agrees that Rule 15 should be amended to accommodate the substantial disclosure burdens brought by the increasing use of body-worn cameras (BWC) by law enforcement. Phoenix therefore recommends adoption of proposed changes to Rule 15 by MCAO, along with the modifications to the Petition proposed by the Arizona Prosecuting Attorneys' Advisory Council (APAAC).

Specifically, this Court should act (1) to extend the time for disclosure under proposed Rule 15.1(e), and (2) to impose safeguards on the use of information from BWC video under proposed Rule 15.4(d). Phoenix agrees with APAAC, however, that MCAO's proposed addition of subsection (b)(12) under Rule 15.1 is not beneficial and should not be adopted. Finally, this Court should define "defense investigator" under Rule 15.1 to encompass only sworn law enforcement and licensed private investigators in good standing.

**II. The use of body-worn cameras has substantially increased Phoenix's discovery burden.**

MCAO correctly articulates important reasons for modifying Rule 15. Since the Phoenix Police Department began the use of BWCs in 2011,<sup>1</sup> Phoenix has seen a substantial increase in the amount of information that must be reviewed and disclosed. Moreover, the victim-privacy enhancements brought by the revisions to A.R.S. § 13-4434 in 2014<sup>2</sup> have challenged Phoenix's ability to disclose video information by the first pretrial-disposition conference. These new challenges have required the hiring of new staff, the diversion of existing staff to accomplish redaction requirements, the modification of disclosure-related business systems, and a dramatic increase in

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<sup>1</sup> "Evaluating the Impact of Officer Body Worn Cameras in the Phoenix Police Department," [http://cvpcs.asu.edu/sites/default/files/content/projects/PPD\\_SPI\\_Final\\_Report%204\\_28\\_15.pdf](http://cvpcs.asu.edu/sites/default/files/content/projects/PPD_SPI_Final_Report%204_28_15.pdf), at p. 14, *visited* May 17, 2017.

<sup>2</sup> 2014 Ariz. Legis. Serv. Ch. 151, § 11 (H.B. 2454).

the number of person hours devoted to disclosure matters. And the disclosure difficulties associated with BWCs are not expected to subside, as the Phoenix Police Department is expected to more than triple the number of BWCs in use by the middle of 2017.

**III. Phoenix supports the proposed changes to Rules 15.1 and 15.4.**

The proliferation of BWCs and the need to protect the privacy of victims require changes to Rule 15. The Petition makes important proposals toward those goals. First, under Rule 15.1(e) a prosecutor would be required to make arrangements for defense counsel, advisory counsel, or a defense investigator to view *unredacted* body-worn-camera video within thirty days of a written request. Second, under that same sub-section a prosecutor would be required to disclose *redacted* versions of BWC video within ninety days of a written request and within seven days before trial, whichever is sooner. Third, Rule 15.4(d) would place appropriate limitations on the use and dissemination of BWC video by all counsel and parties. Phoenix supports adoption of these proposals as they would give prosecutors a more reasonable temporal framework for the disclosure of BWC video, help safeguard victims' right to privacy, while still ensuring that defendants have timely access to BWC video.

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#### **IV. The addition of subsection (b)(12) to Rule 15.1 is unnecessary.**

The City agrees with APAAC's Comment that the proposed addition of subsection (b)(12) to Petitioner's proposed Rule 15.1 is not needed. Prosecutors already bear the burden, under the current version of Rule 15.1(b)(5), to disclose "[a] list of all papers, documents, photographs or tangible objects that the prosecutor intends to use at trial . . ." <sup>3</sup> Requiring prosecutors to also create "a list of all police officers who created any body-worn-camera video during the investigation of the case" under the proposed (b)(12) would add an unnecessary discovery burden. The purpose of the Petition is to minimize the burdens accompanying the proliferation of BWC video. Proposed subsection (b)(12) detracts from that purpose and is redundant to Rule 15.1(b)(5).

#### **V. "Defense investigator" should be defined.**

As noted above, the proposed revision to Rule 15.1(e) requires a prosecutor to make arrangements for defense counsel, advisory counsel, or a *defense investigator* to view *unredacted* BWC video within thirty days of a written request. While the proposal wisely provides defendants a means to access BWC video on an expedited basis, Phoenix also agrees with APAAC that "defense investigator" should be defined to ensure a measure of governance

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<sup>3</sup> Rule 15.1(b)(5).

over agents of defendants who might view victims' private information on video. APAAC's suggestion to limit "defense investigator" to sworn law-enforcement officers and licensed private investigators in good standing is an appropriate measure to ensure such governance. APAAC's definition should thus be adopted along with MCAO's proposed changes to Rules 15.1 and 15.4.

## **V. Conclusion**

The proliferation of BWCs by law enforcement requires changes to Rule 15. Phoenix supports MCAO's request to modify the time for disclosure under Rule 15.1, and to impose safeguards on the use of information from BWC video. Phoenix, however, also agrees with APAAC's commentary on the proposed changes. In particular, Phoenix agrees that proposed subsection (b)(12) of Rule 15.1 should not be adopted and that "defense investigator" should be defined under Rule 15.1. Phoenix therefore recommends that the Court adopt MCAO's proposed changes to Rule 15 along with APAAC's modifications.

RESPECTFULLY SUBMITTED this 22nd day of May, 2017.

PHOENIX CITY PROSECUTOR

By:   
VICKI A. HILL  
Phoenix City Prosecutor

Electronic copy filed with the  
Clerk of the Arizona Supreme Court  
this 22nd day of May, 2017

by: 