

# Major Cities Chiefs and Major County Sheriffs

Technology Needs – Body Worn Cameras





## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

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## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

### EXECUTIVE SUMMARY

#### Survey Purpose

In Summer 2015, the Major Cities Chiefs and Major County Sheriffs, in partnership with the U.S. Department of Homeland Security’s Office of Emergency Communications (OEC), conducted a survey of members to examine the technology and interoperability challenges involved in implementing BWC programs. The survey did not address the legal, policy, financial, evidentiary, or privacy aspects of any such programs.

#### Survey Results and Analysis

The following is a representation of the highlights of the results, with a full, detailed report to follow.

- About 19% said that their BWC programs were “fully operational.” Nearly 77% either “intend to implement,” were in the piloting phase, or have completed the pilot but have not yet started a program. The data indicated that many local agencies are moving forward with implementation, despite of a lack of IT infrastructure and technical solutions to fully support these programs. Only 5% of respondents said they either did not intend to implement a BWC program, or had completed a pilot but chose not to proceed.
- Nearly 70% of respondents recognized a need to expand and improve their IT infrastructure to fully support BWCs. Specific technology gaps they identified included: a lack of data storage capacity, inadequate network or bandwidth capability, and inadequate wireless capacity.
- Issues that surrounded the storage, retention, and transmission of the information captured on BWCs varied greatly, depending not only on technological limitations, but also upon state and local laws, and internal policies. Significant in the findings was that about 54% of the respondents identified current network/bandwidth capacity as “not adequate”; about 46% of respondents put their current storage capacity in that same category. About 30% had not yet determined how they would store data and nearly 45% had not determined what the needed increase in storage capacity would actually be.
- How agencies planned to share video data also varied by agency. Most acknowledged a clear intention to share data with their own internal affairs departments and the District Attorney’s office. The ability to access the data to satisfy Freedom of Information Act (FOIA) requests was acknowledged and indicated a need for expanded software (in addition to policies and personnel) to review and redact the footage as needed before public release. Critically, almost 38% of agencies cited an increased need for both basic and advanced training on BWC editing and processing for officers and staff.



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### INTRODUCTION AND BACKGROUND

The President’s Task Force on Policing in the 21<sup>st</sup> Century identified the increased use of Body-Worn Cameras (BWCs) as a national priority. To support this initiative, President Obama proposed a three-year, \$263-million effort that included \$75 million each year for the *Body Worn Camera Partnership Program*.

In June 2015, the U.S. Department of Homeland Security’s Office of Emergency Communications (OEC), in partnership with the Major Cities Chiefs’ and Major County Sheriffs’ Associations, administered a survey to its association members for the purpose of gathering information on the technological and interoperability challenges involved in implementing BWC programs. The focus of the OEC survey was technology and communications requirements to implement this national initiative. For this reason, this survey did not directly address the legal, policy, financial, evidentiary, and privacy aspects of any BWC programs.

The survey went to 67 Major Cities and 76 Major Counties. Seventy domestic agencies had completed the survey at the time of this report.



### Technology Survey Results Chiefs and Sheriffs

- ✓ **Gaps that can be addressed through policy and funding**
  - Need to improve core IT infrastructure at state/local agencies
  - Need more data storage, more bandwidth, better wireless
  - Need sustainable solutions, ongoing not ad hoc
  - Technology gaps identified for BWCs and related communications, records and evidence capabilities
  
- ✓ **Survey Suggests Next Steps**
  - Development of technical assistance on BWCs
  - Potential national development of technical standards for BWCs
  - Development of solutions by Chiefs and Sheriffs to problems/gaps identified in survey

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## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

### KEY ISSUES

This report contains the results from the 70 completed surveys were tabulated for this report.

**Commitment to Proceed:** The survey illustrates reasons for national caution and concern. While 97% of the respondents indicated that they were moving forward with body camera systems, few had determined how technology requirements would be satisfied and what it would cost. More than 70% noted that their current infrastructure was inadequate to handle the requirements of a body camera system. This study shows that the collective launch of BWC programs may be outpacing the technological solutions. In today's environment, law enforcement agencies are moving forward with implementing BWC programs in advance of having all the technical and policy information in place.

**Much is Unknown:** The survey demonstrates that large gaps exist in both the technical infrastructure, as well as the understanding of the technical requirements for BWC programs. For a significant percentage of the respondents, digital space and technological needs remain largely undetermined or unknown and still require development of technical requirements to support and sustain BWC programs across the nation. Support and guidance is needed on this critical issue, while identifying key interoperability and technology hurdles. The survey results demonstrate that local agencies will require technical assistance and guidance in developing and implementing sustainable BWC programs.

**Technology vs. Policy:** Technology requirements and policy priorities must be weighed against each other. When infrastructure and staffing requirements are enormous, technology issues may dominate policy concerns. For example, the number of personnel required for reviewing and redacting video may represent excessive costs and thus preclude public release of all videos.

**Comprehensive Plan is Required:** Police and Sheriff respondents clearly agreed that numerous factors must be considered for a successful deployment of body worn camera systems. These include technological challenges, funding considerations, policy development, community outreach, communications strategies and training. Privacy and legal concerns must also be addressed. For this national effort to be successful, there must be an increased emphasis placed on addressing BWC technology, especially equipment and communications equipment.



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<b>Agency type</b>		
Police	61.4%	43
Sheriff	37.1%	26
Federal	0.0%	0
Other	1.4%	1
Total Responses (as of 10/08/15)		70
<b>How will you upload the video and audio data?</b>		
WiFi	7.4%	5
Bluetooth	1.5%	1
USB	7.4%	5
Docking station	64.7%	44
Storage card	2.9%	2
3G/4G Cellular	4.4%	3
Not yet determined	30.9%	21
Other	5.9%	4
<b>What is the average quantity of data generated by each officer per day?</b>		
Less than 1 GB	23.5%	16
1 - 5 GB	27.9%	19
5 - 10GB	2.9%	2
More than 10GB	2.9%	2
Don't know	42.6%	29
<b>What is the estimated increase in storage capacity per year considering the length of time evidence and non-evidence BWC video footage must be stored?</b>		
Less than 100 GB	0.0%	0
100 GB - 1 TB	5.9%	4
1 TB - 10 TB	8.8%	6
10 TB - 100 TB	25.0%	17
100 TB - 1 PB (Petabyte)	10.3%	7
Greater than 1 PB (Petabyte)	4.4%	3
Don't know	45.6%	31
<b>What video resolution will you require for your BWCs?</b>		
SD (360/480)	32.4%	22
HD (720)	26.5%	18
Full HD (1080)	13.2%	9
Not yet determined	30.9%	21
Other	7.4%	5
<b>How long does it take to completely upload data from each camera unit?</b>		
Less than 1 hour	38.2%	26
1 – 3 hours	14.7%	10
3 – 5 hours	4.4%	3
5 – 7 hours	1.5%	1
7+ hours	1.5%	1
Don't know	39.7%	27



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### DISCUSSION OF SURVEY RESULTS

The data indicate that many local agencies are moving forward with implementing BWC programs despite of a lack of IT infrastructure and clarification of technical requirements. The purchase of BWC cameras is only a single step in building a program; subsequently, there are a plethora of technical issues, which must be addressed in order to support a sustainable BWC program. This survey clearly indicates that local agencies need assistance in the identification of technological issues.

Noteworthy in this survey's results are the nearly 70% of respondents who recognized a need to expand and improve their current IT infrastructure. Specific technology gaps consistently identified throughout the survey include: a lack of data storage capacity, inadequate network or bandwidth capability, and inadequate wireless capacity. Additionally, staff proficiency in performing and managing technological operations such as processing, tagging, categorizing, and transmitting data are also in need of improvement. Issues surrounding the storage, retention, and transmission of the information captured on BWCs varied greatly, depending not only on technological limitations, but also upon state and local laws, and internal policies.



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What stands out in this survey is the high number of “unknowns.” Law enforcement agencies have not been able to clearly identify all of the gaps, or capture requirements, related to BWC technology and interoperability. For instance, the data clearly show that the quantity of video data being generated by BWC cameras, including the number of hours, video length, and video resolution, is largely undetermined by agencies. The quantity of recorded data is interconnected and will help to determine other technology requirements, such as the amount of bandwidth for data transfer and storage capacity needed, and will ultimately determine the infrastructure required to support a fully operational BWC program. What the data are not clear about is if the agencies who have “not yet determined” these levels may be able to more accurately capture them upon the completion of pilot programs.

A second example is the roughly 44% of agencies who “don’t know” what the increase in storage needs will be. Understanding the amount, quantity, and quality of the data being generated by each BWC unit is critical because those factors will impact the data storage and IT needs of each agency, and will, in turn, drive the selection of how best to store that data whether via cloud service or mainframe. Of specific concern is that storage needs are cumulative, and will increase over time depending on how much, and for how long the data are stored. Storage needs may vary among agencies depending on policies established for the retention of data (both evidentiary and non-evidentiary) and purging policies related to BWC programs. But the costs associated with storing such vast amounts of data mean that agencies must make informed choices about data storage, which can easily be the single greatest expense in implementing a BWC program.

The ability to fully integrate this new sophisticated equipment into the emergency communication architecture and to leverage its full potential is also challenging. Almost half of respondents don’t know how data will be integrated across multiple existing platforms such as RMS and CAD. The value of BWCs for the entire public safety community goes beyond simple evidentiary and behavior assessment purposes. The ability to integrate BWC video, audio, and GPS data with applications and devices will help to enhance emergency communications and real-time incident management and present a clearer and more complete understanding of each incident. Body-worn cameras will require interoperability not only among disparate body-worn camera platforms but also across multiple devices, applications, and systems. Users need to be able to send and view videos for years to come without stove-piped proprietary software and systems.





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The survey included respondents from departments of all sizes and local jurisdictions throughout the nation, each of who are in various stages of program deployment (planning – pilot – operational). In analyzing the data, several takeaways could be identified in the survey results.

### THE WAY FORWARD

- Many technology decisions are largely being driven by vendor selection, rather than being driven by identified and articulated technical requirements.
- IT infrastructure needs to be expanded to support BWC programs. Specific technology gaps identified include: a lack of data storage capacity, inadequate network or bandwidth capability, and inadequate wireless capacity.
- Pilot programs can help a department better understand its own technology needs and IT infrastructure gaps.
- Law enforcement will need guidance, training, and technical assistance to increase proficiency and better understand BWC technical requirements.
- System integration and interoperability will require holistic, long-term technology approaches.
- Most agencies lack the system ability to store and process the large amounts of data currently generated by BWCs.
- The effort to efficiently process video data from BWCs, including reviewing and categorizing all video, will require both ongoing training and significant administrative costs.

FOIA requests will likely require substantial time and effort and must be supported by adequate national and state public disclosure laws and internal policies.

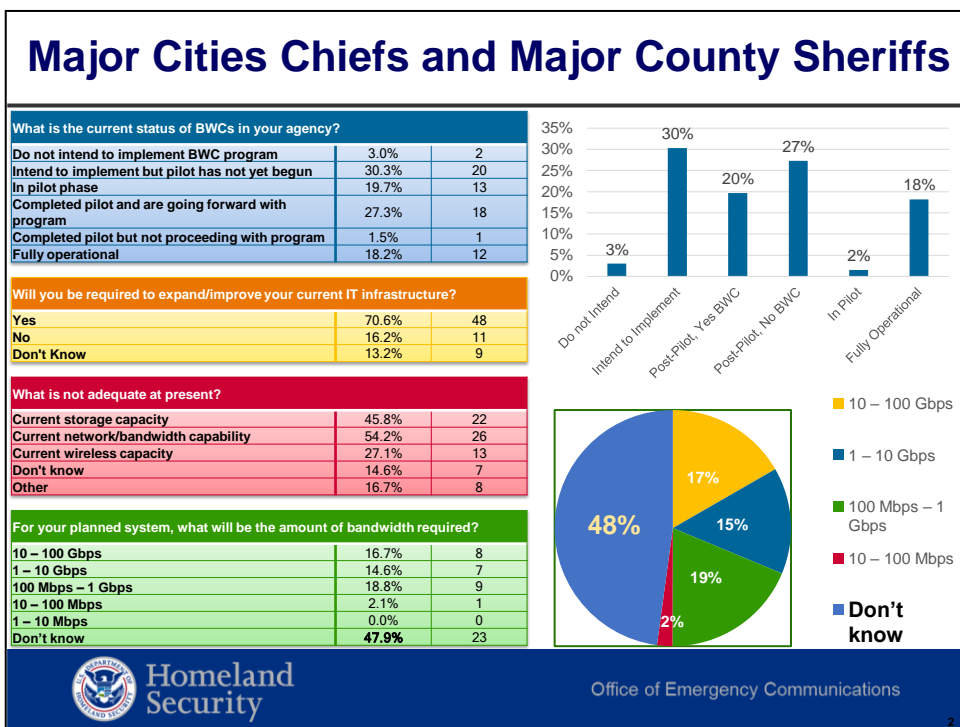
It is important to note that this survey focused specifically on the technology related to BWC programs. However, the results pointed to several interrelated issues that were outside of the scope of this survey but greatly impact technological issues nonetheless. First is the need to develop policies and procedures that will support BWC program management. Policy issues such as data retention, data capture, and where data are to be stored will ultimately impact decisions about technologies. Policies regarding the sharing and public release of video in response to FOIA



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requests are also an issue for many agencies. As technology continues to advance, so must the policies guiding BWC programs.

The second issue is determining the security of BWC data. Whether transmitting data wirelessly, storing video internally or contracting with cloud storage services, protecting the data and preserving the chain of custody should always be a consideration. As with all digital information, reliable back-up systems must be in place. Because BWC data can easily become vulnerable, security must be a primary factor.





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### DETAILED SURVEY RESULTS

#### QUESTIONS 1 – 3: DEMOGRAPHICS

##### Question 1: *Respondents*

Seventy-one completed surveys were received from the members of the Major Cities Chiefs' and Major County Sheriffs' associations; while 70 agencies responded, one agency submitted two surveys, bringing the overall number of completed surveys to 71. *All of the respondents were sworn officers whose ranks ranged from officer or deputy to chief executive.*

##### Question 2: *Please select your state/province.*

The respondents were from state and local law enforcement agencies in 29 states.

##### Breakdown by State:

Arizona - 2	Maryland - 4	Oregon - 1
California - 14	Massachusetts - 2	Pennsylvania - 2
Colorado - 3	Minnesota - 1	South Carolina - 1
D. C - 1	Missouri - 1	Tennessee - 1
Florida - 6	Nevada - 1	Texas - 8
Georgia - 1	New Mexico - 1	Utah - 1
Illinois - 1	New York - 2	Virginia - 2
Kansas - 1	North Carolina - 2	Washington - 2
Kentucky - 1	Ohio - 3	Wisconsin - 2
Louisiana - 1	Oklahoma - 2	



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### **Question 3: *Please select agency type.***

Forty-four of the survey's respondents, or 61.97%, were self-identified police departments. The 26 other respondents, or 36.62%, were self-identified sheriff departments. One agency was self-identified as a consolidated county and city police department.

### **Discussion of Question 3:**

The respondents included some of the largest metropolitan agencies (New York, Chicago, Washington, D.C., Los Angeles) in the country, but the results also reflected small- and medium-sized agencies. Respondents were spread across the nation in 29 states, with the largest set of respondents, being from California (14). Significant groups of respondents also came from Texas (8), Florida (6), and Maryland (4). No respondents outside of the U.S. were considered in the results of this survey.

### **QUESTION 4: WHAT IS THE CURRENT STATUS OF BWCs IN YOUR AGENCY?**

Nearly 20% of respondents said that their BWC programs were “fully operational.” Almost 38% percent “intend to implement,” but had not yet begun a pilot phase; 19.40% and 26.87%, respectively, were either in the pilot phase or had completed the pilot phase and were moving forward with their BWC programs.

About 3% of respondents said they either did not intend to implement a BWC program, whereas only 1.49% said they had completed a pilot but had chosen not to proceed. Slightly less than 3% said they did not intend to implement a BWC program.

### **Discussion of Question 4:**

The data indicate a strong intention to move forward with BWC programs. The data also indicate that many local agencies are moving forward with implementation, despite a lack of IT infrastructure or technical solutions to fully support these programs. Agencies did not expand upon their decisions to not move forward with BWC programs, with or without pilot programs.

A few of the comments for program status mentioned currently being in the procurement phase, doing research into BWC programs, and starting community discussions. One comment noted implementation not feasible due to “infrastructure.”



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### QUESTIONS 5 – 7: VIDEO

#### **Question 5: *What is the average number of hours of video captured per officer per day?***

Almost half (49.28%) of the agencies estimated the number of hours their officers captured on video to be 3 hours or less per day. The second closest group, at 10.15%, estimated their officers captured 4-6 hours of video daily. Only 2.99 % respondents estimated their officers with BWC captured 7 or more hours of video per day.

Significant in the findings is that 37.68% of respondents had “not yet determined” the average number of hours their officers were capturing on video each day.

#### **Question 6: *What video resolution will you require for your BWCs?***

A slight majority of agencies, 32.8%, stated that their BWCs were using the lowest resolution settings (SD 360/480). A higher resolution (HD 720) was used by 27.14% of the agencies surveyed, but only 12.9% required full HD resolution to support their BWCs.

Significant in these responses were the 30.43% of agencies that have not yet determined what video resolution is required to support their programs. A small percent, 7.25%, stated their cameras have “other” resolution requirements, but did not define what those were. One respondent stated that a decision would be made “pending technology available” and storage costs.

#### **Question 7: *What is the average quantity of data generated by each officer per day?***

The findings showed that the largest single percentage, 42.03%, or 29 responding agencies, did not know the quantity of data being generated by their officers each day. Those that had determined data quantities estimated either 1 - 5GB per day (28.99%), or less than 1GB per day (23.19%). Only 5.8% estimated generating data in excess of 5GB or more per day.

### **Discussion of Questions 5 – 7:**

The data clearly show that the quantity, video length, and video resolution are largely undetermined by agencies. Not clearly indicated is if the “not yet determined” data generation quantities will be clarified during a pilot program.

Understanding the amount, quantity, and quality of the data being generated by each officer is critical because those factors impact the data storage needs of each agency. The quantity of hours of recorded data, quantity of data, and resolution selected, are all interconnected and will impact other technological issues such as data transfer and storage, as well as the infrastructure needed to support a fully operational BWC program.



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### QUESTIONS 8 – 10: TAGGING AND CATEGORIZING DATA

#### **Question 8: *How will officers tag and annotate BWC?***

The data indicated a close divide between the 46.38% of agencies that have determined that officers will tag and annotate BWC footage in the field, either by Wi-Fi or Bluetooth, and the 42.03% that anticipated officers completing the task back at the station, after the video was uploaded. A small number of respondents, 5.8%, had equipment with the capability to tag and annotate data directly from their devices in the field.

The remaining 23.19% planned to use “other” means to tag and annotate data. Several comments detailed “other” to mean completing the task by integrating with a Computer-Aided Dispatch (CAD) system. One respondent specified integration with a Records Management System (RMS). Another cited a combination of different methods based on system and policy. One stated the decision “would ultimately depend upon vendor selection.”

#### **Question 9: *What notes and information (metadata) will your officers add to BWC video?***

*This question allowed for multiple answers.* Almost half, 47.83% of respondents, attached report numbers to their videos while 43.48% attached video to a case number. A smaller number of agencies notated videos with other information, such as 8.7% to include the suspect’s name, and 7.25% included the victim’s name. However, 30.43% had not yet determined what notes or metadata would be included with the video. Nearly a third, 31.88% of the respondents, indicated “other” means. Several addressed that with a comment to include a CAD or event numbers.

The results of this question indicated that departments intend to add notes and information via multiple ways, rather than through a single method of cataloging. However, none of the respondents indicated a system that gives them the ability to cross-reference metadata notes (i.e. the ability to cross-reference a case number with a subject’s name).

The comments indicate a desire to include the type of event (e.g., call, case, or contact type) because it impacts how the information will be maintained for retention purposes.

Other common metadata reference categories noted by respondents included: incident number, retention category, evidence category, officer’s name and badge number, incident type, crime type, assigned BWC, and corresponding radio call. Two respondents noted geo-coding to include the location of the event.



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### **Question 10: Which of these items will be added automatically?**

A clear majority, 56.25%, of agencies had not yet determined what information would be added automatically to the data. Smaller numbers determined that the report number (13.04%), case number (10.14%), victim’s name (4.35%), or suspect’s name (5.8%) would be added to the video automatically.

Almost 38% indicated “other” would be added to the data. Explanations of “other” varied but included five respondents who added officer information, date, and time automatically. Six respondents stated a capability, or intention to seek the capability, to automatically add CAD/RMS information. Two respondents noted a need for CAD integration before this could occur. An additional two respondents specifically mentioned a “lack of true system integration by vendor,” which prevented them from adding information automatically. Two respondents mentioned pending decisions based upon vendor selection.

### **Discussion of Questions of 8-10:**

Respondents largely recognize the importance of tagging and annotating metadata and categorizing according to the type of event contained in the footage. However, no consensus regarding the best method or agreement on what those categories should include is currently guiding law enforcement’s approach. Definitive decisions about what information to automatically annotate, including basic information such as report numbers or case numbers, are only shared by a handful of agencies. However, multiple means and categories are being applied to single video data segments for tagging and annotation purposes.

How the videos are categorized may have impact on a number of other issues, including storage and retention requirements. They will determine how long they are retained, who has access, and whether – and how – the data will be recalled for use by officials.

Several agencies indicate that they intend to link to an agency’s RMS or CAD system for automated tagging and documentation. However, it appears that while some tagging information may be added, the majority of agencies are relying on the officers’ ability to correctly tag and code the data manually. Relying on this method leads to possible inconsistency, requires training, and accounts for additional officer time.

### **QUESTION 11: RMS AUTOMATED INFORMATION**

#### **Question 11: Does your current Records Management System (RMS) include automated recordings of: (multiple choice answers)?**

A majority of the respondents, 62.32%, said their RMS included automated recordings of dispatch information. Just over 42% said their RMS included automated recordings of 911



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calls. Slightly more than 30% said their RMS included automated recordings of non-emergency calls.

Over a third, 36.23%, selected “other” to answer this question. Most of the agencies specified this meant “none of the above” were included as automated recordings into RMS and did not supply an additional explanation. However, a select few did specifically state these automated recordings were part of their CAD system rather than RMS.

### **Discussion of Question 11:**

Automated recordings of certain calls in a RMS or other database may help an agency track and manage call response. In terms of BWC data, the automation may help to ease the burden of reviewing, cataloging and tagging video and assist with program compliance. During an investigation and subsequent prosecution of a suspect, having the call information in a RMS may help to accurately fuse evidence (e.g., BWC footage) and call information into a single source. Understanding RMS capabilities may be an important component in selecting the right BWC vendor. Knowledge of the RMS’ functionality is also key to identifying how to integrate BWC data.

Question 11 surveys the extent to which dispatch and call information is integrated into RMS but does not attempt to determine how many agencies intend to integrate BWC video into RMS. This issue is addressed in Question 33, which specifically surveys how many agencies intend to link BWC data to RMS.

### **QUESTION 12: DATA TRANSFER REQUIREMENTS**

**Question 12: *What type of data network currently exists that could support transferring BWC video footage between various remote facilities (e.g. precincts, districts) to the main storage location (e.g. headquarters, data center, cloud provider)?***

Results for this question show that several types of data networks currently exist to transfer BWC video footage between remote facilities to the main storage location. The largest number of respondents, 44.93%, said they have an Ethernet Transport Local Area Network (LAN)/Transparent LAN Service (TLS). Slightly fewer, 42.03%, said they either owned, or leased, an Optical Transport Network (OTN). An Internet Service Provider was used by 23.19% of respondents.

Other data transport networks included microwave for 10.14% and a T-carrier for another 10.14%. Just over 7% of respondents answered “other” to this question, which included, Wi-Fi in the vehicle and a dedicated server for in-vehicle video.





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### **Discussion of Question 12:**

There is no consensus on what type of data network is currently available to each agency. A large percentage of the agencies are currently accessing an Ethernet connection, which may have several key advantages in transferring large amounts of data generated by BWCs.

The advantages include the capability of transmitting data at symmetrical speeds while supporting multiple applications, as well as scalable, reliable, low-latency bandwidth needed to drive capacity for video. In implementing BWC programs, each agency must individually assess whether their data needs to transfer BWC video data can be supported by the existing network. Issues for consideration include network speed, bandwidth and network connectivity.

### **QUESTIONS 13 - 15: IT INFRASTRUCTURE NEEDS**

#### **Question 13: *Will you be required to expand/improve your current IT infrastructure?***

Almost 70% of respondents recognized a need to expand and improve their IT infrastructure to fully support BWCs. Only slightly more than 17% said they did not need to expand or improve their infrastructure. Only 13.04% “did not know” at the time of the survey.

#### **Question 14: *For your planned system, what will be the amount of bandwidth required?***

For those agencies who responded affirmatively to expanding/improving their infrastructure, the largest group of respondents - nearly 50% - admitted not knowing what amount of bandwidth would be required from their new system.

For those respondents who were able to make a determination, 16.67% anticipated 10 – 100 Gbps. Almost 15% anticipated 1 – 10 Gbps and 18.75% anticipated 100 Mbps – 1 Gbps. A very small percentage, 2.05%, anticipated 10-100 Mbps.

#### **Question 15: *What is not adequate at present (multiple choice response options)?***

*This question allowed for multiple answers.* Of the respondents who said they needed to expand/upgrade their IT infrastructure, more than half, or 54.17%, stated that their current network bandwidth capability was not adequate at present. An additional 45.83% stated that their current storage capacity was not adequate. Wireless capacity was also deemed inadequate, according to just over 27% of agencies. Only 14.58% of agencies responded “don’t know” when asked about what part of their IT infrastructure was inadequate.

The remaining 16.67% of agencies responded “other.” Additional items mentioned as needing improvement included, “policy and procedures,” and inadequate, “electrical wiring and systems,” “the city microwave system is not completely built out” and a need for “dedicated power at each station.”



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### **Discussion of Questions 13 – 15:**

The clear majority of respondents recognize a need to expand and improve their IT infrastructure to fully support BWCs. Specific technology gaps identified include: a lack of data storage capacity, inadequate network or bandwidth capability to transfer data and insufficient wireless capacity. Identifying IT infrastructure gaps and needs for improvement may be one of the most critical steps for law enforcement departments to take in support of BWC program because being able to accurately evaluate what IT network infrastructure is needed will inform decisions regarding vendor selection, data policies, and budgetary needs.

### **QUESTION 16: UPLOADING VIDEO**

#### **Question 16: *How will you upload the video data?***

The majority, or 65.22%, of the agencies surveyed planned to upload video via a docking station. Wi-Fi or USB will each be used by 7.25% of agencies. Only 2.9% of respondents used a storage card, 4.35% used a 3G/4G network, and only 1.45% used Bluetooth. A small percentage, 5.8%, indicated using another method. Significant in the findings were the just over 30% who had not yet determined how they would upload video data. Two of the respondents commented that this decision was awaiting vendor selection.

### **Discussion of Question 16:**

Uploading and transferring the data from various remote facilities, such as a police vehicle or a district station to a main storage location such as headquarters, a data center or a cloud provider is a critical step in the processing of video. While most agencies are currently using a physical docking station, Wi-Fi and other wireless transmission methods will continue to grow in use as departments move in the direction of incorporating wireless transmission as a core feature in their communications systems (as demonstrated by the increased use of tablets, smart phones and Bluetooth technology). But, regardless of the means of transmission, the quicker and more reliably it can be done, the better it is for officers.

### **QUESTIONS 17 AND 18: STORAGE**

#### **Question 17: *How will the data be stored in your city/county?***

Almost 45% of respondents stated they chose to store their data via a cloud service provided by a BWC vendor; an additional 7.25% chose a cloud service provide by a non-BWC vendor. Storing data in-house, either on a police/sheriff department's mainframe or server(s), was



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the choice of 20.29% of respondents, with an additional 5.8% chose to store their data on a dedicated server(s) at the district or station. Only 5.8% elected to store data on a city or county mainframe server(s). Almost 30% of respondents had “not yet determined” where they would choose to store data. About 3% of respondents chose another form of storage, but declined to specify.

### ***Question 18: What is the estimated increase in storage capacity per year (just for BWCs) considering the length of time evidentiary and non-evidentiary video footage must be stored?***

The estimated increase in capacity needed to support the storage of data generated by BWC programs varied widely among agencies. The lowest calculation was an estimated increase of 100 gigabytes (GB) to 1 terabyte (TB) by 7.25% of agencies. Slightly more, 8.7%, estimated the increase to be 1 TB to 10 TBs. Almost, 25% of agencies estimated the increased need to be 10 TBs to 100 TBs. Slightly less than 15% of agencies estimated an increased need above 100 TBs; these findings are significant because they included estimates up to, or exceeding, one petabyte (1PB). (A petabyte (PB) is equivalent to 1,000 terabytes or 1 million gigabytes.)

The single greatest commonality was among the roughly 45% of agencies that “don’t know” what the increase in storage capacity will be.

### **Discussion of Questions 17 and 18:**

Questions 17 and 18 both address issues related to the storage capacity needed to support BWC programs. Of specific concern is that storage needs are cumulative, and will increase over time depending on how long the data are stored. Storage needs may vary among agencies depending on policies established for the retention of data (both evidentiary and non-evidentiary) and purging policies related to BWC programs.

This particular set of survey responses does not indicate whether respondents are looking at the impact of data storage over the long term. In order to minimize the amount of digital storage needed, agencies will want to consider policies and practices to purge all videos not specifically needed as evidence in a timely fashion. There are also financial implications to storing vast amounts of data, including the need for contracts for cloud storage, server capacity and improvements to IT infrastructure. The cost of long-term storage in the larger amounts necessary for videos can be staggering but should be accounted for in determining the true costs of a BWC program.

Additionally, security of the data needs to be a priority. While many agencies opt to use internal servers and are therefore responsible for setting up their own safeguards and security measures, a significant number of agencies – 36 in this survey - have chosen to contract for cloud storage and trust third-party vendors with the storage and security of



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their very sensitive data. Whether storing video internally or externally, protecting the data and preserving the chain of custody should always be a consideration.

### **QUESTION 19: VIDEO SHARING**

#### **Question 19: *How will your agency share video data?***

*This question allowed for multiple answers.* Various methods to share data were chosen by responding agencies. The largest set of respondents, 37.68%, shared video data on an Internet-based portal. Nearly 25% of the respondents shared video data through a law enforcement department network, while 17.39% shared through a city/county jurisdictional network. Over a quarter of the respondents, 27.57%, had “not yet determined” how they will share the data.

Thirteen percent intend to use “other” means to share video data. These methods include burning the information to a DVD, sharing via a secured web link or a “vendor-based sharing ability.”

#### **Discussion of Question 19:**

Issues related to video sharing include not only how to grant access, but also to whom and for what purposes (issues that are addressed in Question 25 of this survey). Based on the responses, a clear majority of agencies have made an initial decision regarding this particular aspect of their BWC program. In fact, several agencies will use multiple means to share video data.

### **QUESTION 20: UPLOADING DATA**

#### **Question 20: *How long does it take to completely upload data from each camera unit?***

Almost 38%, the largest group of respondents, determined that it will take less than an hour to completely upload data from each camera unit. An additional 14.49% estimated that it will take anywhere between 1-3 hours to complete the same task. Only a collective total of 8.7% estimated the task will exceed 3 hours. Again, a significant percentage of agency respondents, almost 40%, have “not yet determined” the amount of time uploading data from each camera unit requires.

#### **Discussion of Question 20:**

A significant number of respondents have indicated the time necessary to upload data will not exceed one hour. This indicates a fairly minimal time impact on BWC program operations.



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However, Question 20 has its limitations on what can be interpreted from the data since it does not specify if only a single day of data or an accumulated total over a longer operational period will be uploaded with each attempt; nor does it differentiate how much data are being uploaded at a given time. Therefore this report is unable to extrapolate enough information to determine whether there is a direct correlation to the number of hours of video captured to the number of hours that is required to upload those data. This makes it difficult to fully assess the impact on operations.

### **QUESTIONS 21 - 22: DATA RETENTION**

#### **Question 21: *How long will your agency retain Body-Worn Camera video?***

More than 70% of the agencies intended to retain video considered evidence for more than 180 days. Only 6.77% said they retain video data considered evidence for any period less than 180 days.

Responses to retaining videos considered not to be evidence were more equitably distributed. Only 5% stated a need to hold the data for less than 30 days. Just over a tenth of responders, 11.67%, estimated 30-60 days, while 16.67% elected to keep video for 60-90 days and another 15.67% would keep the data for 90-180 days. Just over 31% of respondents estimated that data would be kept for more than 180 days for non-evidentiary cases. Just over 18% responded N/A to the survey question. However, the responses do not clarify why that answer was selected.

#### **Question 22: *How much data do you anticipate will be uploaded to storage every day, taking into account the average amount of video captured, number of officers wearing cameras per shift and the number of shifts in a 24-hour day?***

Most striking in the numbers are the more than 35% of respondents who “do not know” how much data will need to be uploaded to storage every day. For those respondents who were able to make a determination, 8.7% anticipated 1 – 10 GBs. Just under 25% anticipated 10 – 100 GBs of data and slightly more than 20% anticipated 100 GB to 1 TB of data. Just over 10% anticipated numbers greater than 1 TB of data per day.

### **Discussion of Questions 21 and 22:**

Question 21 breaks the estimate of how long an agency intends to retain BWC video into two categories - evidentiary versus non-evidentiary. There is a distinction quantified in the numbers between the two categories and it is clear from the responses that videos considered evidentiary will require much longer periods of retention.



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The large number of responses exceeding 180 days indicate a common understanding that evidence will be kept for extended periods of time. For instance, responses to requirements of retention periods of 180(+) days included two years, three years, and more than 10 years. Whether the tape is to be used as evidence or is involved in an ongoing case means that some data may need to be housed indefinitely. Many agencies point to a statute of limitations and public law rather than internal policy to determine how long to retain video. This indicates that BWC video information is subject to the same requirements as other evidence in any criminal case.

Retention periods for video considered non-evidentiary were less decisive. One agency mentioned a minimum requirement to hold all video for at least one year.

Some respondents were very clear on the length of time they would be holding data, letting state law dictate the parameters of retention. However, others indicated in comments such as “in discussion,” “unknown,” and “that policy decision has not been made,” that supporting policies on video retention were not yet determined. What is clear is that agencies with BWC programs will be making decisions regarding data retention directly related to the rules of evidence and internal policies.

It should be noted that this question was considered “*non-mandatory*” in the survey so it had a lower rate of response than was averaged in other survey questions.

Question 22 helps to demonstrate the increased difficulties in estimating storage needs with so many unknowns, including how much data will be uploaded and stored, and for what period of time. It is of interest to note the distinction between Question 7 and Question 22, both which look at the amount of data generated by BWC. Question 7 focuses on the data generated by an individual officer in a single shift whereas Question 22 looks an aggregate total and takes into account multiple variables, such as the number of officers with BWC cameras, average hours of video captured, the number of shifts uploading during a 24-hour period. Both have relatively high “unknown” responses, 42.03% and 36.23%, respectively.

Questions 21 and 22 are exceedingly important issues since retention policies and the estimated amount of data uploaded each day will drive storage requirements and system capacity needs.

### **QUESTION 23 - 24: DATA TRANSFER**

**Question 23: *On average, how many times do you need to transfer video footage evidence data to/from central data storage repository prior to trial?***

Only 11.59% of respondents estimated that, on average, they needed to transfer video footage only once prior to trial. Just fewer than 15% estimated an average of two to three



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times, and just under 9% estimated video footage will require five or more transfers prior to trial. The great majority, 65.22%, “do not know” how many times they will need to transfer data to/from a central data storage repository before trial.

### **Question 24: *How does your agency currently plan to transfer video footage?***

Just over 43% of respondents planned to transfer video footage via the cloud, while 24.64% planned do so via a digital file transfer. Transferring video footage via physical means such as a disc, USB thumb drive or a memory card was also significant with 30.43% of agencies that selected this method. Additionally, 7.25% of agencies cited an “other” approach, which included access via a web portal and a wireless upload in a vehicle. The remaining 23.19% indicated the method was undetermined until they received a final product and/or selected a vendor.

### **Discussion of Questions 23-24:**

Question 23 does not ask respondents to provide a reason for why they estimate a need to transfer video to and from a central data repository multiple times; nor does it specify the entities or agencies the footage will need to be transferred between. No additional information was listed for agencies to expand upon, or explain, answers making this question difficult to analyze in more depth. However, the high “don’t know” response rate to Question 23 and the relatively significant “don’t know” response on Question 24 indicate that many of the technical aspects of video transfer are largely unknown by agencies.

## **QUESTIONS 25-28: DATA ACCESS AND RELEASE**

### **Questions 25: *What entities will you allow access to the system for sharing video data?***

*This question permitted multiple answers.* The answers indicated that most agencies will allow more than one entity access to the system in order to share data. For instance, three quarters of the respondents, just over 75%, granted access to their internal affairs unit. Seventy percent are also granted access to the District Attorney’s Office. By comparison, only 44.93% have determined they will allow access by the City Attorney. Allowing access to the Freedom of Information (FOIA) Unit was another large category, with 37.68% of respondents who have granted access. The 13.04% of respondents who specified “other” included the Office of Police Complaints, all internal sections and other agencies for joint cases. Only 15.94% of agencies did not yet know what to what entities they would grant access.



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### **Question 26: *Will your agency be subject to FOIA release of video?***

An overwhelming majority, 72.46%, stated their agencies are required to provide footage in response to FOIA requests for BWC data, while only 8.7% percent said they are not subject to such requests. Almost 18% “do not know” if they are required to provide footage in response to FOIA requests.

### **Question 27: *Will your department redact videos in response to FOIA requests?***

Of those agencies that responded affirmatively to being subject to FOIA release of video the overwhelming number, 78%, determined that they will redact videos; only 4% will not. Eighteen percent listed “not yet determined” or “don’t know” as answers.

### **Question 28: *What type of equipment will be needed to process videos for court and FOIA?***

*This question allowed for multiple answers.* Again, of those agencies that responded affirmatively to being subject to FOIA release of video, exactly half, 50%, said they will install software on their computers so they could process videos for FOIA and court requests. By contrast, 16% responded they would do so through a sole-purpose workstation. Six percent would outsource the processing to the vendor. Eight percent stated they would use other methods such as internal video management programs, features provided by vendor and a cloud-based system with enhanced capability to share, redact and download video.

### **Discussion of Questions 25-28:**

The results show that agencies with BWC programs largely understand the importance of being able to share video for internal and criminal investigations, as well as criminal prosecution. However, there was less consistency in the best method to use for sharing that information.

Another category of agreement was the understanding that agencies would be required to provide BWC footage in response to FOIA requests. Fifty of the agencies agreed this would be an issue for BWC programs. Of those, 39 agencies stated the need to redact video in response to those requests. The numbers also indicate that the majority of departments surveyed have already determined what software or equipment they will need to perform this operation; 18 agencies have not yet made a decision.

The issues surrounding the sharing and release of data will continue to be of critical importance as public perception about BWCs’ ability to make law enforcement more accountable increases. The public scrutiny and desire for public information driving the deployment of BWCs mean that law enforcement agencies must be prepared to either efficiently and legally comply with requests to release video information or explain why they won’t.





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Determination of adequate internal policies to support FOIA requests and the release of data is outside the scope of this survey. However, it can be said that agencies should have clear and consistent protocols for sharing data with all entities but especially when releasing video externally to the public and media. Transparency and accountability are important but must be balanced with privacy considerations for the citizens and the officers when determining whether to release the footage. Each agency's internal policies must comply with the state's public disclosure laws, which vary across the nation.

### **QUESTION 29: PERSONNEL NEEDS**

**Question 29: *How many additional personnel will you need to manage and maintain the BWC program?***

The majority of respondents estimated that a slight increase in additional personnel would be required to maintain their BWC program. Just over 36% estimated increases of 1-5 personnel, and just under 25% estimated an increase of 5-10 personnel. A fairly small number of respondents, 5.8%, estimated a larger increase of 10-20 additional personnel and 2.9% estimated an increase in excess of 20 additional personnel. Nearly 19% of agencies did not know what personnel increase would be required to maintain a BWC program.

#### **Discussion of Question 29:**

The responses to this question indicate that the vast majority of respondents anticipate the need to increase personnel to manage and maintain their BWC program. However, there is no additional information to indicate exactly what functions or duties will require the additional staff time. There is also no information in the question to determine if the additional staff required will be sworn or non-sworn personnel positions – a differentiation that impacts the overall personnel costs.

### **QUESTION 30: EMPLOYEE PROFICIENCY**

**Question 30: *How proficient are your employees in video editing and processing?***

Nearly 38% of respondents stated that their employees were “not proficient” in video editing and processing and required both basic and advanced training. Just over 26% of respondents qualified their staff as “proficient” and therefore required some additional or refresher training. Only 7.25% of respondents qualified their employees as “very proficient” and in need of no additional training. Just over 13% and just fewer than 16% indicated either “don’t know” or “not applicable,” respectively.



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### **Discussion of Question 30:**

Responses demonstrate that agencies will require more training for personnel in order to support BWC programs. A significant percentage, 63.77%, ranked employees as either “proficient” or “non-proficient,” thereby recognizing a need for at least some level of additional training (basic, advanced or refresher level) to bring up employee efficiency.

Much of this training will have to be supported by vendors so that officers better understand the technical aspects of using specific equipment and computer programs. However, other aspects of BWC may benefit from assistance from local, state and federal governments to fill training gaps. As the federal government looks for ways to support the implementation of BWC programs at the local law enforcement level, it may choose to fill the training gaps that exist. The ability of personnel to manage and process BWC video impacts all aspects of a BWC program, including its cost effectiveness.

### **QUESTION 31: COSTS RELATED TO PERSONNEL TRAINING**

**Question 31: *How much money/effort do you estimate you will have to spend on training for officers that manage and process BWC video? Please rate on a scale of 1 to 5 (1 =Least, 5 = Most)***

Under a weighted ranking, this question projects the level of money and effort estimated to train officers. Respondents were asked to rate these efforts on a scale from 1(least) to – 5 (most). The vast majority of respondents ranked the effort at a “3” or above. Nineteen of the responding agencies ranked this effort at the highest level of a “5”. Seventeen agencies ranked the effort as a “4” level of effort and an additional 17 ranked the needed effort at a “3”. Smaller numbers of respondents, four and seven, ranked the effort as fairly low and would require money and effort to train officers at a “1” and “2” respectively.

### **Discussion of Question 31:**

Question 31 estimates the overall anticipated effort and financial support needed to sustain BWC programs without establishing specific dollar amounts or program support. The responses to this question clearly demonstrate that the agencies that are implementing BWC programs see the training of officers as a fairly significant effort. In addition to the initial costs of purchasing cameras and storing data, administering a BWC program requires considerable ongoing financial and staffing commitments. Agencies must provide ongoing training programs for officers, ensure that cameras are properly maintained, and correct any technical issues with equipment. In order to execute BWC programs, police departments will have to establish clear priorities within their budgets and planning to support these programs.



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### QUESTIONS 32-33: DATA INTEGRATION

#### **QUESTION 32: *Does your agency already have a digital evidence system?***

A majority of respondents, just over 75%, indicated that their agencies already possessed a digital evidence system. Just over 23% indicated that their agency did not have such a system. Only a single respondent answered “do not know” in response to this question.

#### **Question 33: *Will your BWC data be integrated with any of the following?***

*This question allowed for multiple answers.* The results showed that agencies are attempting to integrate BWC data across multiple interrelated digital platforms. While nearly 50% of respondents indicated they had not yet determined if, or how, they will integrate their BWC data, the other half demonstrated a clear intention of integrating data through multiple systems.

For instance, about 29% of respondents sought to integrate BWC data into their existing Records Management System (RMS); 24.64% were looking to integrate BWC data into a Computer-Aided Dispatch (CAD) system. A significantly large group, 37.68%, sought to integrate data into a digital evidence system. Other responses included integrating BWC data into a Closed Circuit Television (CCTV) system and with vehicle dash cameras.

#### **Discussion of Questions 32 – 33:**

Although nearly half of the respondents have not yet determined if, or how, they will integrate their BWC data, the responses show that many other agencies are moving forward with their integration efforts. This means that many of agencies deploying Body-Worn Cameras are doing so alongside existing solutions for managing video evidence.

There are both benefits and drawbacks to integrating separate, stand-alone systems. First, there may be technical hurdles to integration. Second, multiple, stand-alone systems can inherently be more costly to deploy and maintain, and also create administrative drawbacks such as working and contracting with individual vendors, and requiring additional staff training to learn various digital programs and interfaces. However, the benefits can include increased system consistency and redundancy, increased efficiency and enhanced data amalgamation.

When integrating multiple systems, agencies must understand their own specific technical needs in order to make their vendor/equipment choice. They also should consider how a particular BWC system will integrate across multiple existing platforms and how it may need to expand over a period of time.



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### QUESTIONS 34 - 35: POLICIES AND PROCEDURES TO SUPPORT DIGITAL EVIDENCE

**Question 34:** *Has your agency developed policies/procedures for your digital evidence system?*

Of those agencies that currently have a digital evidence system, 90.57% said they have developed policies and procedures to support this system. Only 9.43% did not have policies and procedures in place.

**Question 35:** *Are your digital evidence protocols (collection, analysis, storage, transfer, etc.) compliant with national forensic standards and guidelines for evidence?*

Of those agencies that currently have a digital evidence system, 62.26% said their digital evidence protocols were compliant with national forensic standards and guidelines. All of the respondents who recognized that they were not in compliance, 13.21%, were working towards becoming so. Just over 24% of respondents were unsure of their compliance status.

#### **Discussion of Questions 34 -35:**

The vast majority of respondents have established protocols and procedures for digital evidence management. Question 35 confirms that the few who aren't yet compliant with national standards are working towards establishing compliance. Most troubling might be the nearly quarter of respondents who "don't know" if their digital evidence protocols are compliant with national forensic standards and guidelines.

In moving forward with the implementation BWC programs, it is critical that law enforcement agencies develop the policies and procedures for all aspects of their operations and evidence management. The collection, analysis, storage, and transfer of digital evidence will greatly impact the legal and ethical aspects of BWC programs, including privacy, case management and prosecution. Law enforcement needs clear and definitive standards and guidelines for digital evidence management. Some agencies may greatly benefit from assistance as they develop their policies and procedures regarding BWC programs. Another potential area to surge help is when national and state guidance conflict or are too complex to interpret.

### QUESTIONS 36 – 37: VENDOR SELECTION

**Question 36:** *What vendors did you or will you include in your pilot?*

*Fifty-two agencies responded to this non-mandatory question.* The results show that multiple vendors were considered during the pilot program phase and that agencies often tested more than one manufacturer. Seventeen companies were listed as possible options in the



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survey with the ability to list others (12 of the companies listed had one or more responses; an additional 3 were specified in the comments section).

*TASER, International* was the lead vendor selected to participate in 32, or 61.34%, of the agencies' pilot programs. *VIEVU* was another leader; it participated in 27, or 51.92% of the pilot programs.

*Wolfcom* participated with 9, or 17.31%, of the agencies and *Digital Ally* participated in 8, or 15.38% of pilots. The other vendor participants included *BodyVISION* by L-3 Mobile-Vision, *COBAN Technologies, Inc.*, *Data911*, *Reveal*, *Safety Vision*, and *VISTA* by *WatchGuard Video*. Just over 23% of respondents selected "other" vendors. Those specified included *Panasonic*, which was listed by 4 respondents, *Vidmic* and *Dell/Utility*.

Twenty-five percent of agencies had not yet determined which vendors would be participating in their pilot programs.

### **Question 37: What vendor did you or will you make as your final selection?**

*Again, 52 agencies responded to this non-mandatory question.* The results show that decisions about final vendor selection are almost equally split between those agencies that have selected a vendor, and those that have not. Almost half, 48.08% (or 25 agencies), of respondents had not yet selected a vendor. Just over half, 51.92% (or 27 agencies), had made a selection.

*TASER, International* was listed as the most common vendor, selected by 32.69% of agencies. *VIEVU* was selected by 7.69% of agencies. *CopTrax from Stalker* (which was not listed as a consideration in any of the pilot programs) was selected by 1.92% of agencies. Of those who selected "other" as their selected vendor, *TASER, International* was under contract with one agency, as was *Panasonic*. *Wolfcom* and *TASER, International* were the vendor candidates for one respondent's final consideration.

### **Discussion of Questions 37 - 38:**

The results show a relatively select number of BWC vendors being selected for these programs. *TASER, International* and *VIEVU* are the frontrunners, participating in pilot programs and securing the contracts with agencies.

There is no information to explain what information was gained off the pilot to either confirm, or reject, a particular vendor. Nor is there any information about why a particular vendor was selected. This survey does not inform what criteria were driving factors in the selection decision such as camera resolution, system capability, interoperability or data storage options.



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### QUESTION 38: ADDITIONAL INFORMATION

**Question 38:** *Do you face other technology issues and concerns that you wish to add to this survey?*

The final question of the survey asked respondents to add any additional information or concerns they had regarding the technology of BWCs. Thirty-three respondents chose to add additional information.

#### **Discussion of Question 38:**

In this section, comments varied across multiple categories but a number of trends emerged in the answers. Some of the responses (such as the need for infrastructure improvements and increased staffing and ability to manage a BWC program) reinforced the information gathered in earlier survey questions. Others (including the cost for purchasing BWC cameras, improvement to camera technology and mounting options for wearable cameras) highlighted new concerns. Many of the comments cross multiple categories. Below is a summary of those comments. *Comments are edited and/or summarized, rather than verbatim, unless otherwise indicated.*

#### **Camera Technology and Capability**

- A need for additional wireless capabilities integrated into the cameras themselves (i.e. Wi-Fi, LTE, private broadband).
- Point of View (POV): All BWC would benefit from a national standard in which every video is in the same style format and look. A 90-100 degree POV would be better for most citizen contacts.
- Improvement to the logistics of wearable cameras.
  - Headset cameras too cumbersome
  - A lack of mounting options for uniforms. Provided mounting options work just fine in arid, warm environments, but are not practical in colder climates.

#### **Need for Additional Equipment**

- Pairing a BWC with a Bluetooth or Wi-Fi for annotation/comments of recorded video will require a smart device (yet to be issued to every member of the rank and file). This will double equipment costs and or increase operational costs if the device is a cell phone.

#### **Request for Polices, Laws and Guidelines Related to BWC**

- A lack of statewide guidelines for BWC use, storage, sharing and technology. Many departments are waiting to implement programs but will not because new state law could cause agencies to revamp current programs and increase costs.



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### Staffing Increases

- A BWC program would adversely affect business processes, i.e. taking deputies off the street to upload video.
- The impact of FOIA on operations and the need to increase the staff to accommodate growth.
- “It is paramount that agencies with BWC technology dedicate the staff necessary to manage the program. Even with adequate storage, user-friendly software, and a fully integrated CAD/RMS, you must have people to manage the videos that are generated. People are necessary to ensure that all video evidence associated with a criminal prosecution is made available to the prosecution and defense, prepare cases for court, and handle.”

### Video Management and Storage

- The costs of the required upgrades and storage are going to be significant for law enforcement agencies. For this reason, it may be advisable for the federal government to consider establishing a secure law enforcement cloud server to assist local ongoing efforts. Like the federal systems created for communications, a federal system for digital storage could assist local LE in the proper storage and use of digital evidence.
- For those Departments that have a strong IT unit, local storage/control is not an option as a city/county can't compete with cloud-based companies.
- Data storage and data management are problematic.
- Storage of BWC video evidence will be a significant challenge based on current requirements department requirements.
- The largest issue we faced implementing the program had to do with moving and managing the video. There are several unknowns in the area and, like most cities, we do not have the in-house expertise to build our own management/storage system. This made us totally reliant on the expertise of an outside vendor. As such,
- we ended up with a proprietary system that could become very expensive in the future.
- The cost of storage

### Public Expectations

- Communicating to the public the entire technological framework needed to establish a BWC program (i.e. management of video, storage requirements, network effect).
- This technology is somewhat ahead of case law and, as such, is posing some challenges to policy and public expectations.
- The public is not well informed of the technology and therefore assumes BWC can do many things that they cannot. This is a failure to communicate at the state, federal and vendor levels.



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### Redaction and FOIA Requests

- Another major area of concern is the redaction of open record videos. The creation of automated redaction software would be the ultimate solution though none currently exists.
- Standardization of retention schedules, redaction and public records requirements.
- Speed redaction issues.
- FOIA future costs and resources.

### Privacy Concerns

- Filming of juveniles, filming innocent people on calls, filming in hospital setting, filming while deputies are on bathroom breaks.

### Cost of Purchasing Devices

- Our biggest hurdle at this point is the cost of purchasing the devices. We have a robust infrastructure with our in-car camera system and would like to integrate BWC's with our current system. That keeps the cost down by only having to purchase additional storage when necessary.

### Improvements to IT Infrastructure

- Long-term storage and connectivity (infrastructure) are major concerns.
- Infrastructure improvements will need to be made at several substations as many are still using T1 lines, too slow to send video traffic. If data [are] to be stored off site, with a vendor, we will have to upgrade our outbound Internet pipe to handle over 1 TB per day. If data [are] to be stored in-house, we will need to purchase redundant systems that can store several petabytes.
- Infrastructure grants could assist cities with the connectivity issues that plague many major cities.

### Retention and Redaction of Video

- It would be very beneficial for states to pass laws regarding retention and redaction of video.
- Ability to process and redact video on a mass scale to respond to request for information.

### Decisions Pending RFP Process

- [Our department] is going through the evaluation of vendor responses obtained as a result of an RFP. Many of the questions in this survey can be answered as soon as a specific vendor is selected.
- Based on the pilot program, we release[d] a request for competitive sealed proposals in early 2015 and are currently in the process of rating and selecting a final solution for our body camera program. The final selection will dictate some of the tech issues we will face, consequently those cannot be listed at this time.





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- Our Department's staffing is not ready for a full deployment of BWC. We developed a policy BEFORE we plan[ned] to begin our field test in mid-July. Much of our decision for full deployment will be driven not only on cost, but the current capacity of our IT division. The staff would have to manage/maintain the servers if we use local storage vs. the convenience of a cloud-based system. The cloud system costs, but we're still trying to weigh if it will be worth the cost in the end.

### Information Sharing and Regional Coordination

- BWC have not been addressed in a regional sense. In [our] county we are beginning discussions with other agencies, District Attorney, Public Defender and courts to be able to share digital evidence on a shared web-based platform. Currently, each agency is operating independently. More emphasis from organizations like yours would be helpful to push this understanding. Especially the court systems. The courts don't have an understanding of digital evidence storage/sharing and the massive amount coming at the criminal justice system.
- Security for sharing video, especially with public.
- Trying to identify a common platform for sharing digital evidence across the county when all agencies have different systems and providers. Competing policies between agencies when an incident includes response from more than one agency, and each is wearing a camera with a different policy. Mobile platforms in vehicles that allow for WIFI connectivity for uploading video during a shift.

### BWC Adoption Concerns

- Despite increased accountability, currently the risk and expense (involving data collection, storage, potential litigation regard editing out or leaving in aspects of digital images) of adoption make the adoption of body worn cameras problematic.
- I welcome the accountability aspects of body worn cameras. Myself and our state association has been lobbying to change the public disclosure statute in order to allow us financially and ethically to adopt their use. Currently the risk and expense (involving data collection, storage, potential litigation regard editing out or leaving in aspects of digital images) of adoption make the adoption of body worn cameras problematic. Our jurisprudence ... has not caught up with technology. This is a key challenge / flashpoint for policing over the next several years.
- Most manufacturers are not set to accommodate the size and scope of our Department.



## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

### APPENDIX A: RESPONDING AGENCIES

#### Survey Respondents

The following is a list of the 70 law enforcement agencies that responded to the survey on Body-Worn Camera sponsored by the DHS Office of Emergency Communications, in partnership with the Major Cities Chiefs and Major County Sheriffs.

Alameda County Sheriff's Office	Miami-Dade Police Department
Albuquerque Police Department	Milwaukee Police Department
Arapahoe County Sheriff's Office	Minneapolis Police Department
Arlington Police Department	Monroe County Sheriff's Office
Aurora Colorado Police Department	Montgomery County Police
Austin Police Department	Montgomery County Sheriff's Office
Baltimore County Police Department	New Orleans Police Department
Boston Police Department	New York Police Department
Charleston County Sheriff's Office	Oakland Police Department
Charlotte Mecklenburg Police	Oklahoma City Police Department
Chicago Police Department	Orange County Sheriff's Department
Columbus Police Department	Orange County Sheriff's Office
Dallas Police Department	Orlando Police Department
Dane County Sheriff's Office	Philadelphia Police Department
Douglas County Sheriff's Office	Phoenix Police Department
El Paso Police Department	Pierce County Sheriff's Department
Fairfax County Sheriff's Office	Pinellas County Sheriff's Office
Fort Worth Police Department	Pittsburgh Bureau of Police
Franklin County Sheriff's Office	Portland Police Bureau
Fresno Police Department	Prince George's County Police Department
Fulton County Sheriff's Department	Sacramento Police Department
Harris County Sheriff's Office	Salt Lake City Police Department
Houston Police Department	San Antonio Police Department
Jefferson County Sheriff's Office	San Bernardino County Sheriff
Johnson County Sheriff's Office	San Diego Police Department
Kansas City, Mo Police Department	San Diego Sheriff's Department
Las Vegas Metropolitan Police Department	San Francisco Police Department
Long Beach Police Department	San Jose Police Department
Los Angeles County Sheriff	Seattle Police Department
Los Angeles Police Department	Seminole County Sheriff's Office
Louisville Metro Police Department	Stanislaus County Sheriff's Office
Mecklenburg County Sheriff's Office	Tampa Police Department
Memphis Police Department	Travis County Sheriff's Office
Mesa Police Department	Tulsa County Sheriff's Office
Metropolitan Police Department (D.C)	Wayne County Sheriff's Office



## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

### APPENDIX B: SURVEY DOCUMENT

#### Body Worn Camera Technology Survey



#### Major Cities Chiefs and Major County Sheriffs: Body Worn Camera Technology Survey

The Major Cities Chiefs and Major County Sheriffs are administering this survey about Body Worn Camera (BWC) systems with support from the DHS Office of Emergency Communications.

The purpose of this survey is to gather data about technical issues surrounding BWC.

Your input will benefit and help shape this effort.

Thank you for your participation.

Note: Please answer each question. If a question or textbox is left blank, the survey will not continue. If you run into any problems, please call Mario Stylianou at 202-525-6421.



# Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras



## Survey Respondent Information

### 1. Respondent

Name

Law Enforcement Agency  
Name

Rank/Title

Unit with Agency

Number of Sworn officers

### 2. Please select your state/province:

### 3. What is the current status of BWCs in your agency?

- Do not intend to implement BWC program
- Intend to implement but pilot has not yet begun
- In pilot phase
- Completed pilot and are going forward with program
- Completed pilot but not proceeding with program
- Fully operational

Other (please specify)



# Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

**Body Worn Camera Technology Survey**

## Technology/Interoperability Issues

**4. What is the average number of hours of video captured per officer per day?**

**5. What video resolution will you require for your BWCs?**

- SD (360/480)
- HD (720)
- Full HD (1080)
- Not yet determined
- Other (please specify)

**6. What is the average quantity of data generated by each officer per day?**

- Less than 1 GB
- 1 - 5 GB
- 5 - 10GB
- More than 10GB
- Don't know

**7. How will officers tag and annotate BWC footage?**

- Directly into the device in the field
- Pairing a device via Bluetooth in the field
- Pairing a device via Wi-Fi in the field
- At the station after the video is uploaded
- Don't know
- Other (please specify)



## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

**8. What notes and information (metadata) will your officers add to BWC video?**

- Report number
- Case number
- Victim's name
- Suspect's name
- Not yet determined
- Other (please specify)

**9. Which of these items will be added automatically?**

- Report number
- Case number
- Victim's name
- Suspect's name
- Not yet determined
- Other (please specify)

**10. Does your current Records Management System (RMS) include automated recordings of:**

- 911 Calls
- Non-emergency calls
- Dispatch information
- Other (please specify)



## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

**11. What type of data network currently exists that could support transferring BWC video footage between various remote facilities (e.g. precincts, districts) to the main storage location (e.g. headquarters, data center, cloud provider)?**

- Optical Transport Network (owned)
- Optical Transport Network (leased)
- Microwave
- Internet Service Provider
- T-Carrier
- Ethernet Transport LAN / Transparent LAN Service (TLS)
- Don't know
- Other (please specify)

**12. Will you be required to expand/improve your current IT infrastructure?**

- Yes
- No
- Don't Know



## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

### Body Worn Camera Technology Survey



#### Required IT Infrastructure Improvements

**13. For your planned system, what will be the amount of bandwidth required?**

- 10 – 100 Gbps
- 1 – 10 Gbps
- 100 Mbps – 1 Gbps
- 10 – 100s Mbps
- 1 – 10 Mbps
- Don't know
- Other (please specify)

**14. What is not adequate at present?**

- Current storage capacity
- Current network/bandwidth capability
- Current wireless capacity
- Don't know
- Other (please specify)





## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

### Body Worn Camera Technology Survey



#### Data Storage and Management

**15. How will you upload the video data?**

- WiFi
- Bluetooth
- USB
- Docking station
- Storage card
- 3G/4G Cellular
- Not yet determined
- Other (please specify)

**16. How will the data be stored in your city/county?**

- City/county mainframe or server(s)
- Police/Sheriff department mainframe or server(s)
- Police/Sheriff department districts'/stations' dedicated servers
- Cloud service provided by BWC vendor
- Cloud service provided by other vendor
- Not yet determined
- Other (please specify)



## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

**17. What is the estimated increase in storage capacity per year (just for BWCs) considering the length of time evidence and non-evidence video footage must be stored?**

- Less than 100 GB
- 100 GB - 1 TB
- 1 TB - 10 TB
- 10 TB - 100 TB
- 100 TB - 1 PB (Petabyte)
- Greater than 1 PB (Petabyte)
- Don't know
- Other (please specify)

**18. How will your agency share video data?**

- Police/Sheriff department network
- City/County network
- Internet-based portal
- Don't know
- Other (please specify)

**19. How long does it take to completely upload data from each camera unit?**

- Less than 1 hour
- 1 – 3 hours
- 3 – 5 hours
- 5 – 7 hours
- 7+ hours
- Don't know

**20. How long will your agency retain body worn video?**

	<30 days	30-60 days	60-90 days	90-180 days	180+ days	N/A
Evidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-evidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other (please specify)



## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

**21. How much data do you anticipate will be uploaded to storage every day, taking into account the average amount of video captured, number of officers wearing cameras per shift and the number of shifts in a 24-hour day?**

- Less than 1 GB
- 1 - 10 GB
- 10 - 100 GB
- 100 GB - 1 TB
- 1 - 10 TB
- Greater than 10 TB
- Don't know

**22. On average, how many times do you need to transfer video footage evidence data to/from central data storage repository prior to trial?**

- 1
- 2-3
- 4-5
- 5+
- Don't know

**23. How does your agency currently or plan to transfer video footage?**

- By digital file transfer
- By physical media (disc, USB thumb drive, memory card)
- Via cloud access
- Don't know
- Other (please specify)

**24. What entities will you allow access to the system for sharing video data?**

- District Attorney
- City Attorney
- Internal Affairs
- FOIA unit
- Don't know
- Other (please specify)



## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

25. Will your agency be subject to FOIA release of video?

- Yes
- No
- Don't know

### Body Worn Camera Technology Survey



FOIA

26. Will your department redact videos in response to FOIA requests?

- Yes
- No
- Not yet determined
- Don't know

27. What type of equipment will be needed to process videos for court and FOIA?

- Software installed on pre-existing hardware
- Purpose built workstation
- Outsourced to vendor
- Not yet determined
- Other (please specify)



## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

### Body Worn Camera Technology Survey



#### Data Storage and Management, Continued

**28. How many additional personnel will you need to manage and maintain the BWC program?**

- No increase
- 1 to 5
- 5 to 10
- 10 to 20
- More than 20
- Don't know

**29. How proficient are your employees in video editing and processing?**

- Very proficient – No additional training required
- Proficient – Some additional/refresher training required
- Not proficient – Will require both basic and advanced training
- Not applicable
- Don't know

**30. How much money/effort do you estimate you will have to spend on training for officers that manage and process BWC video? Please rate on a scale of 1 to 5 (1 = Least, 5 = Most)**

1	2	3	4	5
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**31. Does your agency already have a digital evidence system?**

- Yes
- No
- Don't know



## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

32. Will your BWC data be integrated with any of the following?

- Computer-Aided Dispatch (CAD)
- Records Management System (RMS)
- Digital Evidence Management System
- CCTV system
- Dash cameras
- Not yet determined
- Other (please specify)

**Body Worn Camera Technology Survey**

Digital Evidence System

33. Has your agency developed policies/procedures for your digital evidence system?

- Yes
- No
- Don't know

34. Are your digital evidence protocols (collection, analysis, storage, transfer, etc) compliant with national forensic standards and guidelines for evidence?

- Yes
- No, and working towards compliance
- No, and not working towards compliance
- Don't know



## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

### Body Worn Camera Technology Survey



#### Vendors

**35. What vendors did you or will you include in your pilot?**

- 10-8 Video, LLC
- BodyVISION by L-3 Mobile-Vision
- COBAN Technologies, Inc.
- CopTrax from Stalker
- Data911
- Digital Ally, Inc.
- ONCALL Live Video Streaming
- PatrolEyes
- Primal USA
- Reveal
- Safety Vision
- SecGru Systems
- Tactical Electronics
- TASER International
- VIEVU
- WatchGuard Video
- Wolfcom
- Not yet determined
- Other (please specify)



## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

### 36. What vendor did you or will you make as your final selection?

- 10-8 Video, LLC
- BodyVISION by L-3 Mobile-Vision
- COBAN Technologies, Inc.
- CopTrax from Stalker
- Data911
- Digital Ally, Inc.
- ONCALL Live Video Streaming
- PatrolEyes
- Primal USA
- Reveal
- Safety Vision
- SecGru Systems
- Tactical Electronics
- TASER International
- VIEVU
- WatchGuard Video
- Wolfcom
- Not yet determined
- Other (please specify)





## Major Cities Chiefs and Major County Sheriffs Survey of Technology Needs – Body Worn Cameras

### Body Worn Camera Technology Survey



Comments

37. Do you face other technology issues and concerns that you wish to add to this survey?





# **Model Police Policy Body Worn Cameras**

*An Aid for Prosecutors*

May 2016



CALIFORNIA  
DISTRICT  
ATTORNEYS  
ASSOCIATION



## INTRODUCTION

This model policy is created as a guide to prosecutors who are working with law enforcement agencies to implement body worn cameras. The policy includes “*Use Notes*,” which present and consider viable alternative policies that may exist for a particular issue. Also accompanying the model policy is a checklist outlining the many issues that should be addressed in a body worn camera policy.

This model evolved from a policy originally created by a subcommittee of the CDAA Foundation, headed by David Angel of the Santa Clara County District Attorney’s Office. Subcommittee members include Michael Cabral (Riverside County District Attorney’s Office), Damon Mosler (San Diego County District Attorney’s Office), and Shawn Randolph (Los Angeles County District Attorney’s Office), with significant contributions from Julie Selsberg (past Chair of the Colorado Prosecutors’ Best Practices Committee) and Kristine Hamann (Executive Director and Founder of Prosecutors’ Center for Excellence).

# MODEL POLICY FOR BODY WORN CAMERAS

## PURPOSE AND SCOPE

Law enforcement agencies electing to employ Body Worn Cameras (BWC) should use a consistent protocol. The purpose of this protocol is to provide recommendations and guidance. It recognizes that each law enforcement agency is unique and that this policy is only intended to be used as a foundation from which individual policies may be derived. All departments are strongly encouraged to have a policy and to review the policy with their local prosecutors.

BWCs will assist and complement officers in the performance of their duties. When BWCs are used to record certain enforcement activities, they can provide a valuable visual and audio record of the incident. It is anticipated that these recordings will:

1. Provide an investigative record for the law enforcement agency.
2. Provide evidence regarding an incident to which the officer responded.
3. Assist in report writing.
4. Provide a more transparent record of encounters with law enforcement and enhance community trust.
5. Hold officers accountable for their conduct and protect officers from unfounded allegations of misconduct.
6. Reduce litigation in the criminal justice system.

## USE OF BODY WORN CAMERAS

1. **Before Going Out on Patrol:**
  - a. **Care of the Camera:** Care of the issued BWC is subject to individual departmental policy, and it shall be operated and maintained according to the manufacturer's instructions and recommendations.
  - b. **Testing Equipment:** At the beginning of each shift, officers shall determine whether their recording equipment is working satisfactorily. If a problem is found, the officer shall arrange for repair or adjustment. The officer shall also ensure that the recorder has sufficient memory and battery power to complete his or her shift. If the system is malfunctioning, the officer shall immediately report this to his or her supervisor.
  - c. **Inoperable Camera:** If a BWC malfunctions or is inoperable and the officer cannot utilize a BWC during his or her shift, this shall be noted in all written reports so that there is a contemporaneous record.

- d. **Positions of the Camera:** Each officer shall ensure that the BWC is properly worn and positioned to record events.
- 2. **Use of the Camera During a Shift:**<sup>1</sup>
  - a. **Mandatory Recording Starting Prior to an Incident:** Every officer shall make every reasonable effort to activate the BWC **prior** to making contact in any of the following incidents where recording shall be the rule and not the exception. If circumstances prevent an officer from recording, they must be noted along with an explanation in any subsequent report. If the officer decides to turn off a camera during an incident, the officer should state the reason on the recording when possible.
    - i. Any enforcement-oriented or investigative encounters to confirm or dispel a suspicion that the person may be involved in criminal activity. This includes detentions, vehicle stops, pedestrian stops, and consensual encounters.
    - ii. Searches pursuant to probation, parole, post-release, community supervision, mandatory supervision, or consent.
    - iii. Service of search warrants or arrest warrants.
    - iv. All suspect statements pursuant to departmental policy regarding the recording of suspect statements.<sup>2</sup>
  - b. **Other Mandatory Recordings:** Officers shall make a reasonable effort to record non-enforcement contacts should they become confrontational, assaultive, or enforcement oriented.
  - c. **Discretionary Recording:** It is recommended that officers record:
    - i. Witness interviews pursuant to departmental policy on recording witness interviews and mindful of witness safety.
    - ii. Non-enforcement events when an audio/video record could have value as evidence.
  - d. **Unauthorized Uses:** Body worn cameras should not be used:
    - i. Outside the scope of official business.
    - ii. When entering a public locker room, changing room, restroom, doctor's or lawyer's office, or other place where individuals unrelated to the investigation are present and would have a reasonable expectation of privacy. However, exigency, consent, or other factors may allow recording.
    - iii. To document conversations with other officers unless incidental to authorized recordings.
  - e. **Terminating the Recording:**<sup>3</sup> Once activated, the recording should not be intentionally terminated until the conclusion of the encounter unless tactical, safety, or practical reasons dictate otherwise. Anytime the recording is terminated early, the reasons shall be documented in writing or on the recording. If no police report is filed for the recorded encounter,

the reasons for the early termination of the recording shall still be documented contemporaneously in some manner.

---

<sup>1</sup> *USE NOTE: There is a range of legitimate policies for deciding when an agency should require recording. Most departments will want to begin recording at the beginning of any enforcement-oriented encounter. Others will opt for an even broader policy of recording. Some may even want to record all events based upon invariable objective criteria, such as every time an officer leaves the squad car. However, as the police officer's discretion is reduced, the risk of interfering with beneficial police interactions increases. If the camera is always running, civilians may feel very reluctant to approach the police. Furthermore, interaction between officers will be disrupted if they know that every word they say is recorded. On the other hand, no policy and too much discretion can result in inconsistencies between officers and the failure to record important events.*

<sup>2</sup> *USE NOTE: Departments will have a range of policies governing when suspect statements should be recorded. In general, suspect statements should be recorded, but there may be circumstances when that is inadvisable. For example, some suspects will agree to give a statement only if it is not recorded. In other circumstances, public safety will weigh against recording the statement. It is important that the officer comply carefully with the departmental policy so that the absence of a recording can be explained by reference to that policy.*

<sup>3</sup> *USE NOTE: There is a range of legitimate options concerning when an agency should allow the termination of recordings. Some agencies may wish to limit officer discretion and mandate recording until the encounter has officially terminated. For example, some agencies may wish to mandate recording until a suspect is released or booked. However, this practice could be very expensive and restrictive. If multiple officers are at the same event, such as maintaining a perimeter around an empty home while awaiting a search warrant, it is probably unnecessary to mandate every officer to record.*

- 3. Consent for Recording:**<sup>4</sup> Officers are not required to advise or obtain consent for recording a person provided the recording is:
- a. In a public place.
  - b. In a location where there is an expectation of privacy but the officer is lawfully present, for example, in a home being searched pursuant to a search warrant.

---

<sup>4</sup> *USE NOTE: Individual states may have laws that limit recordings without informing or attaining consent from all parties. In addition, many agencies may decide that even though their officers are not required to inform and gain consent prior to recording, it may be a best practice to do so in appropriate conditions.*

- 4. Uploading Data:**
- a. The BWC data should be uploaded in a timely manner by properly trained and authorized personnel according to departmental policy.
  - b. No person shall tamper with or alter the BWC data except as authorized by departmental policy.
  - c. No stored image or other data may be copied, destroyed, or disseminated for unauthorized reasons.

- d. The data shall be stored in a secure manner with all reasonable precautions taken to prevent unauthorized access and tampering.<sup>5</sup>

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<sup>5</sup> *USE NOTE: BWC recordings are real evidence and may often be the most important evidence in a case. Agencies must take the same care to secure the integrity of this evidence as with any other form of evidence in a criminal case. Particular care must be taken if using private vendors to provide off-site storage to ensure that this evidence is as secure as if the agency were storing the evidence itself. One solution might be to immediately transfer BWC recordings that are being used for criminal cases to a local file.*

## **5. Documenting Recordings:<sup>6</sup>**

- a. Officers shall note in arrest and other reports when BWC records were made associated with that incident.
- b. The BWC identifier shall be noted in the report for any incident where a report is taken and a BWC was activated.
- c. The uploaded BWC data must be tagged in such a manner so that it can be accurately associated with any associated police report.
- d. The uploaded BWC recording must be associated with the date and time of recording and location to assist in later retrieval.

---

<sup>6</sup> *USE NOTE: Prosecutors must have the ability to gather all recordings related to a criminal incident or investigation. Special care must be taken when multiple agencies and multiple BWC vendors are involved in the same investigations to ensure that all recordings are accounted for.*

## **6. Review and Dissemination of the Body Worn Camera Data**

- a. Recordings may be reviewed in any of the following situations:
  - i. By officers viewing their own recordings pursuant to departmental policy.<sup>7</sup>
  - ii. By a supervisor investigating a specific incident.
  - iii. By a department detective or investigator who is participating in an official investigation, such as a criminal investigation, a personnel complaint, or an administrative inquiry.
  - iv. By others with the permission of a supervisor if they are participating in an official investigation or for other official reasons.
  - v. By media personnel in accordance with the law and with the permission of the chief of police, sheriff, or his or her designee.<sup>8</sup>
    1. Due to the heightened privacy concerns associated with video recording, any BWC recording disclosed to the media may be edited to preserve the privacy of individuals unrelated to the case who were captured by the BWC recording when they had a reasonable expectation of privacy.



- vi. The department shall retain a list of all persons who have requested and/or been given access to a specific recording.
- b. BWC recordings related to criminal charges shall be treated the same as other forms of direct evidence which must be provided to the prosecution and are subject to discovery and disclosure in accordance with law. Prosecuting agencies must be made aware of all BWC recordings when they pertain to any criminal case so they can comply with their discovery obligations. Similarly, BWC recording evidence must be secured and subject to chain of custody policies to protect the integrity of the evidence.
- c. Any person authorized to review the recording can only copy or disseminate it for official purposes pursuant to department policy.<sup>9</sup>
- d. Due to the heightened privacy concerns associated with video recording, when appropriate, court orders and/or redaction limiting the public dissemination of the BWC recording may be secured prior to distribution.

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<sup>7</sup> *USE NOTE: There is divergent opinion as to when officers should be allowed to review recordings when there has been an officer-involved shooting or any use of force resulting in serious injury. Some departments prohibit officers from reviewing such footage until after they have given an initial statement. It is recommended that the department have a transparent policy on the viewing of an officer's recording.*

<sup>8</sup> *USE NOTE: The dissemination to the media of recordings from BWC can play a vital role in reassuring the public after a controversial enforcement action. Great care must be taken to ensure that recordings are not released prematurely in a manner that could jeopardize ongoing investigations and prosecutions. However, agencies must have a consistent policy so that they are not accused of only releasing the recordings that they deem helpful.*

<sup>9</sup> *USE NOTE: In general, all data associated with a criminal or civil case should only be disseminated in a manner consistent with existing policy on the dissemination of evidence. In some cases, an agency may wish to disseminate footage from a BWC to the general public in order to confirm or dispel public concern about a police action. An agency should consider a policy of when, and if, it will release footage in non-criminal cases.*

## 7. **Retention and Purging:**<sup>10</sup>

- a. Recordings relating to incidents where criminal charges are filed shall be retained for the period set by the departmental policy on evidence retention.<sup>11</sup>
- b. BWC recordings relating to potential criminal charges that are not filed shall be retained for at least one year after the statute of limitations has expired.
- c. BWC recordings relating to complaints against an officer, whether externally or internally generated, shall be retained in accordance with applicable law or until the matter has been resolved, whichever is later. Note: a civil action against an officer may trigger additional retention requirements.
- d. BWC recordings of routine events that are not associated with either a criminal investigation or an Internal Affairs Complaint shall be retained for 90 days.<sup>12</sup>

- e. BWC recordings shall be systematically purged after the retention period has expired.

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<sup>10</sup> *USE NOTE: Different jurisdictions will have different rules governing retention. However, in general, it is advised to distinguish data from a BWC that is associated with a case and data that is not. Data that is associated with a case should be attached to that case and kept in accordance with how other evidence is retained. Data that is not associated with a case could be kept for a much shorter period of time.*

<sup>11</sup> *USE NOTE: In general, recordings from a BWC that are associated with a criminal case should be attached to the criminal file and kept according to departmental policy on the retention of evidence. A good guideline would be to keep the evidence for some period of time until the last of these events has occurred:*

1. *The matter is resolved;*
2. *The defendant has been released from custody due to the completion of the sentence and completed any term of post-custody supervision such as probation, parole, mandatory supervision, or post-release community supervision;*
3. *The appeal and post-conviction motions are final; or*
4. *The BWC recording may be destroyed earlier than this provided that the district attorney or other prosecuting agency, all defendants, and the relevant counsel for legal representation for the law enforcement agency which made the BWC recording are notified and given time to object prior to any destruction of the BWC recording related to a criminal incident.*

<sup>12</sup> *USE NOTE: Some jurisdictions may have laws governing the minimum and maximum time a recording made by a government agent must be retained.*

## **8. Request for Deletion of Accidental Recordings**

- a. In the event of an activation of a BWC where the resulting recording contains personal and/or private conversations of an officer unrelated to any ongoing criminal or internal affairs investigation, or otherwise has no valid official purpose, and which has no apparent evidentiary or investigatory value, an officer may request the deletion of the accidentally recorded BWC file by submitting a written request to the system administrator. If the chief of police, sheriff, or his or her designee, determines that a BWC recording contains personal and/or private conversations of an officer unrelated to an ongoing criminal or internal affairs investigation, or otherwise has no valid official purpose, and which has no apparent evidentiary or investigatory value, it may be deleted pursuant to written policy.
- b. In the event of an activation of a BWC where the chief of police, sheriff, or his or her designee, determines that a BWC recording contains personal and/or private conversations or images of any individual unrelated to an ongoing criminal or internal affairs investigation, or otherwise has no valid official purpose, and which has no apparent evidentiary or investigatory value, it may be deleted pursuant to written policy.

## Checklist for Prosecutors to Review Body Worn Camera Policies

May, 2016

The Law Enforcement Agency Policy contains:

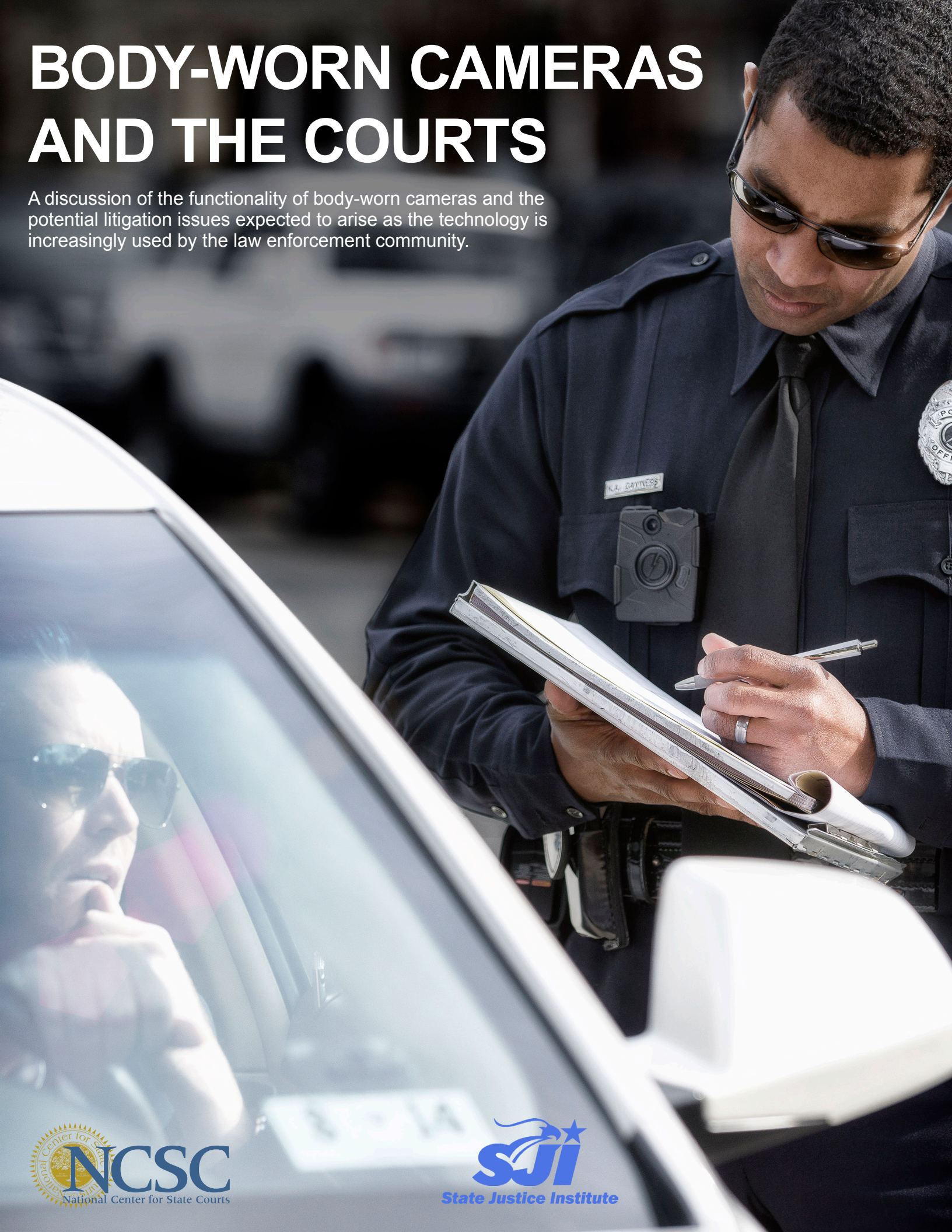
- A “Purposes and Scope” section
  - Limits BWC to law enforcement purposes
  - Prohibits unauthorized use
- Training Officers
  - Policy and use of BWCs
- Pre-use Requirements
  - Check BWC’s operability
  - Document any problems or inoperability
  - Decide who will wear the BWCs and how they will be assigned
  - Placement of cameras
- Camera Usage Specifications
  - When is recording mandatory?
    - Upon leaving squad car?
    - Upon any enforcement or investigative encounter?
    - Upon all citizen contacts?
  - When is recording discretionary?
    - Upon all citizen contacts or only adversarial citizen contacts?
    - Upon citizen contacts with agitated or disturbed citizens?
  - Consent recordings
    - Is consent required prior to activation?
  - When is recording prohibited?
    - Locker rooms and changing areas
    - Doctors’ and lawyers’ offices
    - Fellow officers without official cause
    - When unauthorized
  - When to terminate recording
    - Upon completion of arrest?
    - Upon return to station?
    - When no reason to expect further incidents of evidentiary value?
    - Upon citizen request?

- Requirement to document reasons for terminating recording?
  - Other areas for usage policies to cover:
    - Discretion for officer to deviate from policies when articulable exigencies exist
      - Documenting deviations required
    - Recording witness statements
    - Recording suspect statements
    - Recording victim statements
      - Special considerations for sexual assault, domestic violence, and juvenile victims
- Uploading data
  - How and when data gets uploaded from BWC
  - Prohibit unauthorized editing, copying, and distribution
- Data Storage
  - Anticipate data storage demands
  - Provide adequate security for the data
  - Ensure the storage plan allows LE complete access to the data
- Documenting Recordings
  - All officers required to document use of BWC at any given incident or scene
  - Provide a mechanism for ensuring that prosecutors receive all recordings of a particular incident or scene
- Reviewing BWC Recordings
  - When officers are allowed to review their own recordings
  - When officers are allowed to review others' recordings
  - When supervisors are allowed to review recordings
  - Policy for incidents involving officer-involved shootings or other use-of-force incidents
  - Treat BWC recordings consistently with how other physical evidence is treated
  - Prohibit unauthorized review
- Dissemination/Discovery for Prosecutors
  - Recordings from criminal cases must be secured and provided to the prosecution as is any other real evidence

- Allow the agency's prosecutor's offices full access to evidence associated with a criminal case that is submitted for prosecution
- Process for prosecutors to obtain the information
- Dissemination for Others
  - Clear rules for disclosure and dissemination to the media and general public
    - Redaction
    - Conforming to state open records laws
  - Prohibit unauthorized disclosure, reproduction, or editing
- Retention
  - Clear retention policy consistent with evidence retention policies
    - Specified retention periods for:
      - Criminal cases
      - Civil cases
      - Internal investigations
  - Clear guidelines for destruction of recordings
    - When it is not evidence in criminal, civil, or internal investigation
    - When inadvertent recording that captures private encounter has no evidentiary value

# BODY-WORN CAMERAS AND THE COURTS

A discussion of the functionality of body-worn cameras and the potential litigation issues expected to arise as the technology is increasingly used by the law enforcement community.



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# Body-Worn Cameras and the Courts

A discussion of the functionality of body-worn cameras and the potential litigation issues expected to arise as the technology is increasingly used by the law enforcement community.

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# Introduction

In response to the August 9, 2014 shooting death of Michael Brown by Officer Darren Wilson in Ferguson, Missouri, a citizen petition was posted on the White House website, [petitions.whitehouse.gov](http://petitions.whitehouse.gov). It asked people to sign if they supported a law requiring all state, county, and local police to wear body-worn cameras, or “BWCs.” Within a few weeks, the petition collected 150,000 signatures. The response to this petition received national mainstream media attention. Roy L. Austin, Jr., deputy assistant to the president for the Office of Urban Affairs, Justice and Opportunity in the Domestic Policy Council, responded to the petition on behalf of the administration. He noted that research suggested that BWCs can have significant benefits to the community, which can include:

- evidence that both officers and civilians acted in a more positive manner when they were aware that a camera was present;
- new opportunities for effective training of law enforcement officers presented by the use of cameras; and
- useful evidence of interactions was often captured on video.

However, he also stated that the cost of this technology cannot be ignored, and there are some significant unanswered questions that need to be addressed, such as:

- What is the most effective type of camera (vehicle, body, weapon)—and if body, where is it best placed (lapel, ear, belt)?
- What are the privacy implications of having officers record interactions with the public?
- When should cameras be turned on?
- Does every officer on a force need a camera?
- How long should video data be maintained and who should have access to it?
- What is the impact on community relationships?

On December 2, 2014, Shaun Donovan, the director of the White House’s Office of Management and Budget, announced that a proposed, three-year

\$263 million Community Policing Initiative would include an investment package that would increase the use of BWCs. This was a significant statement from the Obama Administration and demonstrated the administration’s view that BWCs could be a useful tool in providing greater officer accountability and promoting more trust in law enforcement by the general public.

On September 21, 2015, the Department of Justice announced over \$23 million in federal funding to support a BWC pilot program, which will support 73 local and tribal law enforcement agencies in 32 states. In their press release, they noted that this was done as a “part of President Obama’s commitment to building trust and transparency between law enforcement and the communities they serve.” This development is not surprising as the Obama Administration had previously indicated a willingness to deploy BWC technology.

It is reasonable to assume that the cumulative effect of public support for officers using BWCs, and the federal government’s willingness to provide funding for a significant pilot program, suggests that BWCs will become an increasingly common piece of law enforcement equipment. In fact, the author is of the opinion that within the next five to ten years, the vast majority of law enforcement officers nationally will be equipped with and required to wear and use BWCs.

# BWC Systems and Functionality

## HOW BODY-WORN CAMERAS WORK

Currently, a number of companies offer BWC products to law enforcement. In April of 2015, the U.S. Department of Homeland Security released the *Body-Worn Cameras for Law Enforcement Assessment Report*. The report looked at the primary model offered by seven different companies and assessed the operational characteristics of each. However, it should be noted that other, smaller companies offer these products as well.

BWCs can be attached to a variety of locations on the officer's body, depending on the model being used. This may be on the head area, attaching to the officer's hat, glasses, or ear, or on the officer's body, attaching to the shirt, lapel, or badge. The placement of the camera is important for three reasons. First, it impacts the areas that will be recorded on the video. A head-mounted unit will capture the areas where the officer is looking, while a body-mounted unit will only capture video in front of the officer's body. People tend to move their heads more frequently than their bodies, which can affect the quality and evidentiary value of the video. Second, the placement can impact sound quality for the same reasons. And third, the general assumption with body-worn cameras is that law enforcement wants the public to know and be aware that they are being recorded. There is some limited but solid information that suggests that the public tends to be better behaved when they are aware they are being videoed. In fact, many of the models sold either have a steady red light or a flashing light to signify that the model is on for this reason. So, the BWC should be conspicuously placed and large enough to be noticeable.

BWCs are designed to be turned on and off by the officer with each interaction with the public. There are several practical reasons for this. First, most models do not have the battery or video capacity to run for eight hours. Additionally, from a data-retrieval point of view, it is better to have a number of smaller clips of video than one 8-to-12-hour shift. The officer also needs to be able to turn the camera off when handling personal business, or perhaps based on the request of a member of the public.

## CATEGORIZATION OF THE VIDEO

The officer wearing the body camera is responsible for classifying each video clip, which will be done pursuant to departmental policy. This is a critical function and a point in the process where error or malfeasance may later get litigated. Policies vary, but generally the officer is classifying each interaction as routine public interaction (no arrest), misdemeanor arrest, or felony arrest. An actual policy will likely have many more categories. However, the categorization is important because it will be directly linked to the department's retention policy. So, the retention policy may only require video from routine interactions to be maintained for 10 days, while felony arrests may have a 5-to-10-year retention policy. An officer that either inadvertently or intentionally misclassifies a citizen encounter may cause that video to be "lost or destroyed." (This report will discuss the legal issues surrounding "lost or destroyed" evidence at length.) It is also possible that the video is appropriately classified but the case identifier that the officer attaches to the video is either completely wrong or has a sufficient error in it that makes future retrieval of the video impossible. Depending on the BWC being used and the available technology, the officer may be able to enter the classification information using an in-car computer or smart phone immediately after stopping the camera from recording. Alternatively, and most commonly, the officer may have to wait until the completion of a shift to input this information. This adds to the risk that error could creep into the process, causing videos to be unavailable in court when needed.

## HOW BWCS ARE SOLD

Most BWCs come as a system. Law enforcement departments buy a number of units, which includes their docking stations and a cloud-storage package. Departments may also buy a maintenance package, an automatic-update package, and technical support. It is important to note that cloud storage is expensive. To keep the costs affordable, departments have officers classify citizen encounters as noted above and will delete that video pursuant to departmental policy. The authority to delete will be or should be limited to a few officers or civilian personnel.

When an officer completes a shift and returns to the department, with most models of BWCs the officer puts the camera unit into a docking station. The docking station both charges the battery for the next shift and uploads the video clips to cloud storage. If the clips have not been previously categorized, the officer can do it at this point in the process. It is important to note that a field officer has no ability to delete the video. If an officer had engaged in improper conduct and wanted to destroy the video, the only options are to destroy or discard the camera itself.

## PROPRIETARY SOFTWARE

Most BWCs come with some form of proprietary software. Although the operational characteristics may vary slightly by company, these products generally allow for cloud storage of all video collected by a department. The original video can be retrieved by authorized personnel via streaming video. (It is a controversial topic in the law enforcement community whether or not the officer wearing the BWC should be given access to the video before giving a statement in a police-involved shooting or a case with other serious public injury.) Authorized personnel may also edit the video, but they are actually editing a copy, and they never have the ability to change or alter the original. Authorized personnel may include prosecutors and the defense bar.

Imagine that an officer talks to a drunk-and-disorderly person on a street corner for 20 minutes, and then the individual punches the officer. In a prosecution for “battery on an officer,” the prosecutor may want to just show the jury the 15 seconds before the punch and the punch itself. That prosecutor could create a video clip depicting that. The counsel for the defendant may agree that the entire video does not need to be shown to the jury but may want to show two minutes of video leading up to the punch. This might be to develop a self-defense claim. The defense attorney could create an edited version showing what the defense thinks is relevant. Those clips could both be shown to a judge or jury while the original is still available if needed.

One issue that comes up with propriety software is the necessary format the video should be in when it

is moved into evidence. That issue will be addressed further into this report.

## LAW ENFORCEMENT BWC POLICIES

Law enforcement BWC policies play an important role from a legal perspective in the videos they collect, or the lack thereof. The International Association of Chiefs of Police’s (IACP) National Law Enforcement Policy Center, in an April 2014 policy paper titled “Body-Worn Cameras,” states:

The usefulness of BWCs has been clearly demonstrated; however, their utility is realized only when they are recording. Agency policy should require that officers activate their BWC whenever they make contact with a citizen in the course of conducting official police business.

The Bureau of Justice Assistance’s *Body-Worn Camera Toolkit* has a number of BWC policies from police departments around the country. All of the policies reviewed require officers outfitted with BWCs to activate them in all citizen encounters, but most of the policies have exceptions to this requirement. However, the policies also have another important function. They establish both the categories that officers need to use in cataloging video clips and the retention times based on each category, for example, routine, 10 days, misdemeanor arrest 1 year, felony arrest 5 years, etc. These retention policies can be a very important consideration for courts when determining if there was police malfeasance if video evidence is lost. The policies suggest that from a law enforcement perspective, BWCs’ value in protecting individual officers from citizen complaints, lawsuits, or both is at least as important as their value to collect videos for use as evidence. For some departments, the protection from liability is the paramount reason that they purchase BWC technology. This is an important point because it can explain the thinking behind aspects of departmental BWC policies.

## LIMITATIONS TO BWC TECHNOLOGY

There are some significant limitations to BWC technology. First, by design it shows events from the officer’s perspective. Under the best of circumstances, the video will not be Hollywood quality and

may contain shaky images, muffled sound, and unrecognizable images in some lighting situations. The cumulative effect may be that value of a given piece of evidence may be minimal in some circumstances. Second, police departments have exposure to state-level FOIA requests, subject to a number of exceptions. Complying with an FOIA request can be a significant burden even under the best of circumstances. In some situations, police must edit the video before it can be released. For example, a video may contain images of a person protected by a rape-shield statute or a person that is functioning as a confidential informant. In the past, a technician needed to manually blur a face in each frame before a video could be released. As video is commonly shot at 30 frames per second, a two-minute video becomes a monumental task to redact. The BWC industry is aware of this of this issue. At least one company now has “object recognition” technology. Under optimal circumstances, the object, a person, license plate, etc., can be blurred once, and the software will blur it in the rest of the frames. However, the technology may only be marginally effective when the video was shot in low-light conditions or other objects pass in front of the object being blurred.

## **AUTHENTICATION AND PUBLICATION OF VIDEO EVIDENCE**

Photographs have been admitted into evidence for more than a 100 years. Video recordings have been admitted into evidence since long before the existence of BWCs. The law requires that before a photograph or a video is admitted into evidence and published to the jury, the party offering the evidence must prove that the evidence in question is what they claim. This is a process that judges and lawyers refer to as “authentication.” Authentication can only be done in one of two ways: “specific identification” or “chain of custody.”

Specific identification can be used when a witness is present and saw whatever is depicted in the photograph or video. For example, a coroner might testify that he or she saw John Doe when he was brought to the morgue with a gunshot to the head. A prosecutor may hand the coroner a photo and ask if the picture accurately depicts the condition of John Doe’s head

when he arrived. Assuming the coroner answers affirmatively, the picture has been authenticated, will be admitted into evidence, and shown to a jury. The exact same process is routinely used in courtrooms across the nation for video evidence. With specific identification, it is not important to present or even know who took the photograph or video or where it was physically located from the time it was taken until the trial.

Chain of custody, by contrast, requires the party offering evidence to provide testimony of each person that handled the evidence before trial to try to show an unbroken chain. The purpose of developing a chain of custody is to demonstrate by the testimony of each individual that the item was unaltered while it was in their care and control. Although it might be possible to demonstrate a chain of custody for a piece of physical evidence such as a bag of cocaine, it is nearly impossible when cloud storage is involved. Therefore, to authenticate a BWC video, a witness to the events will testify that they saw what transpired at the scene of the alleged crime and the BWC video accurately depicts what they saw happen.

Additionally, the practice in the vast majority of jurisdictions across the country makes the party offering the video evidence responsible for appearing at the hearing or trial with it and arranging for it to be played. In some modern courtrooms, the court may have the proper equipment available. In other courts, the parties may carry the required equipment into the courtroom to show the video. Regardless, it is the party’s responsibility to ensure that the appropriate technology is available to display their evidence. Video evidence may be brought to court on a thumb drive, DVD, CD, VCR tape, etc. It might even get preloaded into the court’s system to display to the judge or jury. However, a physical item that contains the video will be moved into evidence and accepted in evidence. This is a very important point as it relates to videos from BWCs that have been stored in a cloud environment. Although it might be possible to live stream a BWC video directly from its cloud-based environment to show to the judge or jury, the current rules of admission of evidence do not allow parties to move a data stream into evidence.

There may be a time in the not so distant future when parties can upload their BWC videos (or other videos) into the court's case management system. They could then ask a court employee to play the video at the appropriate time, and once the video was admitted, it would be included in the electronic case file just like an electronic document. However, this would be a significant paradigm shift in responsibility, and it is technologically out of reach for most jurisdictions.

## **FORMAT AND CONVERSION**

As the parties are required to download BWC videos out of proprietary software and put those videos on a physical storage device, formatting and data conversions become important issues. Most BWC software will allow authorized users to download videos into popular video formats, such as .avi or .mov. Alternatively, it can be downloaded in its native format on to a storage device, and a free player can be downloaded and saved to the storage device as well. Some states mandate the formats that videos must be in to be admissible. This standardization makes sense so others may readily access the video. However, there is a risk that the required conversion will alter the images or the speed. Arguably, a video that is slightly altered may still accurately depict the events in question. However, the court system does not want to encourage evidence to be altered, even if that alteration was very slight. The alternative is to use the player provided by the BWC company. These players come as executable files and present a myriad of compatibility and security issues.

# Legal Impacts on the Courts

## LOST AND DESTROYED EVIDENCE

Although BWCs may provide a partial solution to regaining the public's trust in law enforcement, the technology will have impacts on the state court system. Due to number of videos that will be collected by law enforcement departments, the labeling or classifying of each video encounter, and the need to delete video due to storage limitations, there will inevitably be cases in which video that was taken and classified by an officer will be lost or destroyed before being examined by the defendant or presented in the case. Lost-and-destroyed-evidence cases are not new or novel as they relate to all kinds of evidence. In fact, there is a substantial body of caselaw on the topic. However, the critical issue being addressed in all these case is what benefit or presumption is attributable to the defendant when evidence is lost or destroyed. States have taken varying approaches when answering this question.

## ARIZONA V. YOUNGBLOOD

The U.S. Supreme Court issued an opinion that addresses lost or destroyed evidence in *Arizona v. Youngblood*, 488 U.S. 51 (1988). Although the case is more than a quarter-century old, it is a seminal case that is still followed in a number of states. Factually, a young boy was sexually assaulted. Law enforcement collected the boy's clothing for future analysis; however, the clothing was neither refrigerated nor frozen to preserve any biological samples that may have been present. After Mr. Youngblood was arrested, a state criminologist made an unsuccessful attempt to determine the blood type of samples on the clothing in an effort to develop a better case against the defendant. Expert testimony given at trial demonstrated that timely performance of tests with properly preserved semen samples could have produced results that might have completely exonerated the defendant, who claimed that the boy had mistakenly identified him. Although the state trial court instructed the jury that if they found that the state had destroyed or lost evidence, they might "infer that the true fact is against the State's interest," the jury found the defendant guilty as charged. Although finding no implication of bad faith on the part of the state, the Arizona Court of

Appeals reversed, reasoning that when identity is an issue at trial and the police permit the destruction of evidence that could eliminate the defendant as the perpetrator, such loss is material to the defense and is a denial of due process.

The United States Supreme Court reversed the Arizona Court of Appeals. They held that unless a criminal defendant can show bad faith on the part of the police, the state's failure to preserve potentially useful evidence does not constitute a violation of the due-process clause of the United States Constitution's Fourteenth Amendment. They also indicated that the failure of the law enforcement to refrigerate the boy's clothing and to perform tests on the semen samples could, at worst, be described as negligent; that none of this information was concealed from the defendant at trial; and that the evidence was made available to the defendant's expert, who declined to perform any tests on the samples.

The *Youngblood* case sets an almost impossible bar for criminal defendants seeking to establish a benefit from the loss of evidence that was in the state's custody. They either need to prove that the state acted in bad faith in losing or destroying evidence, or they would need to show that missing evidence contained something that would have been exculpatory. At a practical level, proving the latter would be almost impossible. In an ironic twist to this seminal case, which makes it very difficult for criminal defendants to get any benefit from evidence that is lost or destroyed, in 2000 the boy's clothing was retested for DNA using more modern techniques. Mr. Youngblood was exonerated when his attorneys were able to demonstrate that the bodily fluids on the boy's clothing belonged to a third party. This DNA was compared with a DNA database, which led to the arrest of Walter Cruise. Mr. Cruise was serving a sentence in Texas at the time, but he was tried and convicted of the sexual assault. He was sentenced to 24 years. In 2007, Youngblood died.

Many states follow the reasoning developed in *Youngblood* and interpret their state constitutions in ways that are consistent with the case. However, there are a number that do not follow *Youngblood* (see Appendix A, which depicts each state's lead



cases on lost and destroyed evidence and whether the state follows *Youngblood*).

## **OTHER TESTS FOR LOST OR DESTROYED EVIDENCE**

### **CONNECTICUT: FOUR-PART BALANCING TEST BASED ON STATE CONSTITUTION**

The Supreme Court of Connecticut addressed a missing-evidence case in *State v. Asherman*, 478 A.2d 227 (1994). Mr. Asherman was tried on the charge of murder but convicted of manslaughter. Factually, the state alleged that the defendant murdered a friend by repeatedly stabbing him. At the time of the defendant's arrest, a bloody key chain was removed from the pocket of his blue jeans and seized by the police. It would become a critical piece of evidence at the defendant's trial. The state tested the blood on the key chain and was able to determine it was human. However, all of the blood evidence was consumed in this process, and the defendant was unable to conduct any independent blood testing. The defendant's principal argument was that he should have been able to test the blood to see if the blood type was consistent with the victim's, and he averred that as a medical student, he was exposed to human blood routinely.

The Supreme Court of Connecticut announced a four-part test to determine whether the defendant's trial was fair based on due process in light of blood evidence being destroyed during the state's testing. The test involved:

- the materiality of the missing evidence;
- the likelihood of mistaken interpretation of it by witnesses or the jury;
- the reason for its nonavailability to the defense; and
- the prejudice to the defendant caused by the unavailability of the evidence.

However, the defendant offered no evidence, nor made any offer of proof, that the amounts of blood on the key ring were sufficient, if properly tested,

to establish blood type. In the absence of such evidence or offer, the defendant's claim was speculative. Furthermore, the defendant does not challenge the state's assertion that the testing of the samples necessarily consumed each sample. Based on those facts, the appeals court concluded that the destruction of evidence in this situation did not impact the defendant's right to a fair trial.

This outcome of this case does not diminish the importance of the test created by the court. The Supreme Court of Connecticut made it clear that the Asherman balancing test is based on the Connecticut Constitution in *State v. Morales*, 657 A.2d 585 (1994). Additionally, the test has been recently cited to favorably by the Appellate Court of Connecticut in *State v. Walker*, 82 A.3d 630 (2013).

### **TENNESSEE: BALANCING TEST BASED ON STATE CONSTITUTION'S DUE-PROCESS CLAUSE**

The Supreme Court of Tennessee considered a lost-or-destroyed-evidence case in *State v. Merriman*, 410 S.W. 3d 779 (2013). Ms. Merriman was charged with driving under the influence, and an array of related charges, following a pursuit. The arresting officer's car was equipped with an in-car video-recording system. Following the arrest and while the car was back at the station, the arresting officer reviewed the video recording. However, for an unknown reason the hard drive was not removed, logged into evidence, and securely stored as per the departmental policy. Two days before the trial, the defense moved to dismiss the indictment based on the missing video. The motion was granted, and the state appealed.

The Tennessee Supreme Court based its decision on the due-process clause in the Tennessee Constitution. They found that the state's duty to preserve evidence is limited to "constitutionally material" evidence, which they described as "evidence that might be expected to play a significant role" in the suspect's defense. If a trial court finds that the state failed in its duty to preserve constitutionally material evidence, the trial court must consider the following factors to determine the consequences of that failure:

- the degree of negligence involved;
- the significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains available; and
- the sufficiency of the other evidence used at trial to support the conviction.

Based on applying the above test to the facts of Ms. Merriman's case, the Supreme Court of Tennessee determined that the trial court did not abuse its discretion by dismissing the case based on the missing video recording.

### **OHIO: BAD-FAITH DETERMINATION BASED ON CARELESS LAW ENFORCEMENT BEHAVIOR**

The Court of Appeals of Ohio, Sixth Appellate District, rendered an opinion in a lost-or-destroyed-evidence case in *State v. Durnwald*, 837 N.E 2d 1234 (2005). Mr. Durnwald was arrested for impaired driving by a state trooper. There was a video recording of the defendant's field sobriety testing, and the trooper making the arrest had previously reviewed it. However, before the tape was placed in the evidence locker and while it was still in the car, police cadets were left unattended in the cruiser. In some unexplained way, the tape was recorded over, destroying the pertinent parts of the video.

The Court of Appeals of Ohio stated, "this court finds it incredible that such 'accidental' erasures continue to occur." They additionally stated, "the erasure occurred due to the trooper's complete and utter failure to safeguard evidence relevant to a crime and arrest." They reviewed this case based on the logic in *Arizona v. Youngblood*. They noted that pursuant to *Youngblood*, as it was unknown whether the evidence contained on the video was materially exculpatory, the defendant would have to demonstrate that the officer acted in "bad faith." They determined that the circumstances of this case, which allowed for the tape to be destroyed, amounted to bad faith. This case was reversed. However, it was a cumulative-error case, which included several other significant errors during the trial court proceeding.

Therefore, it is unclear what the outcome might have been had this been the sole issue on appeal.

### **LESSONS LEARNED FROM ASHERMAN, MERRIMAN, AND DURNWALD**

As law enforcement agencies continue to equip more and more officers with BWCs, trial and appellate court judges should expect to hear more motions to strike evidence and motions to dismiss based on the assertion that evidence was lost or destroyed. The first step in the analysis of these cases is to determine factually whether the evidence actually existed at some point. This first step was not an issue in *Asherman, Merriman, or Durnwald*. The next step would be to know the existing law in one's own state regarding lost or destroyed evidence; the Appendix to this report should provide a starting point for that determination. Judges in states that generally follow the logic and reasoning in *Arizona v. Youngblood* should expect two kinds of arguments. First, defendants will want to persuade the court to interpret the due-process clause in their state's constitution in a way that provides broader protections. Second, judges should expect arguments addressing the "bad-faith" test as it is defined in *Youngblood*.

Trial judges should anticipate that that they will likely have to hear testimony in these cases. The key issues to determine will be:

- whether the video ever existed;
- whether it was material to the case;
- the factual circumstances leading up to the evidence being lost or destroyed; and
- whether the state acted in "bad faith" for its part in the evidence being unavailable.

Trial judges should be careful to build the appropriate record. As this issue is likely to be litigated more frequently in trial courts, it will also appear more frequently in appeals. Although every state has precedent on lost or destroyed evidence and this is not a new issue, appellate courts may nevertheless be more inclined to readdress it.

## STATUTORY ISSUES

There are states that have statutory language requiring certain law enforcement activities to be video recorded. These statutes are not directed at BWCs, but the use of this technology would clearly fulfill the requirements of these statutes. It is very likely that as state legislators and the public become more familiar with and accustomed to BWCs, there will be more legislation of this nature nationwide. The states of South Carolina and Illinois have similar statutory language, which requires aspects of impaired-driving arrests to be video recorded. However, the way those statutes have been interpreted differs significantly.

South Carolina has a statute that requires that significant events associated with an impaired-driving arrest be video recorded (S.C. Code Ann. § 56-5-2953). The statute requires the video to begin no “later than the activation of the officer’s blue lights,” and there must be video of any field sobriety testing and any secondary chemical testing. The South Carolina Supreme Court has considered several cases in which the arresting officer failed to comply with the statutory requirements, such as *Town of Mount Pleasant v. Roberts*, 713 S.E. 2d 278 (2013). In *Roberts*, the arresting officer failed to video record an impaired-driving arrest because his vehicle was not equipped with the appropriate technology to do so. The state maintained that an exception in the statute permitted the introduction of the evidence without video if recording equipment was not available. However, the South Carolina Supreme Court stated, “we find the Town’s prolonged failure to equip its patrol vehicles with video cameras defeats the intent of the Legislature; therefore, the Town should not be able to avoid its statutorily-created obligation to produce a videotape by repeatedly relying on” an exception to the statute; see also, *State v. Sawyer*, 763 S.E.2d 183 (2014).

The Appellate Court of Illinois heard a case that was similar factually to *Roberts*. In *People v. Borys*, 995 N.E.2d 499 (2013), a state trooper failed to record an impaired-driving arrest because the officer’s car was not equipped with video-recording technology. Illinois has § 20 ILCS 2610/30, which states, “By June 1, 2009, the Department shall install in-car

video camera recording equipment in all patrol vehicles.” It also contains statutory language similar to the language used in South Carolina. However, the Appellate Court of Illinois concluded that the officer’s testimony was admissible. In the court’s view, the statute was a legislative directive to the Department of State Police to install recording equipment in squad cars and to preserve the recordings for a minimum time period. It did not address admissibility of evidence when video was not recorded.

To some extent, the differences in how the South Carolina Supreme Court and Appellate Court of Illinois decided cases that were factually similar may be based on differences in the way the statutes at issue were drafted. It is also possible that philosophical differences in the courts played a role. However, as the cost of video-recording equipment goes down and more officers are equipped with the technology, statutes that address video recording of specific aspects of law enforcement activities will become more common. These statutes may involve impaired-driving cases, felony confessions, etc. Appellate courts around the country will be faced with making determinations regarding the interpretation of these statutes and the appropriate remedy if they are violated.

## NEGATIVE-INFERENCE INSTRUCTIONS

In some states, a defendant may request and the court may grant a negative-inference jury instruction. These instructions provide another mechanism to ensure that a defendant is afforded a fair trial when evidence has been lost or destroyed. The following language is from the Revised Arizona Jury Instructions, Criminal, 2013 Revision, which is available on the Arizona Bar’s website.

If you find that the State has lost, destroyed, or failed to preserve evidence whose contents or quality are important to the issues in this case, then you should weigh the explanation, if any, given for the loss or unavailability of the evidence. If you find that any such explanation is inadequate, then you may draw an inference unfavorable to the State, which in itself may create a reasonable doubt as to the defendant’s guilt.

Trial courts should expect negative-inference-instruction requests when BWC video of an event is

lost or destroyed. Defendants may also try to extend this argument to cases wherein a department had a policy of recording all citizen interactions with police, but the arresting officer failed to turn on the BWC or it failed to work properly.

## **FREEDOM-OF-INFORMATION/ OPEN-RECORDS STATUTES**

Every state has a freedom-of-information or open-records statute, although the scope of those statutes varies significantly. States vary as to whether their statutes are applicable to the judiciary. However, once video is admitted into evidence, it becomes part of the public record of the trial. In some circumstances, it may be appropriate for the prosecution to request that sensitive videos get sealed by the court. This might be video that shows a confidential informant, provides the identity of a victim protected by a rape-shield statute, etc. However, state courts may also see an increase in cases in which the media or the public are attempting to gain access to video in the possession of law enforcement. For example, if an officer is involved in a fatal shooting, the media may request video from every encounter that officer had with a citizen for the past month, six months, or year. Law enforcement may be unwilling or unable to comply with many requests due to the limitations on their resources. As BWCs become increasingly used by law enforcement, both trial and appellate judges will likely see an increase in actions seeking greater access to video.

# Conclusion

BWCs will be increasingly deployed as a tool by law enforcement departments. Both the federal government and the public have suggested that BWCs may at least be part of the solution to the public's lack of trust in law enforcement in some geographical locations. This increased deployment will have an impact on state courts. This will likely be primarily seen in the pretrial practice in criminal cases in which the defense is seeking a remedy for missing video evidence. In preparation for this, judicial education organizations should begin to plan and schedule sessions that address the current status of the law in their states on this issue, as well as the kinds of arguments judges are likely to hear concerning good-faith modifications to existing law.

# Appendix

## States that follow or mostly follow the *Youngblood* standard

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Alabama	<i>Snyder v. State</i> , 893 So. 2d 488 (Ala. Crim. App. 2003)	Published	The defendant was convicted of capital murder. A police officer wrote down the defendant's statements, which were also recorded, as well as took notes before the recording started. Those notes were not found. The court emphasized that it had previously adopted the U.S Supreme Court's holding in <i>Arizona v. Youngblood</i> that a defendant's due process rights have been violated only when the state acted in bad faith or the evidence was so critical to the defense that its destruction made the trial unfair. The court held that the defendant in this case failed to establish that evidence was lost in bad faith or that it was critical to the defense.
		<i>McMillan v. State</i> , 139 So. 3d 184 (Ala. Crim. App. 2010)	Published	A surveillance video showed defendant shooting the victim in a parking lot. A search of the defendant's truck revealed a camera containing pictures of the defendant and pictures of a pistol resembling the murder weapon. The truck was later disposed of. The court stated that the Alabama Supreme Court adopted the U.S Supreme Court's position in <i>Arizona v. Youngblood</i> , and that the Alabama courts therefore evaluate a claim of lost or destroyed evidence based on whether the State acted in bad faith or whether the evidence was so critical to the defense that it denied the defendant a fair trial. The court held that the evidence was not destroyed in bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Arizona	<i>State v. Youngblood</i> , 844 P.2d 1152 (Ariz. 1993)	Published	The defendant was convicted of child molestation, sexual assault and kidnapping. A defendant is not deprived of due process by the loss or destruction of evidence unless the state acted in bad faith, or the defendant is prejudiced by the loss or destruction of the evidence. The failure to preserve evidentiary material does not constitute a denial of due process under the Arizona Constitution without bad faith on the part of the state. The court held that there wasn't any evidence of bad faith.
		<i>State v. Berge</i> , No. 1 CA-CR 10-0553, 2011 Ariz. App. Unpub. LEXIS 1064, at *1 (Ariz. Ct. App. Aug. 4, 2011)	Unpublished	The police failed to make a copy of a video that captured an incident outside of a bar. The court held that when making a determination as to whether the state's failure to preserve evidence violates the defendant's constitutional rights, the key distinction is between materially exculpatory evidence and potentially useful evidence. The state denies a defendant his due process rights when it destroys exculpatory evidence and the defendant is unable to obtain comparable evidence. The failure of an officer or the state to preserve potentially useful evidence is not a denial of due process of law absent a showing of bad faith. The court held that the defendant's due process rights were not violated.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Arkansas	<i>Mayweather v. State</i> , No. 1 CA-CR 10-0553, 2006 Ark. App. LEXIS 409 at *1 (Ark. Ct. App. Mar. 8, 2006)	Unpublished	The defendant was pulled over, and a police officer searched his car. The officer's patrol car was equipped with a videotape recorder, as was the patrol car of another officer who arrived on the scene. The recordings were destroyed after thirty days. The court stated that "Arkansas case law has relied on the <i>Youngblood</i> holding . . .," and went on to hold that the defendant had failed to prove that the state acted in bad faith in destroying the videotape and that it was doubtful that the videotape would have been potentially exculpatory.
		<i>Lewis v. State</i> , 396 S.W.3d 775 (Ark. Ct. App. 2012)	Published	The defendant was convicted of aggravated assault and theft. The surveillance system automatically recorded over itself every 30 days and the police did not make a copy of the tape. As the defendant did not request a copy of the video within 30 days, the video was automatically erased. The state is only required to preserve evidence that plays a significant role in the defense if it presents an exculpatory value that the defendant would be unable to prove through other evidence. In order to prove a due process violation, the defendant must show bad faith on the part of the state. Here, the court was not persuaded by the defendant's argument.
Follows/mostly follows <i>Youngblood</i> standard	California	<i>City of Los Angeles v. Superior Court</i> , 124 Cal. Rptr. 2d 202 (Cal. 2002)	Published	The defendant was charged with sexual molestation. He sought discovery of the officers' personnel records, but those records had been destroyed. The prosecution has a duty to retain evidence, however, when the prosecution fails to retain evidence, there is a due process violation only if the evidence might be expected to play a significant role in the suspect's defense and has exculpatory value that is apparent before it is destroyed. If the prosecution fails to retain evidence that is potentially useful to the defense, there is a due process violation if the accused can prove bad faith. The court held that the routine destruction of the records did not violate the defendant's due process rights.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	California	<i>People v. Alvarez</i> , 176 Cal. Rptr. 3d 890 (Cal. App. 4th Dist. 2014)	Published	Three defendants were charged with robbery. Police officers failed to obtain a copy of surveillance videos before they were deleted, even though one of the defendant's had requested that the officers review the videos and defense counsel had requested the preservation of any videos in this case. The court held that two different tests were applicable. The first test was the <i>California v. Trombetta</i> test which looked to see if the evidence had an "exculpatory value" that was apparent. The second test was the <i>Arizona v. Youngblood</i> test which looked to see if the evidence was "potentially useful." The court noted that the <i>Trombetta</i> test was a higher standard to meet than the <i>Youngblood</i> test. The court further noted that failure to retain evidence violates due process when the evidence has exculpatory value that is apparent before it is destroyed. The court dismissed the charges for two of the defendants, finding that the officers failed to preserve the video which was potentially useful for the defendants and that they did so in bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Colorado	<i>People v. Braunthal</i> , 31 P.3d 167 (Colo. 2001)	Published	The VCR at the police station destroyed a video tape which showed the defendant stealing. The court stated that the defendant had to meet each of the following three elements: (1) the defendant had to prove that the evidence was destroyed by state action and that the evidence which was destroyed was material evidence; (2) the evidence possessed an exculpatory value that was apparent before the evidence was destroyed; (3) and the evidence had to be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means. The court held that the video was not exculpatory evidence.
		<i>People v. Abdu</i> , 215 P.3d 1265 (Colo. App. 2009)	Published	The defendant was convicted of second degree assault. The videotape, which showed the defendant spitting on a nurse in jail, was erased. The court stated that although other states have construed their constitutions broadly, the court was going to follow the Supreme Court's decision in <i>Arizona v. Youngblood</i> . The court held that because the defendant could not prove that the video had exculpatory value, he would have to show bad faith in order to establish that there was a due process violation.



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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	District of Columbia	<i>Koonce v. District of Columbia</i> , No. 13-CT-0494, 2015 D.C. App. LEXIS 97, at 1011 (D.C. March 19, 2015)	Unpublished	The defendant was arrested for a DUI after causing severe accidents, and the video from the night of his arrest was subsequently destroyed. The court emphasized that the government had a general duty to preserve discoverable evidence and stated that the failure to preserve potentially useful evidence violates due process if the defendant can prove bad faith. Bad faith of a “constitutional magnitude” is shown if the evidence is of exculpatory value that was apparent before the evidence was destroyed and the defendant is unable to obtain comparable evidence. The court established that for sanctions for a due-process violation the trial must weigh the following: “ (1) the degree of government negligence or bad faith involved; (2) the importance of the evidence lost; and (3) the evidence of guilt adduced at trial in order to come to a determination that will serve the ends of justice.”
Follows/mostly follows <i>Youngblood</i> standard	Georgia	<i>State v. McNeil</i> , 708 S.E.2d 590 (Ga. Ct. App. 2011)	Published	A police officer found two bags of cocaine in the defendant’s purse. The defendant was a passenger in a car that the officer pulled over. The master copy of a video containing footage of the stop was destroyed when the police officer attempted to play the video for opposing counsel. The court held that in order to prove a due process violation, the defendant needed to meet the <i>Youngblood</i> requirements. The court found that the video evidence was, at best, potentially exculpatory; it did not believe that the defendant was unable to obtain comparable evidence; and finally, it found that the defendant failed to show that the State destroyed the video in bad faith.
		<i>Spaulding v. State</i> , 195 Ga. App. 420 (Ga. Ct. App. 1990)	Published	The state failed to preserve a video of defendant’s arrest. The court held that a criminal defendant has to show bad faith on the part of the police in accordance with <i>Arizona v. Youngblood</i> . In this case, the evidence did not show that the police acted in bad faith.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Illinois	<i>People v. Holmes</i> , 552 N.E.2d 763 (Ill. 1990)	Published	The defendant was indicted on two counts of unlawful delivery of cannabis. Defendant argued that the state had to produce their informant for trial. The court provided a thorough analysis of <i>Arizona v. Youngblood</i> . The court adopted the bad-faith standard for destruction or loss of evidence but did not adopt it in regards to the situation in which the prosecutor did not produce his informant.
		<i>People v. Borys</i> , 995 N.E.2d 499 (2013)	Published	Defendant was arrested for impaired driving; the state trooper failed to record the impaired-driving arrest because the officer's car was not equipped with video-recording technology. Illinois has a statute, § 20 ILCS 2610/30, which states, "By June 1, 2009, the Department shall install in-car video camera recording equipment in all patrol vehicles." It also contains statutory language similar to the language used in South Carolina (S.C. Code Ann. § 56-5-2953). However, the Appellate Court of Illinois concluded that the officer's testimony was admissible. In the court's view, the statute was a legislative directive to the Department of State Police to install recording equipment in squad cars and to preserve the recordings for a minimum time period. It did not address admissibility of evidence when video was not recorded.
		<i>People v. Nunn</i> , 24 N.E.3d 11 (Ill. App. Ct. 3d Dist. 2014)	Published	Police officers told witnesses to delete the recordings on their phones of the defendant's arrest. The court held that in determining whether there was a due-process violation the proper considerations include the degree of bad faith or negligence by the state in failing to preserve the evidence and the importance of the lost evidence. Failure to preserve "potentially useful evidence" is not a due-process violation if the defendant can't show bad faith on the part of the police officers. Applying these considerations to this case, the court found that the defendant's due-process rights had been violated.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Indiana	<i>Chissell v. State</i> , 705 N.E.2d 501 (Ind. Ct. App. 1999)	Published	The video of the defendant's sobriety test was destroyed. The court started its analysis by distinguishing between "potentially useful" evidence and "materially exculpatory" evidence. The court held that <i>Arizona v. Youngblood</i> provided the appropriate standard in regards to "potentially useful" evidence, and that the appropriate standard for "materially exculpatory" evidence was the standard established in <i>California v. Trombetta</i> . Applying those standards to the facts of this case, the court held that the defendant's due-process rights had not been violated.
		<i>Samek v. State</i> , 688 N.E.2d 1286 (Ind. Ct. App. 1997)	Published	The defendant's wife provided police officers with a tape recording of a man admitting to committing the crime of which her husband was accused. The tape got lost and was not available for trial. The court made a distinction between "potentially useful" evidence and "materially exculpatory" evidence, and chose to adopt the exact same terms and definitions as those used and defined in <i>Youngblood</i> to avoid any confusion. The court emphasized that bad faith only needs to be proven when evidence is "potentially useful," but held that as the evidence was only potentially useful in this case, and as the defendant did not prove that it was lost in bad faith, there was no due-process violation.
Follows/mostly follows <i>Youngblood</i> standard	Iowa	<i>State v. Hulbert</i> , 481 N.W.2d 329 (Iowa 1992)	Published	A police officer accidentally erased a video of an interview between the defendant's daughter and an investigator. The court held that to prove a due-process violation based on the destruction of evidence, a defendant is required to show (1) a proper defense request for the evidence; (2) that the evidence was material; and (3) that the evidence would have been significantly favorable to the defendant. Additionally, the destruction has to be intentional. The court held that the officer did not erase the video in bad faith.
		<i>State v. Dulaney</i> , 493 N.W.2d 787 (Iowa 1992)	Published	Defendant caused a car accident, which resulted in the death of three people. Defendant did not request that his blood sample be preserved so the police department destroyed it after a 120-day period. The court, implementing a <i>Trombetta</i> and <i>Youngblood</i> analysis, held that there wasn't any evidence that the state intentionally destroyed the blood sample or that the sample was exculpatory and that, therefore, there wasn't enough to find a violation of due process.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Kansas	<i>State v. Beltz</i> , 184 P.3d 286 (Kan. Ct. App. 2008)	Unpublished	The defendant was stopped for a DUI but the video of the stop was destroyed. The court stated that Kansas has adopted the ruling and reasoning in <i>Arizona v. Youngblood</i> . The court indicated that when the State fails to preserve potentially useful evidence, there is no due-process violation unless the defendant shows bad faith on the part of the State. Whether the State acted in bad faith is a question of fact.; the presence or absence of bad faith by the State when the evidence is destroyed depends on the State's knowledge of the exculpatory value of the evidence at the time that the evidence was lost or destroyed. The court held that the defendant failed to prove that the evidence was exculpatory and that it was destroyed in bad faith.
		<i>State v. Finley</i> , 42 P.3d 723 (Kan. 2002)	Published	Defendant had a meth lab in his home. A fire started in the house while the defendant and a few others were cooking meth, and resulted in one death. The evidence from the scene was destroyed. The defendant, citing cases from other states which granted greater protection in their state constitutions than the U.S. Constitution, urged the court to follow that authority. However, the court chose to follow <i>Arizona v. Youngblood</i> and stated that the court had consistently rejected the argument to provide more protection under the state constitution; the rights granted an accused under the state constitution are coextensive with the rights granted by the U.S. Constitution. Applying <i>Youngblood</i> to the facts of this case, the court held that the defendant failed to establish bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Kentucky	<i>Collins v. Commonwealth</i> , 951 S.W.2d 569 (Ky. 1997)	Published	The appellant was convicted of rape, sodomy, incest, and wanton endangerment of his stepdaughter. His wife found a soiled towel, which she bagged and put away for safekeeping pursuant to a deputy sheriff's instructions, but the towel was never collected for testing and was subsequently lost. The appellant urged the court to reject the bad-faith approach of <i>Arizona v. Youngblood</i> and to adopt a balancing test. The appellant relied on the fact that the wording in Kentucky's Constitution differs from the federal Due Process Clause, and claimed that the state constitution provides more expansive rights. The court reaffirmed that the state has adopted <i>Youngblood</i> , and held that "[t]he Commonwealth's failure to collect and preserve the towel clearly constituted negligence. However, Appellant has failed to demonstrate that such amounted to bad faith under the standard recognized in this Commonwealth."

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	<b>Kentucky</b>	<i>Meadows v. Commonwealth</i> , NO. 2010-CA-001155-DG, 2012 Ky. App. Unpub. LEXIS 123, at *1 (Ky. Ct. App. Feb. 10, 2012)	Unpublished	Defendant was arrested for a DUI. The video containing footage of her stop was not preserved. Defendant relied on <i>Sanborn v. Commonwealth</i> ; however, the court noted that <i>Sanborn</i> has been overruled. The court relied on the U.S. Supreme Court's holding in <i>Arizona v. Youngblood</i> and after applying the <i>Youngblood</i> standard to this case, held that the defendant did not prove bad faith.
Follows/mostly follows <i>Youngblood</i> standard	<b>Louisiana</b>	<i>State v. Shoupe</i> , 71 So. 3d 508, (La. Ct. App. 2011)	Published	Defendant crashed his car and fled the scene, but was later arrested. The video containing footage of the investigation in the selective enforcement room on the night of his arrest was lost. The court stated that due process requires that the state provide the defendant with any exculpatory evidence that it has in its possession. The court also stated that when a defendant claims that the state failed to preserve potentially useful evidence, the defendant has the burden of showing that the state acted in bad faith. The court held that the defendant did not allege or prove bad faith on the part of the state. Furthermore, he did not demonstrate that the video had an exculpatory value.
		<i>State v. Sereal</i> , 11-326, 2011 La. App. Unpub. LEXIS 715, at *1 (La. Ct. App. Nov. 16, 2011)	Published	The physical evidence in this case was lost. The court focused its analysis on the difference between "potentially useful" and "material exculpatory" evidence. The court applied the analyses of <i>Arizona v. Youngblood</i> and <i>Illinois v. Fisher</i> . The court held that the evidence at issue was only "potentially useful" and not exculpatory and that, therefore, the defendant had to prove bad faith on the part of the police officers. The defendant failed to do so.
Follows/mostly follows <i>Youngblood</i> standard	<b>Maine</b>	<i>State v. Bilynsky</i> , 932 A.2d 1169 (Me. 2007)	Published	The defendant was indicted on charges of aggravated trafficking of scheduled drugs, criminal conspiracy, and unlawful possession of scheduled drugs. The state lost items that the defendant used in the manufacturing process of drugs. The court held that the appropriate remedy when evidence is lost or destroyed is suppression of that evidence; it is not the dismissal of the case. The court stated that it has adopted the U.S. Supreme Court's analysis to determine when the destruction of evidence violates a defendant's due-process rights. The court focused closely on <i>California v. Trombetta</i> . It applied the Trombetta two-part test: (1) the evidence must possess an exculpatory value that was apparent before the evidence was destroyed, and (2) the evidence must be of such a nature that the defendant would be unable to reasonably obtain comparable evidence. The court held that the defendant's due-process rights were not violated.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Maine	<i>State v. Derosa</i> , No. CR-93-675, CR-93-692, 1994 Me. Super. LEXIS 416, at *1 (Me. Super. Ct. Nov. 16, 1994)	Unpublished	The defendants assert that the State wrongfully failed to take steps to preserve the fire scene to allow inspection by their expert. The court held that when the lost evidence is not exculpatory, the defendant has the burden to show bad faith on the part of the police agency. The court held that the record did not include a showing of bad faith on the part of the police agency.
Follows/mostly follows <i>Youngblood</i> standard	Maryland	<i>Patterson v. State</i> , 741 A.2d 1119 (Md. 1999)	Published	After observing petitioner run a stop sign, officers pulled him over, and upon discovering that he had a revoked Maryland license, they placed him under arrest. A search of the vehicle produced 4.93 grams of cocaine inside of a jacket pocket. The state did not produce the jacket for trial. The court held that the same standards apply whether a claim alleges a due-process violation of a state or federal constitutional right. Moreover, requiring a defendant to show bad faith limits the extent of the police's obligation to preserve evidence to reasonable bounds. The court further held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." The <i>Arizona v. Youngblood</i> standard extends to the refusal to instruct on the government's failure to preserve evidence. Furthermore, non-production does not automatically equate with destruction of evidence, and negligence alone is not enough to meet the requirements of <i>Youngblood's</i> bad-faith standard.
		<i>Cost v. State</i> , 10 A.3d 184 (Md. 2010)	Published	Defendant was an inmate who was accused of stabbing another inmate. The evidence from the victim's cell was disposed of. Though it acknowledged that other states provide defendants with greater protection, the court stated that Maryland does not afford a defendant greater protection than the protection afforded in <i>Arizona v. Youngblood</i> . While acknowledging that the court set a missing-evidence-instruction standard in <i>Patterson v. State</i> , the court performed an analysis of <i>Patterson</i> and held that the <i>Patterson</i> rule was not absolute. The court further held that the trial courts have discretion in choosing when to give or deny a missing-evidence instruction to the jury. In this case, the court found that the State had destroyed highly relevant information and, therefore, the defendant was entitled to jury instruction on the missing evidence.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Michigan	<i>People v. Hardy</i> , No. 287181, 2010 Mich. App. LEXIS 311, at *1 (Mich. Ct. App. Feb. 11, 2010)	Unpublished	The defendant was arrested for driving with a suspended license. A video recording of the defendant in custody was not preserved. The court agreed with the prosecutor that the defendant's due-process claim failed because he could not establish that the police acted in bad faith. The court held that the proper test to determine if a defendant's right to due process had been violated was stated in <i>Arizona v. Youngblood</i> . Furthermore, the routine destruction of taped material did not mandate reversal. Routine destruction does not establish bad faith.
		<i>People v. Salamey</i> , No. 275102, 2008 Mich. App. LEXIS 1689, at *1 (Mich. Ct. App. Aug. 21, 2008)	Unpublished	Defendant was convicted of armed robbery. The investigator only copied one minute of the surveillance video. The defendant alleged that the remaining surveillance footage was erased from the hard drive while in police custody. The court stated that the prosecution is required to automatically disclose exculpatory evidence in its possession. Evidence is material only if there is a probability that the trial result would have differed if the evidence had been disclosed. Moreover, failure of the police to preserve "potentially exculpatory evidence" in its possession violates the defendant's right to due process when the police acted in bad faith. The court held that the defendant failed to establish bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Minnesota	<i>State v. Hawkinson</i> , 829 N.W.2d 367 (Minn. 2013)	Published	The defendant was charged with several misdemeanor offenses. He pled guilty and moved to suppress the results of his blood-alcohol test because the state had destroyed a blood sample in accordance with its retention policy, but after the defendant had filed a request to preserve the blood tests. The State petitioned the court for review and asked the court to determine the applicable standard. The court provided an analysis of <i>Brady v. Maryland</i> and <i>Arizona v. Youngblood</i> . The court held that there are two categories of evidence that can give rise to a due-process violation: evidence that has apparent and material exculpatory value and "potentially useful evidence." The court focused its analysis of this case on the following two questions: (1) "is the rule from <i>Brady</i> applicable because the destroyed evidence had apparent and material exculpatory value?" and (2) "if not, was the evidence potentially useful and destroyed by the state in bad faith?" The court held that the evidence was only potentially useful, and it was not destroyed in bad faith.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	<b>Minnesota</b>	<i>State v. Bragg</i> , CX-02-1407, 2003 Minn. App. LEXIS 1124, at *1 (Minn. Ct. App. Sept. 9, 2003)	Unpublished	The defendant was taken to the police station where he refused to submit to an Intoxilyzer test. He was videotaped while he was at the police station, but the video was only retained for 30 days and then recorded over. There was evidence that the defendant attempted to obtain a copy of the video by calling the police department but was unsuccessful. The court held that the State's constitutional duty to preserve evidence on behalf of criminal defendants is subject to a standard of materiality, and to meet this standard the evidence must possess an exculpatory value that was apparent before the evidence was destroyed and be of such a nature that the defendant would be unable to obtain comparable evidence. Unless a defendant can demonstrate bad faith on the part of the State, failure to preserve potentially exculpatory evidence does not amount to a denial of due process. Moreover, the court held that the court is to consider "(1) whether the destruction was intentional, (2) the possible exculpatory value of the destroyed evidence, and (3) the strength of the state's case if the evidence had been available." The court held that the defendant failed to prove that the evidence was exculpatory or that it was destroyed in bad faith.
Follows/mostly follows <i>Youngblood</i> standard	<b>Mississippi</b>	<i>Freeman v. State</i> , 121 So. 3d 888 (Miss. 2013)	Published	The defendant was arrested for a DUI. The police officer recorded the entire stop on video, and though the defendant subpoenaed the video, the police never provided a copy of it. The trial was continued, and the court ordered that all evidence in the case be preserved, including the video. The video, however, was destroyed due to technical problems. The court noted that the state has a duty to preserve evidence that might play a significant role in the defendant's defense. The court also noted that the court normally applies a three-part test to determine whether a loss of evidence violates the defendant's due-process rights: (1) the evidence in question must possess an exculpatory value that was apparent before the evidence was destroyed; (2) the evidence must be of such a nature that the defendant would be unable to obtain comparable evidence; and (3) the prosecution's destruction of the evidence was in bad faith. The court held that the defendant's due-process rights had been violated.



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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Mississippi	<i>Ellis v. State</i> , 77 So. 3d 1119 (Miss. Ct. App. 2011)	Published	The defendant was pulled over for a DUI. The stop was videotaped; however, the video recording was erased. The trooper routinely erased the memory card to record future stops, unless the stop was extraordinary. Relying on <i>Trombetta</i> and <i>Youngblood</i> , the court determined that the appropriate test to use was a three-part test: the evidence must be exculpatory evidence that was apparent before it was erased; the defendant is unable to obtain comparable evidence; and the defendant must show that the state acted in bad faith. The court held that the trooper did not act in bad faith when erasing the memory card because it was erased through the normal process used by the trooper, and there wasn't any rule or regulation that required him to preserve every recording of his traffic stops.
Follows/mostly follows <i>Youngblood</i> standard	Missouri	<i>State v. Ferguson</i> , 20 S.W.3d 485 (Mo. 2000)	Published	Defendant kidnapped a girl from a gas station and murdered her. The video footage from a surveillance camera was destroyed. The court analyzed the defendant's Bradyclaim and held that the allegation did not contain a sufficient amount of factual information and was entirely speculative. The court further held that even if the defendant had properly pled a Bradyclaim he had not established that the evidence was exculpatory or that he was prejudiced by the result. Absent a showing of bad faith on the part of the police, the failure to preserve potentially useful evidence does not constitute a denial of due process. The defendant did not prove that there was bad faith.
		<i>State v. Richard</i> , 798 S.W.2d 468 (Mo. Ct. App. 1990)	Published	The defendant was a drug dealer. Tape recordings of exchanges between the defendant and an undercover officer were deleted. Relying on <i>Arizona v. Youngblood</i> , <i>State v. Petterson</i> , and <i>State v. Hamilton</i> , the court stated that none of those cases defined "bad faith." "If 'bad faith' only occurs when police officers destroy evidence knowing it has 'exculpatory value,' then a defendant faces an almost impossible burden to show bad faith." Relying on <i>State v. Little</i> , the court held that there is no constitutional duty to preserve evidence unless it was evident that it would aid the defendant. The court held that the evidence in this case did not support the conclusion that the tape possessed an exculpatory value that would have been apparent to the deputies.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Montana	<i>State v. Giddings</i> , 349 Mont. 347 (Mont. 2009)	Published	The defendant was arrested for homicide, and he was taken to the police station where he was interviewed by an officer. The officer did not tape record the first interview. The officer recorded the second interview, but the tape recorder stopped recording before the interview was complete. The last interview was also recorded, but the recording was of poor quality. The officer took detailed notes during each interview and then typed up a report. After he typed up all of his reports, he threw away his notes. The court stated that while the intentional suppression of exculpatory evidence by the prosecution constitutes a due-process violation in Montana, if the evidence lost is only potentially exculpatory then the defendant must show bad faith by the state. The court held that the defendant failed to provide any evidence showing that the notes contained information favorable to the defense and that he failed to show the officer acted in bad faith when he destroyed the notes.
		<i>Taylor v. State</i> , 335 P.3d 1218 (Mont. 2014)	Published	The defendant was convicted of rape and sexual assault. He claimed that because fingernail scrapings weren't taken from him and because the victim did not undergo a rape exam, important evidence was negligently destroyed. When lost evidence is potentially exculpatory, a defendant must show bad faith to prove a due-process violation. The state's negligent suppression of evidence can be a denial of due-process rights; however, when evidence is negligently suppressed the evidence must be material, vital to the defense, and exculpatory. The court held that there wasn't a due-process violation because the officers did not have a duty to gather exculpatory evidence.
Follows/mostly follows <i>Youngblood</i> standard	Nebraska	<i>State v. Davlin</i> , 639 N.W.2d 631 (Neb. 2002)	Published	The defendant was convicted of second-degree murder and first-degree arson. The victim's larynx and trachea were lost, and the rest of the victim's organs were destroyed after three years as was routine procedure. The court stated that because the due-process requirements of Nebraska's constitution are similar to those of the federal Constitution, it would apply the same analysis to both the defendant's state and federal constitutional claims. While the State may be required to preserve potentially exculpatory evidence under certain circumstances, "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." The court held that the defendant failed to show that this due-process rights had been violated.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Nebraska	<i>State v. Nelson</i> , 807 N.W.2d 769 (Neb. 2011)	Published	The defendant was arrested for possession of cocaine. Two Styrofoam cups and cigarette butts, which were found inside of his car, were thrown away, which was routine police procedure. The defendant claimed that the evidence was exculpatory because it didn't belong to him, and it would prove that he gave two other men a ride during his trip. The district court concluded that the defendant had not demonstrated that the officers acted in bad faith by throwing the evidence away, that he had not shown that the items were exculpatory, and that there was insufficient evidence presented to find that he was unable to obtain comparable evidence. This Nebraska Supreme Court affirmed the district court's findings.
Follows/mostly follows <i>Youngblood</i> standard	Nevada	<i>State v. Hall</i> , 768 P.2d 349 (Nev. 1989)	Published	The defendant was charged with driving under the influence. The chemist who had tested the defendant's blood sample to determine blood-alcohol level threw the blood sample away after a year to make room for new samples. The chemist routinely threw samples away after a year. The court held that to establish a due-process violation resulting from the state's loss or destruction of evidence, the defendant must demonstrate (1) that the state lost or destroyed the evidence in bad faith, or (2) that the loss prejudiced the defendant's case and the it possessed an exculpatory value that was obvious before the evidence was destroyed. There was nothing on the record to show that the chemist acted in bad faith.
		<i>Williams v. State</i> , 50 P.3d 1116 (Nev. 2002)	Published	The defendant struck and killed six teenagers with her car. The defendant admitted to having stayed up all night, to smoking marijuana two hours before driving, and to taking ecstasy the night before. The State did not preserve the defendant's blood sample. Relying on <i>Youngblood</i> and <i>State v. Hall</i> , the court held that a state's failure to preserve evidence does not warrant dismissal of the case unless the defendant can show bad faith by the government and prejudice from the loss of the evidence. The Nevada Supreme Court concluded that the district court properly determined that the defendant failed to show that the state's failure to preserve the blood sample constituted a due-process violation.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	New Jersey	<i>State v. Mustaro</i> , 984 A.2d 450 (App.Div. 2009)	Published	The defendant pleaded guilty to driving under the influence, but claimed that he would not have pleaded guilty if he had been provided with the videotape recorded by the officer's patrol car. By the time the defendant filed his motion seeking leave to vacate the guilty plea, the videotape had been destroyed according to policy. To show that the defendant was entitled to relief because of the state's failure to disclose or preserve exculpatory evidence, the defendant was required to show that "(1) the prosecutor failed to disclose the evidence, (2) the evidence was of a favorable character to the defendant, and (3) the evidence was material." When the evidence is no longer available, the defendant has to show that the evidence had an exculpatory value that was apparent before it was destroyed and the defendant would be unable to obtain comparable evidence by other means. Alternatively, the defendant can establish that the evidence was destroyed in bad faith. The court held that "[h]e did not establish that the videotape had exculpatory value that was apparent to the State when it was erased or that the State erased it in bad faith."
		<i>State v. Ayala</i> , No. A-6325-11T1, 2014 N.J. Super. Unpub. LEXIS 813 (App.Div. Apr. 10, 2014)	Unpublished	The defendant was arrested after speeding and then attempting to evade the officer trying to pull him over. He was taken to the police station where his confession was videotaped. The tape, however, was not subsequently available for trial because the computer system was not functioning. Relying on the <i>Trombetta</i> standard, the court stated that the defendant may not have been able to prove that he made no admission by showing the video, but that he could still testify and deny the officers' claims. The court held that if the evidence presented permitted an inference of bad faith then an instruction should be given to the jury that it could draw an adverse inference if it determined that the state acted in bad faith.
Follows/mostly follows <i>Youngblood</i> standard	North Carolina	<i>State v. Hunt</i> , 483 S.E.2d 417 (N.C. 1997)	Published	The defendant was convicted of first-degree murder. During a consent-based search of the defendant's home, officers seized several items; however, these items were lost before commencement of the trial. A failure to preserve potentially useful evidence does not constitute a denial of due process unless the defendant can show bad faith on the part of the police. The North Carolina Supreme Court upheld the trial court's finding that there was no showing of bad faith or willful intent on the part of any police officer. Moreover, the defendant did not demonstrate that the missing evidence possessed an exculpatory value that was apparent before it was lost. Therefore, the State's failure to preserve the evidence did not violate the defendant's due-process rights.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	North Carolina	<i>State v. Burnette</i> , 582 S.E.2d 339 (N.C. Ct. App. 2003)	Published	The defendant was convicted of possession of cocaine. A police dog found the baggie containing the drugs but destroyed it, and the remaining pieces of the baggie were ultimately thrown away by one of the officers. The court noted that a North Carolina statute requires police officers to “keep property seized pursuant to lawful authority under the direction of the court or magistrate as long as necessary to assure that the property will be produced at and may be used as evidence in any trial.” The court further noted that North Carolina had adopted the reasoning and bad-faith requirement of <i>Youngblood</i> . The court found that the baggie was intentionally destroyed but that there wasn’t any evidence of bad faith on the part of law enforcement.
		<i>State v. LaSalle</i> , No. COA11-27, 2011 N.C. App. LEXIS 1596 (N.C. Ct. App. July 19, 2011)	Unpublished	The defendant was indicted on charges of possession with intent to manufacture, sell, and deliver cocaine and the sale and delivery of cocaine. A detective used a confidential informant to set up a controlled drug buy with the defendant. The informant was accompanied by an undercover officer who wore audio- and video-recording equipment. Before trial, the video was lost and deemed unrecoverable. The court relied on <i>Hunt v. State</i> as precedent and determined that there wasn’t a due-process violation in this case. The court noted that the defendant did not contend bad faith on the part of the officer and did not argue that the missing evidence had any exculpatory value.
Follows/mostly follows <i>Youngblood</i> standard	North Dakota	<i>State v. Steffes</i> , 500 N.W.2d 608 (N.D. 1993)	Published	The defendant was convicted of driving under the influence. The police officer had taped the defendant’s performance on the verbal sobriety tests using the patrol car’s audio tape recorder, but he later recorded over the tape. The court stated that the cases in which the conduct of the State results in the loss of evidence can be grouped into three general categories: “(1) the state’s failure to collect evidence in the first instance, (2) the state’s failure to preserve evidence once it has been collected, and (3) the state’s suppression of evidence which has been collected and preserved.” The <i>Brady v. Maryland</i> analysis applies to the third category and the <i>Arizona v. Youngblood</i> analysis applies to the second category. This case falls under the second category, and applying the <i>Youngblood</i> standard, the court held that there wasn’t any evidence that the tape was destroyed in bad faith.
		<i>State v. Schmidt</i> , 817 N.W.2d 332 (N.D. 2012)	Published	The defendant was found guilty of theft of property. Surveillance video was available, but the police officers never obtained a copy of it. Applying the three categories identified in <i>Steffes</i> , the court concluded that this case fell under the first category.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Ohio	<i>State v. Durnwald</i> , 837 N.E.2d 1234 (2005)	Published	Defendant was arrested for impaired driving by a state trooper. There was a video recording of the defendant's field sobriety testing, which the arresting trooper reviewed; however, before the tape being placed in evidence, it was inexplicably recorded over destroying the pertinent parts of the video. The Court of Appeals of Ohio found it incredible that "such 'accidental' erasures continue to occur," and stated that, "the erasure occurred due to the trooper's complete and utter failure to safeguard evidence relevant to a crime and arrest." The court relied on <i>Youngblood</i> in its analysis, and noted that pursuant to <i>Youngblood</i> , as it was unknown whether the evidence contained on the video was materially exculpatory, the defendant would have to demonstrate that the officer acted in "bad faith." The court determined that the circumstances that occurred in this case that allowed for the tape to be destroyed amounted to bad faith.
		<i>State v. Geeslin</i> , 878 N.E.2d 1 (Ohio 2007)	Published	The defendant was arrested for driving under the influence. The officer videotaped the defendant's driving prior to the stop, as well as the defendant's performance on his sobriety tests after the stop; however, the first part of the tape was accidentally recorded over. The court acknowledged that the U.S Supreme Court addressed the issue of lost or destroyed evidence in <i>Youngblood</i> , and that <i>Youngblood</i> drew a distinction between materially exculpatory evidence and potentially useful evidence. The court held that the evidence in this case was only potentially useful and that the defendant did not prove bad faith on the officer's part.
		<i>State v. Frasure</i> , 2008-Ohio-1504 (Ohio Ct. App., Ashtabula County Mar. 28, 2008)	Published	The defendant was driving a van and collided with another vehicle; as a result, her van caught on fire and a passenger in the other car died. Both vehicles were impounded and then released, and when no one claimed the vehicles, they were both destroyed. The court noted that several states, including Ohio, adhere to the holding in <i>Youngblood</i> and that, therefore, it was required to apply the <i>Youngblood</i> bad-faith standard. The court did, however, emphasize that other states have turned to using a balancing approach due to concerns over the unfairness that may result in situations in which the defendant is unable to prove that the State acted in bad faith. The court stated that a balancing test would be more equitable, and it voiced its concern over the potential effect of the bad-faith standard. Nevertheless, the court held that there wasn't any evidence of bad faith.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Oklahoma	<i>Hogan v. State</i> , 877 P.2d 1157 (Okla. Crim. App. 1994)	Published	The defendant was charged with murder. All but one vial of the victim's blood was destroyed. Relying on <i>Youngblood</i> , the court held that the defendant had not shown that the state acted in bad faith. The destruction of the vials of blood occurred through inadvertence and not bad faith.
		<i>Gilson v. State</i> , 8 P.3d 883 (Okla. Crim. App. 2000)	Published	The appellant was sentenced for murder and injury to a minor child. The appellant claimed that he was denied a fair trial because the interviews with the victim's brothers and sisters were not recorded. The court relied on <i>Youngblood</i> , noting that the court in that case distinguished between evidence that was exculpatory and evidence that was potentially exculpatory, and stated that Oklahoma adopted the <i>Youngblood</i> standard in <i>Hogan v. State</i> . The court held that the failure to video or audio tape the interviews did not indicate a failure to preserve potentially useful evidence. Additionally, the court found that the appellant failed to show that the state acted in bad faith by failing to tape all of the children's interviews.
Follows/mostly follows <i>Youngblood</i> standard	Oregon	<i>State v. Faunce</i> , 282 P.3d 960 (Or. Ct. App. 2012)	Published	The defendant was convicted of murder with a firearm and of being a felon in possession of a firearm. An additional suspect, Green, was arrested and questioned. A pistol was taken from and then returned to Green; the defendant contended that should not have been done as it was potentially exculpatory evidence. The defendant further contended that the state acted in bad faith in its investigation of Green. The court held that because the Oregon Constitution does not have a due-process provision, the court must turn to the due-process clause in the U.S Constitution to determine whether the state violated the defendant's due-process rights. The court relied on <i>Youngblood</i> for its analysis of "potentially useful" evidence, and held that the evidence alone was not exculpatory and that admission of the pistol itself into evidence would have added little to his defense. Moreover, the court upheld the trial court's finding that the police officer was negligent in not preserving the evidence, but that the negligence did not amount to bad faith.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	<b>Oregon</b>	<i>State v. Zinsli</i> , 966 P.2d 1200 (Or. Ct. App. 1998)	Published	<p>The defendant was arrested for driving under the influence. The officer videotaped the defendant's sobriety tests; however, the video was later lost. The court noted that the defendant had to show that either the state acted in bad faith to preserve the evidence or that the evidence would be favorable to the defendant's defense and that he could not obtain comparable evidence through other reasonable means. The court found that even though the officer wrote his report based on the video and even wrote down direct quotes from the defendant, the defendant's due-process rights were violated because the video was lost. The video would have provided evidence that the defendant performed satisfactorily on some of the field sobriety tests, and it would have allowed the jurors to form their own opinions as to the defendant's intoxication level. However, the court decided that dismissal was too harsh of a sanction.</p>
Follows/mostly follows <i>Youngblood</i> standard	<b>Pennsylvania</b>	<i>Commonwealth v. Snyder</i> , 963 A.2d 396 (Pa. 2009)	Published	<p>The appellee was illegally dumping solid waste, and the attorney general's office executed a search warrant on the property and removed 199 drums. The samples that were taken from the drums for testing were later destroyed. Because of this destruction and the fact that identical samples could not be obtained, the trial court suppressed the test results. The Supreme Court reversed. After analyzing its holding in a previous case, <i>Deans v. State</i>, as well as analyzing how <i>Youngblood</i>, <i>Trombetta</i>, and <i>Fisher</i> affected their holding in that case, the court held that <i>Fisher</i> was the appropriate governing standard. The court further held that the evidence was "potentially useful" and not "materially exculpatory." Under <i>Fisher</i>, the test results may not be suppressed unless the Commonwealth acted in bad faith in destroying the soil samples; the court concluded that the samples in this case were not destroyed in bad faith.</p>



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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Pennsylvania	<i>Commonwealth v. Lamana</i> , 7 Pa. D. & C.5th 225 (Pa. C.P. 2009)	Published	The defendant, a school teacher, was convicted of possession of child pornography. While looking into a virus attack on the school's network, the school's IT manager discovered child pornography on the defendant's personal computer, which was hooked up to the school's network. When she opened the pornographic files on the defendant's personal computer, the data about last use changed to reflect her most recent viewing. Because of the altering of potentially exculpatory material, the defendant sought to have the charges dismissed. The trial court denied the motion, and on appeal the court noted that in order "[t]o justify corrective sanctions for lost or destroyed evidence, such as the suppression sought by the defendant here, the defendant must demonstrate that the police acted in bad faith in losing or destroying the evidence." The court held the police did not commit the alleged destruction of the evidence, and that the evidence was not destroyed in bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Rhode Island	<i>State v. Garcia</i> , 643 A.2d 180 (R.I. 1994)	Published	The defendant was convicted of arson. The investigator wrote his report based off of his notes, and then, according to his normal procedure, he threw his notes away after he finished writing his report. The notes included his tentative conclusion that the fire started in an apartment to which the defendant did not have access. Upon further investigation, however, he concluded that the fire started elsewhere. The court held that together <i>Trombetta</i> and <i>Youngblood</i> established a tripartite test to determine whether a defendant's due-process rights have been infringed by the failure of law enforcement personnel to preserve evidence. The test requires that the defendant (1) establish that the proposed evidence possesses an exculpatory value that was apparent before the evidence was destroyed; (2) the defendant would be unable to obtain comparable evidence; and (3) demonstrate bad faith on the part of the state. The court concluded that the notes were not destroyed in bad faith.
		<i>State v. Werner</i> , 851 A.2d 1093 (R.I. 2004)	Published	The defendant was convicted of robbery. The police did not keep the original surveillance video, and the copy they had was of very poor quality. Applying the tripartite test adopted in <i>Garcia</i> , the court held that the defendant failed to demonstrate that the alleged exculpatory value of the evidence was known to the police before the original tape was destroyed and that the police acted in bad faith. Furthermore, the defendant failed to show that the video was exculpatory. The court also held that the evidence was destroyed because of "sloppy police work."

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	South Carolina	<i>Town of Mount Pleasant v. Roberts</i> , 713 S.E. 2d 278 (2013)	Published	Defendant was arrested for impaired driving; the arresting officer failed to video record the impaired-driving arrest because his vehicle was not equipped with the appropriate technology to do so. South Carolina has a statute that requires that the significant events associated with an impaired-driving arrest be video recorded, S.C. Code Ann. § 56-5-2953. The state maintained that an exception in the statute permitted the introduction of the evidence without video if recording equipment was not available. However, the court found that “the Town’s prolonged failure to equip its patrol vehicles with video cameras defeats the intent of the Legislature; therefore, the Town should not be able to avoid its statutorily-created obligation to produce a videotape by repeatedly relying on an exception to the statute.”
		<i>State v. Moses</i> , 702 S.E.2d 395 (S.C. Ct. App. 2010)	Published	The defendant got into an altercation with a police officer at school. The surveillance video of the event was not preserved. The court noted that South Carolina has adopted the analysis in <i>Youngblood</i> in its jurisprudence, but also recognized that the state does not possess an absolute duty to preserve potentially useful evidence. The court stated that the South Carolina Supreme Court has held that a defendant must show that either the state destroyed evidence in bad faith or that the state destroyed evidence that possessed an exculpatory value that was apparent before the evidence was destroyed, and the defendant cannot obtain comparable evidence. The court held that the defendant failed to establish a due-process violation resulting from the intentional destruction of evidence.
		<i>State v. Jackson</i> , 396 S.E.2d 101 (S.C. 1990)	Published	The defendant was arrested for a DUI. He was taken to the police department where he was given a breathalyzer test and was videotaped while performing field sobriety tests. When the assistant solicitor dismissed the charges, the video was erased and the test results were lost. The defendant was later convicted. The court held that the solicitor made a conscious decision to dismiss the charges, which was the reason why the video was erased, and that the value of the tape could not be replaced. The videotape was exculpatory and the defendant could not obtain evidence of comparable value. The court used the <i>Youngblood</i> standard, but commented that it thought “that requiring a defendant to show bad faith on the part of the police both limits the extent of the police’s obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant.”

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	South Dakota	<i>State v. Bousum</i> , 663 N.W.2d 257 (S.D. 2003)	Published	The defendant was convicted of first-degree intentional damage to property and resisting arrest. When he was arrested, he knocked out the passenger window of the police car. The police department had the window replaced before the defendant had an opportunity to have his expert examine the window. The court used the bad-faith standard. It noted that the court had previously recognized that mere negligence in the loss or destruction of evidence does not result in a constitutional violation. Furthermore, the North Dakota Supreme Court has defined “bad faith” in the context of destroying evidence as meaning that “the state deliberately destroyed the evidence with the intent to deprive the defense of information.” The court held that the police did not destroy evidence in bad faith; the loss or destruction of any evidence as a result of the window repair was negligent but it was not an act of bad faith.
		<i>State v. Pinela</i> , 458 N.W.2d 795 (S.D. 1990)	Published	The defendant was convicted of vehicular homicide. During the autopsy of one of the passengers, a blood sample was taken but subsequently lost. The defendant claimed that the blood sample was exculpatory evidence because it would match the blood found on the driver’s side of the car, thus proving that he was not driving the vehicle. The court held that under the facts of this case, <i>Youngblood</i> was controlling. Moreover, the record did not contain evidence of bad faith on the part of the officers; the loss of the blood sample was simply negligent. The blood sample also had little or no exculpatory value.
Follows/mostly follows <i>Youngblood</i> standard	Texas	<i>Castilla v. State</i> , 374 S.W.3d 537 (Tex. App. San Antonio 2012)	Published	The defendant was convicted of evading arrest. The police officer’s patrol car was equipped with a dashboard camera and recorded the entire event; however, the video was unexplainably missing audio. The defendant claimed that the state failed to preserve evidence that would have been favorable to his case and requested a spoliation instruction. The court, noting that the Court of Criminal Appeals has routinely applied the <i>Youngblood</i> standard, rejected the defendant’s argument that the court should not rely on the “bad-faith” standard. The court noted that only one appellate court has altered the “bad-faith” requirement and that case, <i>Penna v. State</i> (Pena III), has been reversed.
		<i>Ex parte Napper</i> , 322 S.W.3d 202 (Tex. Crim. App. 2010)	Published	The applicant was convicted of aggravated sexual assault and aggravated kidnapping. The swab samples taken from the victim were destroyed. The court provided a thorough analysis of the <i>Youngblood</i> standard, noting that what constitutes bad faith is unclear. The court ultimately rejected the applicant’s <i>Youngblood</i> claim, holding that the test results from the swab samples were not exculpatory and tended to incriminate the applicant.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Virginia	<i>Gagelonia v. Commonwealth</i> , 661 S.E.2d 502 (Va. Ct. App. 2008)	Published	The defendant was convicted of possession with intent to distribute, transporting controlled substances into the Commonwealth, and possession of a firearm while in possession of a controlled substance with the intent to distribute. The police officer lost the video of the incident, as well as the defendant's cell phone. The court analyzed <i>Trombetta</i> and <i>Youngblood</i> , and stated that when a defendant is seeking a new trial on the basis of missing evidence, the defendant must show that "(1) the evidence possessed an apparent exculpatory value, (2) the defendant could not obtain comparable evidence from other sources, and (3) the Commonwealth, in failing to preserve the evidence, acted in bad faith." Furthermore, the presence or absence of bad faith is specific to the police officer's knowledge of the exculpatory value at the time the evidence was lost or destroyed. Applying this standard to the facts of the case, the court held that the defendant did not meet his burden of showing that there was bad faith.
		<i>Hayden v. Commonwealth</i> , No. 1042-05-2, 2006 Va. App. LEXIS 275 (Va. Ct. App. June 27, 2006)	Unpublished	The appellant was convicted of forcible sodomy. The DNA samples collected from the victim were thrown away prematurely. The court held that the appellant's due-process claim was unsupported by the record., as the record did not contain evidence of bad faith on the part of the police--the evidence was destroyed as the result of a mistake. At worst, the police officer's actions were negligent.
Follows/mostly follows <i>Youngblood</i> standard	Washington	<i>State v. Hamilton</i> , No. 46439-6-I , 2001 Wash. App. LEXIS 2614 (Wash. Ct. App. Nov. 26, 2001)	Unpublished	The defendant was convicted of rape. A surveillance video, which captured the incident, was requested but never retrieved; the video was eventually lost. Relying on <i>Youngblood</i> , the court found that the tape was potentially useful at best, and emphasized that the police's failure to realize that the evidence was potentially useful was insufficient to show bad faith. Additionally, a showing that the government failed to follow established procedures does not establish bad faith; in this case, the procedures for collecting videotapes were unclear and ambiguous.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	<b>Washington</b>	<i>State v. Groth</i> , 261 P.3d 183 (Wash. Ct. App. 2011)	Published	<p>The defendant was convicted of murder. All of the physical evidence in the case was destroyed. The court denied the defendant's argument that Washington's due-process clause provides more protection than the federal due-process clause when the government destroys material evidence in a case, and stated that the determination of whether the state due-process clause provides more protection is a determination that would have to be left up to the state supreme court. Focusing its analysis on <i>Youngblood</i> and <i>State v. Wittenbarger</i>, the court emphasized that there is no due-process violation unless the defendant can show the evidence was destroyed in bad faith. Moreover, the Washington Supreme Court found that there is no bad faith when the government follows its own protocols in destroying evidence.</p>
Follows/mostly follows <i>Youngblood</i> standard	<b>Wisconsin</b>	<i>State v. Greenwold</i> , 525 N.W.2d 294 (Wis. Ct. App. 1994)	Published	<p>The defendant was charged with homicide by the intoxicated use of a motor vehicle. The defendant moved to have the charged dismissed on the ground that the State failed to preserve relevant and exculpatory evidence and that this constituted a violation of his constitutional right to due process. Though the trial court granted the defendant's motion, the Court of Appeals reversed. The court applied <i>Trombetta</i> and <i>Youngblood</i>, and stated that the due-process analysis is two-pronged: "A defendant's due process rights are violated if the police: (1) failed to preserve the evidence that is apparently exculpatory; or (2) acted in bad faith by failing to preserve evidence which is potentially exculpatory." The second prong requiring bad faith can only be shown if "(1) the officers were aware of the potentially exculpatory value or usefulness of the evidence they failed to preserve; and (2) the officers acted with official animus or made a conscious effort to suppress exculpatory evidence." Applying the above tests to the facts of the case, the court concluded that the defendant failed to meet his burden of proving bad faith, and therefore, according to the <i>Youngblood</i> standard, the defendant's due-process rights were not violated. The court also rejected the defendant's argument that the due-process clause of the Wisconsin Constitution affords greater protection than the federal due-process clause.</p>

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Follows/mostly follows <i>Youngblood</i> standard	Wisconsin	<i>State v. McEssey</i> , No. 2011AP2668-CR, 2012 Wisc. App. LEXIS 744 (Wis. Ct. App. Sept. 20, 2012)	Unpublished	The defendant was charged with sexual assault. He moved to have the charges dismissed on the grounds that a deleted audio recording of a conversation between the defendant and the victim contained potentially exculpatory material. The appeals court reversed the lower court's dismissal of the charges, holding that the lower court applied an incorrect legal test. Relying on <i>Greenwold II</i> (see case above), which in turn relies on <i>Youngblood</i> , the court held that the defendant had not been deprived of due process because the audio recording was not apparently exculpatory, and he had not shown that the failure to preserve the audio recording was in bad faith.
Follows/mostly follows <i>Youngblood</i> standard	Wyoming	<i>Willoughby v. State</i> , 253 P.3d 157 (Wyo. 2011)	Published	The defendant was convicted of murder. He moved for a new trial arguing, among other things, that the destruction of two sketches (done by witnesses during police interviews) violated his due-process rights. The court agreed with the parties that their review of the issue should be guided by <i>Youngblood</i> and <i>Trombetta</i> . In assessing whether the State acted in bad faith in this case, the court stated that five factors should be considered: "(1) whether the State was on notice by the appellant that he believed the evidence was potentially exculpatory; (2) whether the appellant's assertion that the evidence had exculpatory value was merely conclusory or whether his assertion was supported by objective, independent evidence; (3) whether the State was in possession of or had the ability to control the evidence at the time it received notice from the appellant; (4) whether the evidence was central to the State's case; and (5) whether there was an innocent explanation for the State's failure to preserve the evidence." After applying the above factors to the current case, the court determined that "the exculpatory value of the two sketches [was] indeterminate at best," that there was no evidence that the State acted in bad faith, and that the appellant failed to show a violation of his right to due process.
		<i>Drury v. State</i> , 194 P.3d 1017 (Wyo. 2008)	Published	The appellant was convicted of felony larceny. On appeal, she contends that her due-process rights were violated when a police officer destroyed the recordings of her and other witnesses' interviews. The court held that the appropriate standard to apply was <i>Youngblood</i> . The court found that there was no evidence that the tapes had any possible exculpatory value, let alone that the officer was aware of any exculpatory value before he destroyed the recordings as part of his routine procedure; therefore, there was no violation of appellant's right to the due process of law.

# Appendix

## States that do not accept or reject the *Youngblood* standard

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Florida	<i>State v. Muro</i> , 909 So. 2d 448 (Fla. Dist. Ct. App. 4th Dist. 2005)	Published	The defendant was charged with child abuse. Only a portion of the video evidence from a “nanny cam” was preserved. Though the State and the defendant relied on different precedent, the court found that both sets of cases generally applied the same standard as they both compared the deliberateness of the act with the degree of prejudice resulting from the act. The court held that the recording in this case was not constitutionally material and that it was no more than potentially useful to the defendant.
		<i>State v. Davis</i> , 14 So. 3d 1130 (Fla. Dist. Ct. App. 4th Dist. 2009)	Published	Video evidence of the defendant’s sobriety test was lost. Relying on <i>State v. Muro</i> and <i>Kelly v. State</i> , the court held that loss of materially exculpatory evidence is a violation of the defendant’s due-process rights and that the good or bad faith of the state is irrelevant. The court did not provide an analysis of <i>Arizona v. Youngblood</i> .
		<i>Bennett v. State</i> , 23 So. 3d 782 (Fla. Dist. Ct. App. 2d Dist. 2009)	Published	The court provided a thorough analysis of the case law in Florida with regard to lost or destroyed evidence, though it acknowledged that its analysis was only dicta. The court stated that the Florida Supreme Court has never expressly recognized the effects of <i>Youngblood</i> .
Does not accept or reject <i>Youngblood</i> standard	Idaho	<i>State v. Greenwold</i> , 525 N.W.2d 294 (Wis. Ct. App. 1994)	Published	The defendant was convicted of first-degree murder, lewd and lascivious conduct with a minor, and kidnapping. The state failed to preserve swabs of bodily fluid from the victim’s autopsy. The court provided a lengthy analysis in which it analyzed several different cases in an effort to determine whether the state deprived the defendant of due process by failing to preserve the semen samples. The court relied on a “balancing approach” to determine that the state did not deprive the defendant of due process. Using the “balancing approach,” the court focused on the balance between the quality of the government’s conduct and the degree of prejudice to the defendant. The court held that there wasn’t a due-process violation.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	<b>New Mexico</b>	<i>State v. Bartlett</i> , 789 P.2d 627 (N.M. Ct. App. 1990)	Published	<p>The defendant was charged with criminal sexual penetration. The victim was interviewed on two separate occasions, and both interviews were taped; however, the State was later unable to produce the tape of the first interview. The court stated that sanctions for violations of discovery orders are discretionary and that a defendant is not entitled to a dismissal or other sanctions simply by showing a violation of a discovery order. A three-prong test must be used in cases where the violation results from lost or destroyed evidence. The court emphasized that the analysis applied in this case is somewhat different from that employed in <i>Arizona v. Youngblood</i> because this case focuses on discovery sanction, though it acknowledged that due-process considerations are intertwined with the issue of discovery sanctions. The court held that the sanction of dismissal was not appropriate in this case.</p>
Does not accept or reject <i>Youngblood</i> standard	<b>New York</b>	<i>People v Handy</i> , 988 N.E.2d 879 (N.Y. 2013)	Published	<p>The defendant was charged with three counts of assault while he was in jail. A video recording of the event was destroyed in accordance with jail policy. The court, noting that a number of state courts have rejected the <i>Arizona v. Youngblood</i> holding when interpreting their state constitutions, whereas others have followed it, stated that New York had not addressed the <i>Youngblood</i> issue directly, but had considered related issues. The defendant requested that the court depart from <i>Youngblood</i> and adopt an interpretation more favorable to defendants. The court stated that it did not see a need to agree or disagree with <i>Youngblood</i>, and it held that under the New York law of evidence, "a permissible adverse inference charge should be given where a defendant, using reasonable diligence, has requested evidence reasonably likely to be material, and where that evidence has been destroyed by agents of the State." The court held that the defendant was entitled to have the adverse-inference charge applied to all of his charges.</p>



# Appendix

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Alaska	<i>Thorne v. Department of Pub. Safety</i> , 774 P.2d 1326 (Alaska 1989)	Published	The defendant was arrested after he performed poorly on sobriety tests following a car accident. The police did not receive a request to preserve a video tape that contained footage of defendant's sobriety test. The police deleted the footage and recycled the tape. The court held that failure to preserve the tape violated the defendant's due-process rights. Evidence that may be relevant to an issue of importance at a proceeding should be preserved. The issue is whether the evidence that was destroyed would have been favorable to the defendant. If the court is unable to make that determination, "the court must evaluate whether the evidence might have led the jury to entertain a reasonable doubt about the defendant's guilt." The court noted that, contrary to the decision in <i>Arizona v. Youngblood</i> , the Alaska Constitution's due-process clause does not require a showing of bad faith. The court found that the defendant's due-process rights had been violated.
Does not accept or reject <i>Youngblood</i> standard	Connecticut	<i>State v. Asherman</i> , 478 A. 2d 227 (1994)	Published	Defendant was charged with murdering a friend by repeatedly stabbing him; he was convicted of manslaughter. At the time of the defendant's arrest, a bloody key chain was removed from the pocket of his blue jeans and seized by the police. The state tested the blood on the key chain and determined that it was human; however, all of the blood evidence was consumed in this process, and the defendant was unable to conduct any independent blood testing. Defendant argued that he should have been able test the blood to see if the blood type was consistent with the victims and he averred that as a medical student, he was exposed to human blood routinely. The Supreme Court of Connecticut announced a four part test to determine whether the defendant's trial was fair in light of the blood evidence being destroyed during the state's testing: (1) the materiality of the missing evidence, (2) the likelihood of mistaken interpretation of it by witnesses or the jury, (3) the reason for its nonavailability to the defense, and (4) the prejudice to the defendant caused by the unavailability of the evidence. Applying the test to the facts of the case, the court found that the defendant offered no evidence nor made any offer of proof that the amount of blood on the key ring was sufficient, if properly tested, to establish blood type, and that in the absence of such evidence or offer the defendant's claim was speculative. Furthermore, the defendant did not challenge the state's assertion that the testing of the samples necessarily consumed each sample. Based on those facts, the court concluded that the destruction of evidence in this situation did not impact the defendant's right to a fair trial.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	<b>Connecticut</b>	<i>State v. Schmidt</i> , MV13429920S, 2014 Conn. Super. LEXIS 2916 at *1 (Conn. Super. Ct. Nov. 25, 2014)	Unpublished	Defendant was arrested for a DUI. The video containing footage of her booking was not preserved. The court held that <i>Arizona v. Youngblood</i> was more appropriately applied in federal cases. The court used the <i>Asherman</i> test in its analysis, and focused on the following elements: (1) the materiality of the missing evidence; (2) the likelihood of mistaken interpretation of the evidence by the witness or the jury; (3) the reason for its non-availability to the defense; (4) and the prejudice to the defendant caused by the unavailability of the evidence. The court held that there wasn't a due-process violation.
Does not accept or reject <i>Youngblood</i> standard	<b>Delaware</b>	<i>Hammond v. State</i> , 569 A.2d 81 (Del. 1989)	Published	The defendant was convicted of two counts of vehicular homicide after a car accident in which he was the driver and in which both of his passengers died. The defendant challenged his conviction arguing, among other things, that the police's failure to preserve the crash vehicle violated his constitutionally guaranteed right of access to evidence. The court, opting not to follow the <i>Youngblood</i> test, held that the appropriate tests to apply to a case involving lost or destroyed evidence were the <i>Deberry</i> and <i>Bailey</i> tests. The <i>Deberry</i> test involves the following analysis: "(1) would the requested material, if extant in the possession of the State at the time of the defense request, have been subject to disclosure under Criminal Rule 16 or Brady; (2) if so, did the government have a duty to preserve the material?; (3) and if there was a duty to preserve, was the duty breached, and what consequences should flow from a breach?" The <i>Bailey</i> test helps determine the consequences of a breach of duty by analyzing: "(1) the degree of negligence or bad faith involved; (2) the importance of the missing evidence considering the probative value and reliability of secondary or substitute evidence that remains available; (3) and the sufficiency of the other evidence produced at the trial to sustain the conviction." The court held that although the evidence should have been preserved, it was not destroyed in bad faith. The court further held that the defendant's trial was not fundamentally unfair.

# Appendix

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Delaware	<i>State v. Shugard</i> , No. 0302017363, 2004 Del. C.P. LEXIS 24, *1 (Del. C.P. June 21, 2004)	Unpublished	The defendant was arrested for DUI, and the video recording of his sobriety test was subsequently destroyed. After applying the <i>Deberry</i> and <i>Bailey</i> tests (see above), the court held that "(1) the defendant was entitled to a copy of the tape; (2) the test which the Supreme Court of Delaware established for determining appropriate relief in cases where the State lost or destroyed evidence that a defendant was entitled to discover did not contemplate suppression of the arresting officer's testimony; and (3) the proper remedy was to grant defendant an inference that the tape would be exculpatory, and to require the State to stipulate to that fact." The court held that there was a due-process violation and the proper remedy was "to grant an inference that the lost evidence was exculpatory in nature."
Does not accept or reject <i>Youngblood</i> standard	Hawaii	<i>State v. Matafeo</i> , 787 P.2d 671 (Haw. 1990)	Published	The appellant, charged with sexual assault and kidnapping, moved to dismiss the complaint after the police accidentally destroyed all of the physical evidence in the case. The court did not agree that it needn't go beyond an <i>Arizona v. Youngblood</i> analysis, believing that a strict reading of <i>Youngblood</i> would preclude the court from looking into the favorableness of the evidence that was lost or destroyed when no bad faith is shown. The court agreed with the <i>Youngblood</i> concurrence that there are situations when the evidence is "so critical to the defense [that the loss or destruction of the evidence makes] a criminal trial fundamentally unfair." However, as there was no showing that the evidence was destroyed in bad faith or that it was exculpatory, and as the clothing was not "evidence so crucial to the defense that its destruction will necessarily result in a fundamentally unfair trial," the supreme court affirmed the trial court's order denying appellant's motion to dismiss the complaint.
		<i>State v. Steger</i> , 158 P.3d 280 (Haw. Ct. App. 2006)	Published	A police officer took pictures of drugs that were found in the defendant's apartment, but the pictures were subsequently lost. The court rejected the defendant's contention that criminal charges should automatically be dismissed whenever potentially exculpatory evidence is lost or destroyed because a rule of automatic dismissal would require dismissal of virtually every case involving lost or destroyed evidence. The court applied the Hawaii Supreme Court's analysis in <i>Matafeo</i> , explaining that further inquiry into cases where there wasn't any bad faith would not be precluded, but that an automatic dismissal was not required.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Massachusetts	<i>Commonwealth v. Henderson</i> , 582 N.E.2d 496 (Mass. 1991)	Published	The defendant was charged with unarmed robbery. A police officer wrote down a victim's description of the suspect; however, the officer's notes were then lost. The court held that the rule under the Massachusetts Constitution's due-process provisions is stricter than that stated in <i>Youngblood</i> . The lower-court judge determined that the degree of police fault in losing the notes was not great, but that some mechanism should be in place to preserve this type of information. The lower court dismissed the indictment, and the Massachusetts Supreme Court affirmed, noting that other states have also held the government to higher due-process-law standards under their state constitutions.
		<i>Commonwealth v. McLean</i> , 13-P-138, 2015 Mass. App. Unpub. LEXIS 298, at *1 (Mass. App. Ct. April 13, 2015)	Unpublished	The defendant was convicted of open and gross lewdness. The video from a surveillance camera, which contained footage of the act, was not preserved in time and it was overwritten. The court held that a dismissal was not appropriate. The court indicated that when evidence is destroyed the following must be weighed: (1) the culpability of the government, (2) the materiality of the evidence, and (3) the potential for prejudice. Charges will not be dismissed unless there has been "irremediable harm" preventing the possibility of a fair trial. The defendant has the burden of establishing that access to the evidence would have produced evidence favorable to his case. The court held that the defendant's claim that the evidence was exculpatory was insufficient.
Does not accept or reject <i>Youngblood</i> standard	New Hampshire	<i>State v. Smagula</i> , 578 A.2d 1215 (N.H. 1990)	Published	The defendant was found guilty of armed robbery. The police officers did not write down or preserve the photo lineup in which the victim failed to identify the defendant. Under the state constitution, when a defendant demonstrates that the State failed to preserve relevant evidence, the State has the burden of showing that it acted in good faith. This means that the State has to show that it did not intend to prejudice the defendant and that it acted without culpable negligence (culpable negligence being less than gross negligence but more than ordinary negligence). The defendant must show that the lost evidence was material, and that if the evidence had been introduced, there would have probably been a verdict in his favor. Under the U.S. Constitution, the court applied the <i>Arizona v. Youngblood</i> standard. The court held that the police officer's actions were mere negligence.

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	<b>New Hampshire</b>	<i>State v. Shugard</i> , No. 0302017363, 2004 Del. C.P. LEXIS 24, *1 (Del. C.P. June 21, 2004)	Published	<p>The defendant was convicted of first-degree murder. The police officers failed to preserve the victim's body because the body was burned, and the officers thought that it was an animal carcass. The court held that the defendant's due-process claim under the U.S. Constitution was without merit because there wasn't any proof that the police acted in bad faith in failing to preserve the body. Due process is violated only if the police acted in bad faith. Furthermore, the police must have had the knowledge of the exculpatory value of the evidence at the time it was lost or destroyed. The court held that the defendant failed to show bad faith on the part of the police or that they could have been expected to know the potential evidentiary value of the body at the time they disposed of it.</p>
Does not accept or reject <i>Youngblood</i> standard	<b>Tennessee</b>	<i>State v. Ferguson</i> , 2 S.W.3d 912 (Tenn. 1999)	Published	<p>The defendant was arrested for driving under the influence. He was taken to the police station, where he was video taped while performing his sobriety tests. The video was erased before anyone had an opportunity to view it. The court declined to follow the <i>Youngblood</i> standard and instead adopted a standard similar to the standard adopted in Delaware. The standard includes the following: "(1) the degree of negligence involved; (2) the significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains available; and (3) the sufficiency of the other evidence used at trial to support the conviction." The court stated that the central objective was to protect the defendant's right to a fundamentally fair trial. The court further stated that if the trial without the missing evidence would be fundamentally unfair then it was within the trial court's discretion to dismiss the charges or issue a sanction. The court held that, in this case, the defendant had a fair trial and was not disadvantaged by the missing evidence.</p>

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Tennessee	<i>State v. Merriman</i> , 410 S.W.3d 779 (Tenn. 2013)	Published	<p>The defendant was arrested for driving under the influence and a number of other charges following a pursuit. The arresting officer's car was equipped with a video-recording system, which recorded the pursuit and stop; however, the hard drive was not subsequently removed, logged into evidence, or stored as was department policy. Two days before the trial, the defense moved to dismiss the indictment based on the missing video; the motion was granted and the state appealed. The Tennessee Supreme Court based its decision on the due-process clause as contained in the Tennessee Constitution. It found that the state's duty to preserve evidence is limited to "constitutionally material" evidence, which they described as "evidence that might be expected to play a significant role in the suspect's defense." If a trial court finds that the State failed in its duty to preserve constitutionally material evidence, the trial court must consider the following factors to determine the consequences of that failure: the degree of negligence involved; the significance of the destroyed evidence, considered in light of the probative value and reliability of secondary or substitute evidence that remains available; and the sufficiency of the other evidence used at trial to support the conviction. Applying the above test to the facts of defendant's case, the Supreme Court of Tennessee determined that the trial court did not abuse its discretion by dismissing the case based on the missing video recording.</p>
Does not accept or reject <i>Youngblood</i> standard	Utah	<i>State v. Tiedemann</i> , 162 P.3d 1106 (Utah 2007)	Published	<p>The defendant was charged with murder; however, he was declared incompetent to stand trial and the charges were dismissed. Approximately 14 years later, he was declared competent but all of the evidence for the case had been destroyed. The court rejected the <i>Arizona v. Youngblood</i> standard because it was both too broad and too narrow. Instead, the court held that the standard focuses on a balance of different factors on a case-by-case basis. In a case where the defendant has shown that lost or destroyed evidence may be exculpatory, the following needs to be considered: "(1) the reason for the destruction or loss of the evidence, including the degree of negligence or culpability on the part of the state; and (2) the degree of prejudice to the defendant in light of the materiality and importance of the missing evidence in the context of the case as a whole, including strength of the remaining evidence." The importance of the balancing test is fundamental fairness. The court held that the defendant did not show culpability or bad faith on the part of the state. Furthermore, the reason the evidence was destroyed was for a completely routine reason.</p>

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CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	Utah	<i>State v. Otkovic</i> , 322 P.3d 746 (Utah Ct. App. 2014)	Published	The defendant was convicted of aggravated kidnapping and aggravated robbery. A video from the ATM captured the event; however, it was later destroyed. The court relied on <i>State v. Tiedemann</i> for its analysis. The court stated that a defendant must first demonstrate that there was a reasonable probability that lost or destroyed evidence would be exculpatory. The court held that the defendant failed to make such a threshold showing. For this reason, the court concluded that the trial court correctly declined to analyze the evidence any further.
Does not accept or reject <i>Youngblood</i> standard	Vermont	<i>State v. Delisle</i> , 648 A.2d 632 (Vt. 1994)	Published	The defendant was convicted of second-degree murder. Only a small portion of the tarp in which the victim's body was wrapped was preserved--the rest was destroyed--and the victim's hyoid bone was lost. The court held that <i>Arizona v. Youngblood</i> did not apply to the defendant's state due-process claim. The court stated that <i>Youngblood</i> is the controlling federal standard. However, it is both too broad and too narrow. The court chose to apply the standard that it established in <i>State v. Bailey</i> , a case that was decided before <i>Youngblood</i> . This standard requires the balancing of the following: "(1) the degree of negligence or bad faith on the part of the government; (2) the importance of the evidence lost; and (3) other evidence of guilt adduced at trial." After applying the <i>Bailey</i> test, the court held that the loss of the evidence did not result in a denial of the defendant's rights.
		<i>State v. Porter</i> , No. 12-344, 2014 Vt. LEXIS 88 (Vt. Aug. 1, 2014)	Unpublished	The defendant was convicted for attempted kidnapping. He argued that the case should have been dismissed because the state failed to collect, preserve, or test items of potentially exculpatory evidence. The court stated that for the defendant to be entitled to sanctions under the Vermont Constitution, he needed to show only a reasonable possibility that the evidence would have been favorable. If the defendant is able to make such a showing, then the court has to determine whether sanctions are warranted based on an analysis of the three <i>Bailey</i> factors. The court upheld the trial court's determination that failure to preserve the evidence did not result in any kind of violation.

CATEGORY	STATE	CASE CITATION	PUBLICATION STATUS	CASE SUMMARY
Does not accept or reject <i>Youngblood</i> standard	<b>West Virginia</b>	<i>State v. Osakalumi</i> , 461 S.E.2d 504 (W. Va. 1995)	Published	<p>The defendant was convicted of murder. Evidence in the case was destroyed. The court held that the <i>Arizona v. Youngblood</i> analysis was the appropriate standard to use when analyzing the defendant's federal due-process claim. However, the court did not adopt the <i>Youngblood</i> standard for the defendant's state due-process claim. Instead, the court held that fundamental fairness requires the court to evaluate the state's failure to preserve potentially exculpatory evidence in the context of the entire record. A trial court must determine "(1) whether the requested material, if in the possession of the State at the time of the defendant's request for it, would have been subject to disclosure under either West Virginia Rule of Criminal Procedure 16 or case law; (2) whether the state had a duty to preserve the material; and (3) if the State did have a duty to preserve the material, whether the duty was breached and what consequences should flow from the breach." The court held that the defendant's trial was fundamentally unfair.</p>
Does not accept or reject <i>Youngblood</i> standard	<b>Utah</b>	<i>State v. Paynter</i> , 526 S.E.2d 43 (W. Va. 1999)	Published	<p>The defendant was convicted of second-degree murder. Samples taken from the victim were destroyed. The court provided an analysis of <i>Arizona v. Youngblood</i> but applied the standard set forth in <i>State v. Osakalumi</i>.</p>



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# The Colorado Best Practices Committee for Prosecutors

*Presents*

## **Body-Worn Cameras: A Report for Law Enforcement**

By Antonia Merzon for the Colorado Best Practices Committee

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## Colorado Best Practices Committee for Prosecutors



### Body-Worn Cameras Executive Summary

Body-worn cameras are a rapidly emerging law enforcement tool that implicate many policy issues involving law enforcement, local, state and federal governments, civil liberties groups and the media. Limited research is available on the ultimate effects of the cameras; however, their use is quickly growing. A POST survey conducted in January 2015 indicates that approximately 28% of Colorado law enforcement agencies are using body-worn cameras, with many more contemplating them in the near future.

Using body-worn cameras raise a number of technical, financial and policy considerations including:

- What brand and type of camera should be purchased?
- How, where and for how long should footage be stored?
- Should officers have discretion when to record, or should the recording run continuously?
- When officers record in the field, how and when will they upload the data? What processes will ensure the integrity and security of the recordings?
- Who within the department will be authorized to view recorded footage? Who will be tasked with sorting and tagging recordings as evidence in criminal, traffic or investigative matters, or as non-evidence? What are the criteria for each category?
- In what manner are officers required to document the existence of body-worn camera footage in written reports?
- How will the department handle the release of recordings for open records requests?

Recording with body-worn cameras also brings up complex privacy issues. Officers will inevitably record sensitive events such as incidents inside people's homes and incidents involving medical treatment. They might also record everyday encounters with civilians that have nothing to do with enforcement activities such as someone asking for directions or someone with a disabled vehicle. The privacy rights of the individuals in body-worn camera recordings are an important factor in deciding whether to record and what to do with the recordings if they are made.

In sum, these critical policy decisions will affect every element of the body-worn camera program from choosing hardware and software to the ultimate courtroom use of evidence.

The Best Practices Committee for Prosecutors looks forward to working with our legislature and law enforcement agencies in sorting through these considerations to bring the best possible policies and practices to the people of Colorado.

# The Colorado Best Practices for Prosecutors Committee

## A Report on Body-Worn Cameras for Colorado Law Enforcement

### Introduction

Since the 1980s, video cameras have been an evolving tool for law enforcement agencies. Many police departments across the country first put this technology in the field by installing cameras inside vehicles. “Dashboard cams,” still in wide use today, allow officers to record certain encounters with the public - such as traffic stops or emergency assistance responses. But a dashboard camera’s vantage point limits recordings to whatever can be seen through the windshield of a police car, and often dashboard cameras do not have audio capabilities rendering, essentially, a silent movie of the events within view.

In the past ten years, new cameras have been developed for police officers to wear on their bodies – typically on the chest, shoulder or affixed to sunglasses. These body-worn cameras, or “body cams,” greatly broaden the reach of video recording in the field. With body-worn cameras, officers can record – in both video and audio - virtually all contact with other individuals whether within a police vehicle or on foot. At this time, the equipment and/or personnel to run a full body-worn camera program represent a major, long-term financial investment for law enforcement. And like all new forms of technology, body-worn cameras create both new powers and new responsibilities for the agencies using them. Given the costs and the many conflicting policy issues raised by body-worn cameras, a cautious approach to implementation is needed. However, recent intense public and media scrutiny of police activity has put body-worn cameras front and center for many law enforcement agencies, with many rushing to start programs.

The goal of this report is to outline the key decisions agencies face when considering a body-worn camera program.<sup>1</sup> We have divided the discussion into five general sections:

- I. An overview of the body-worn camera debate and the current use of cameras in Colorado
- II. Technology questions associated with body-worn cameras

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<sup>1</sup> Several well-respected organizations have written comprehensive reports in order to help law enforcement develop thoughtful, commonsense approaches to using the cameras. The information in this memo is primarily derived from the following reports: (1) Miller, L., Toliver, J., & Police Executive Research Forum (PERF). (2014). *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services; (2) White, M. D. (2014). *Police Officer Body-Worn Cameras: Assessing the Evidence*. Washington, DC: Office of Community Oriented Policing Services (COPS); (3) International Association of Chiefs of Police (IACP) National Law Enforcement Policy Center (April 2014). *Body-Worn Cameras*. Alexandria, VA; (4) Stanley, J. (Oct. 2013). *Police Body Mounted Cameras: With Right Policies in Place, a Win for All*. American Civil Liberties Union (ACLU); (5) Force Science Institute Special Report. (2014). *10 Limitations of Body Cams You Need to Know for Your Protection*. Mankato: Force Science Institute; (6) *Body Worn Camera Video Technology*. (Feb. 2015). Arvada Police Department. Inter-Agency Version of Staff Study 14-09.



- III. Policy considerations about when officers should record with the cameras
- IV. Privacy concerns
- V. Handling open records requests for body-worn camera recordings

By reviewing the difficult choices inherent in any police use of body-worn cameras, especially in light of the long-term costs associated with maintaining a program, we hope to enlarge the discussion within Colorado law enforcement, government and the public about the use of this technology.

## **I. Body-Worn Cameras and Where We Are in Colorado**

### *- Pros and Cons*

There has been a great deal of discussion about the pros and cons of body-worn cameras among law enforcement organizations, local, state and federal governments, civil liberties activists and the media. Proponents often argue that body-worn cameras will.<sup>2</sup>

- Provide compelling evidence in criminal prosecutions by recording events, statements, searches and other key moments in the early stages of a case;
- Promote accountability and transparency about law enforcement agencies and the work of their officers, thereby enhancing community relations;
- Improve the behavior of both citizens and officers when they know their conduct is being recorded – thereby increasing safety and reducing “use of force” incidents;
- Debunk frivolous complaints about officer misconduct, saving police departments time and money;
- Allow police departments to monitor the work of their officers, both for training purposes and in situations where an officer’s performance requires review.

Those against the use of body cams point to the significant side effects of recording police officers going about their daily duties. The most cited concerns are:<sup>3</sup>

- The large financial investment needed for hardware, software, storage, personnel, and training;
- The onerous job of managing, storing and providing discovery of any video recordings generated - particularly for medium to large departments handling thousands of hours of footage;

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<sup>2</sup> Lists of pros and cons are derived from the reports described in footnote 1.

<sup>3</sup> Some reports mention officer safety as possible drawback of body-worn cameras; however, they also note the risk is very low and the potential injuries minor.

- Intrusions into the privacy rights of people being recorded - especially when incidents occur inside homes or involve non-investigatory/enforcement situations;
- Intrusions into the privacy rights of law enforcement officers wearing the cameras;
- The public availability of body-worn camera recordings pursuant to state and federal open-records laws;
- The potential chilling effect on interviews with sensitive witnesses and informants;
- The complexities of handling encounters involving privileged information – such as medical, mental health, attorney-client, religious or marital communications;
- Inadvertent capturing of personal, embarrassing or irrelevant comments/events when officers mistakenly leave a camera on or forget the camera is on;
- Public misconceptions – potentially carried into the jury pool - that video will always be present and/or will always resolve factual disputes;<sup>4</sup> and
- Public misconceptions that body-worn cameras are always equal to or better than humans at capturing events.

*- Very Limited Research, but Body-Worn Cameras Are Growing in Use*

Unfortunately, because body-worn camera technology is relatively new, there is limited information about any of the ultimate benefits or risks of using them.<sup>5</sup> In October 2014, the only peer-reviewed study on the topic to date was released. The University of Cambridge Institute of Criminology (United Kingdom) did a research study over a one-year period in conjunction with the Rialto, California Police Department.<sup>6</sup> The results of that research, which gathered and compared statistics about Rialto officers who wore cameras and those who did not, indicates that body-worn cameras do provide many of the

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<sup>4</sup> The recent case of Eric Garner in Staten Island, NY, is often cited as an example in which video of the incident did not necessarily resolve the factual or legal dispute. In that incident, a bystander with a cellphone recorded a police officer using a chokehold to arrest Garner, resulting in Garner's death.

<sup>5</sup> It should be noted that dashboard cameras have demonstrated many of the perceived benefits of body-worn cameras over the approximately twenty-five years they have been in widespread use. See, (1) *Body-Worn Cameras (IACP)* and (2) IACP. (2003). *The Impact of Video Evidence on Modern Policing: Research and Best Practices from the IACP Study on In-Car Cameras*. Alexandria, VA.

<sup>6</sup> Ariel, B. et al. *The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial*. *Journal Quantitative Criminology* (Nov. 19, 2014).

perceived benefits described by their supporters. In particular, citizen and officer behavior notably improved, while frivolous complaints and use of force were drastically reduced. However, with only one available study about one police agency, its applicability on a wider scale is limited.<sup>7</sup> Importantly, the study does not directly address many of the other concerns about body-worn cameras – such as privacy intrusions, open records requests and handling sensitive witnesses.

Despite the lack of experience or information available about body-worn cameras, many police agencies are moving forward with programs to implement them. There are logical reasons to do so. The cameras make a visual and aural evidentiary record in criminal or other enforcement matters, and can help officers correctly document the incidents occurring during their shifts. Due to highly publicized national events – like the Ferguson and Garner cases – there is strong public and governmental pressure to employ the cameras because of this documentary function. The cameras also can help officers deflect frivolous complaints about their conduct, saving the officers from the ordeal of an internal investigation and saving their agencies precious budget dollars. As a result, in departments without body-worn camera programs, some officers are privately purchasing and using their own cameras, raising a host of evidentiary and liability issues.

#### *- Survey of Law Enforcement in Colorado*

Body-worn cameras are already being used in Colorado. In a recent survey by the Colorado Peace Officer Standards and Training Board (POST), law enforcement agencies across the state were asked if their officers are equipped with body-worn cameras; 170 agencies responded. Of those, 47 agencies (27.7%) said they are currently using the cameras. Another 93 agencies are considering using body-worn cameras in the near future, with many indicating that cost is the only factor standing in the way. Of the 35 Colorado agencies that described their camera programs in the survey:

- 22 are currently using fewer than ten cameras
- 9 are using between 10 and 20 cameras
- 3 are using between 20 and 30 cameras
- only one is using 50 cameras, and
- none reported a higher number than 50 cameras

Approximately 35 of the responding agencies stated they are in the process of studying or testing the implementation of a body-worn camera program. This information, coupled with the above figures, offers two important insights. The first is

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<sup>7</sup> The study's authors even cautioned against using the results as a source of general information about the effects of policing with body-worn cameras. *See, First Scientific Report Shows Police Body-Worn Cameras Can Prevent Unacceptable Use of Force.* (12/23/2014). University of Cambridge official website: <http://www.cam.ac.uk/research/news/first-scientific-report-shows-police-body-worn-cameras-can-prevent-unacceptable-use-of-force>.

that agencies are generally taking a careful approach before fully embracing the policy and fiscal consequences of this new technology. Second, it may well be easier for smaller departments to develop a body-worn camera program because the management and usage issues are less complex and the resulting financial impact less significant.<sup>8</sup>

## II. The Technology of Body-Worn Cameras

Whether large or small, when a police department chooses to begin a body-worn camera program, it must make a number of technical decisions on how best to utilize this tool. Each decision, in turn, can raise policy issues related to the creation, use and storage of recorded footage.

The following is a list of some of the basic technical questions that arise, and cost is a critical factor in answering all of them. Once an agency is using more than a handful of cameras, these programs are expensive. An in-depth study by the Arvada Police Department highlighted an important correlation about the high costs of adopting body-worn cameras. Agencies may choose to spend less on the actual camera equipment and storage system, but they will end up spending more on the personnel needed to manage the enormous amount of recorded data that body-worn cameras produce. On the other hand, if an agency spends more on cameras and a computerized storage/management system, the personnel costs of their body-worn camera program will be low. This “budget tradeoff” is worth keeping mind when considering the issues described below.<sup>9</sup>

### 1. *What type of camera to purchase?*

- A recent market survey by the National Institute of Justice detailed 18 different camera models currently available to law enforcement agencies, ranging in price from \$119.95 to \$1,000.00 per unit.<sup>10</sup> Each model comes with its own specifications as to weight, size, video quality, battery life, storage capacity and many other features. But cost is only one consideration in choosing a camera. Choosing the right camera for a particular agency requires decisions to be made about the recordings they will produce, such as

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<sup>8</sup> Some agencies gave reasons other than prohibitive cost for not pursuing a body-worn camera program at this time. Among those reasons were concern over unresolved legal and privacy issues, small department size, satisfaction with their current dashboard camera systems, and a good police/community relationship such that cameras are unnecessary to build trust.

<sup>9</sup> *Body Worn Camera Video Technology*. (Feb. 2015). Arvada Police Department. **The Arvada study estimates that the average patrol officer recording all citizen contacts during his/her shift would generate 1.5 terabytes of video footage per year.** In other words, if all Arvada patrol officers were equipped with cameras, the recordings would require 1 terabyte of storage every two weeks. These estimates provide a window into the massive amount of data storage required for a body-worn camera program.

<sup>10</sup> ManTech International Corporation. (2014). *Body-Worn Cameras for Criminal Justice: Market Survey (v.1.0)*. Fairmont, WV: ManTech International Corporation for National Institute of Justice (NIJ).

how tampering with video footage will be prevented, or what type of storage system will be put in place for the video data produced. Some cameras, for example, include built-in safeguards that prevent a video from being altered by the officer wearing it. Others do not include this type of protection. Some companies market cameras to be used in conjunction with offsite data storage systems. Others sell cameras simply as a stand-alone product, leaving it to the agency to determine how recorded data will be securely uploaded and stored. In addition, as discussed in a later section, the camera choice should reflect the agency's policy decisions about the types of incidents officers will be required to record. The more expansive an agency's policy, the more storage capacity, battery life and durability are needed from the cameras.

2. *How will officers be trained in the use of this equipment?*

- Once a body-worn camera system is selected, officers must be trained on how to use them. This training requires a number of choices to be made by the agency, including where on the body the camera will be worn, how officers will be asked to sign out cameras, and how they will be returned, uploaded and recharged at the end of a shift. The cameras available on the market offer different solutions for these and other technical questions, providing additional factors to be considered in choosing a body-worn system. In addition to the technical aspects, officers also must be trained on the agency's policies for when cameras should be activated and deactivated, and what discretion officers have in those decisions. The policy issues surrounding "when to record" are discussed in more detail in Part III of this report.
- Training on both the camera's technical aspects and the agency's recording policy will be critical to the use of body-worn camera recordings in criminal cases. An officer's written reports about an incident will reflect whether he or she complied with the technical recording protocols as well as the agency's rules for when to record. If the officer ever were to testify about the incident, he or she would be examined and cross-examined on the same facts. The more an officer's conduct deviates from the protocols and policies of a body-worn camera program, the more likely the recordings will be excluded from evidence or discredited by the defense. Training, therefore, is the foundation to ensuring body-worn camera recordings become strong sources of evidence.

3. *When officers record in the field, how do they upload the data at the end of the shift? What processes are in place to ensure the integrity and security of the recordings?*

- With any law enforcement use of video or audio recordings, steps must be taken to ensure the recordings cannot be altered after the fact. Preserving the integrity of the footage and the chain of custody from recording to storage is vital to its potential use as courtroom evidence and to forestall accusations that a police department manipulated recordings for self-serving reasons. Therefore, agencies must develop a process by which body-worn recordings are uploaded from officers' cameras in a tamper-proof way. Some camera companies offer tamper-proof uploading as part of their package of equipment

and services. But if this type of system is not being used, the agency should come up with its own protocols by which the officers themselves and/or other personnel collect the recordings, upload and store them in a manner which does not allow for altering of the video data.

4. *Who within the department is authorized to view recorded footage?*

- Agencies using body-worn cameras concerns will also have to determine which personnel will be authorized to view footage after it is recorded, uploaded and stored.
  - *Will the officer who made the recordings have access to them afterwards?* Some agencies - within Colorado and nationally - have adopted the policy that officers should regularly review their video recordings after a shift in order to: (a) properly memorialize the existence of the recordings in written reports, and (b) write written reports describing events occurring during the shift as accurately as possible. Other agencies have chosen a different position, saying that while officers should note the existence of body-camera recordings in their reports, the reports should otherwise reflect the officer's own memory of events, not what the camera view shows. One reason used to support the second approach is the fact that the viewpoint of a body-worn camera when it records is always going to be different than what the human officer observes with his or her five senses. The position of the camera on the chest, shoulder or sunglasses also results in a somewhat different visual perspective than what the officer sees. No matter which policy is chosen, when it comes to recordings of critical incidents – such as officer-involved shootings – the seeming consensus is that officers should not be allowed to review body camera footage as a matter of course. Instead, agencies should determine if and when an officer can look at the recordings within the context of the ensuing investigation. It should be noted that if an officer reviews his or her own recording, for any reason, it should be done only if measures are in place to prevent intentional or inadvertent tampering.
  - *Other than the recording officer, who else in the agency should have access to the stored video footage?* Agencies must consider approaches to handling stored recordings that provide access as needed – for reports, discovery, training or other legitimate purposes – while ensuring the security and integrity of the recordings. Depending upon the size of the agency, such an approach could involve simply documenting who, when and why a video recording is accessed or copied, or perhaps designating specified personnel as the only individuals with access and copying privileges. Another solution is to use a camera and data storage system that offers auditing features for recording the details of any access to a video data file. If such software is not used, however, the agency must create its own protocols for auditing access to the body-worn camera data.

Similarly, agencies should consider the type and number of supervisors who have reviewing authority – from an officer’s direct supervisor all the way to the head of the agency. In larger departments with Internal Affairs units, a determination also needs to be made about how to provide access to Internal Affairs investigators.

5. *Who within the department is tasked with sorting and tagging recordings as evidence in a criminal, traffic or investigative matter, or as non-evidence? What are the criteria for each category?*
  - Once officers begin recording with body-worn cameras, the footage needs to be sorted or tagged in some manner. Recordings relevant to investigations, arrests, traffic infractions or other police matters have to be identified and associated with their cases or files, either physically placed together or within a computerized case management system. It is particularly important such “evidence” recordings are categorized and stored in a secure, tamper-proof manner and follow departmental chain of custody protocol. Many other recordings may have no evidence value at all, such as civilians asking for directions or calls for help involving a disabled vehicle. Agencies have to decide what criteria will be used to determine if a recording is “evidentiary” or “non-evidentiary”, or perhaps create more specific classifications. Once these criteria are developed, the agency then must task personnel within the department to sort the recordings, properly tag them, and ensure they are attached to cases or files. In smaller agencies, or those using the features available with some software packages, it may be practical for the recording officer or a supervisor to take on this responsibility.<sup>11</sup> In larger agencies generating hundreds of hours of footage, this process can become one or more dedicated staff member’s full-time job.
  
6. *In what manner are officers required to document the existence of body-worn camera footage in written reports?*
  - In order to make sure body-worn camera recordings are correctly associated with cases, summonses, investigations or other official matters, it is recommended that agencies require officers to note the existence of the footage in their written reports. Agencies might consider adding check-boxes or other entries to existing forms to facilitate the notation and description of the recordings.

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<sup>11</sup> For example, Taser International provides a service that allows officers to review and tag their recordings using a smartphone application. The application also prevents altering or tampering with the video. Officers can use down time during their shifts to perform the review process. Other companies offer similar video storage and management systems. This memo in no way endorses Taser International or any other vendor.

7. *How and where is footage stored? What steps are taken to ensure the digital recordings are secure and tamper-proof? Are recordings tagged as evidence stored in the same or a different manner than recordings deemed non-evidence?*

- Storage of the digital recordings can be one of the most complex and costly aspects of adopting body-worn cameras as a law enforcement tool. The recordings are a form of digital data that must be uploaded and stored in a tamper-proof manner. In addition, the storage method must be secure, so as to prevent unauthorized access to the digital data. If an agency is handling only a small number of recordings, it may not be very complicated or expensive to create such a system – perhaps using CD-ROMs or DVDs to store recordings in a physically secured location. In larger agencies, however, the necessary secure storage can involve the development of in-house capacity on internal servers or hard-drives, or contracting with private companies who provide off-site, “cloud” storage. Cloud storage maintained by a private vendor is the most expensive but least labor-intensive form of storage. Taser International’s “evidence.com” is one such cloud service being used by many police departments.<sup>12</sup> Agencies also must decide whether it will expend the resources to store all footage in the same secure manner. To save money, it could make sense to remove “evidentiary” recordings from an expensive cloud service and store them internally, or vice versa. This determination may be tied to the policy questions discussed in Section 8, below.

8. *For how long is recorded footage stored? Is the time period different for recordings determined to be evidence versus non-evidence?*

- There are two principal issues facing police agencies when it comes to how long digital recordings will be store.
  - The first question concerns “**evidence**” recordings – that is, body camera footage connected or potentially connected to an investigation, arrest, traffic infraction or any other type of official matter. Agencies need to determine how long “evidentiary” recordings will be retained within the video storage system, possibly hinging the storage period on the duration of the related matter or some other criteria. Consultation with local prosecutors’ offices is recommended in evaluating storage and retention policies for evidentiary recordings.
  - The second question concerns “**non-evidentiary**” recordings, and their potential release pursuant to open records requests. If body-worn camera recordings have no evidentiary value – for example, video of an officer providing directions or video of spectators lining a parade

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<sup>12</sup> For example, the cost of Taser International’s “evidence.com” management and storage service typically ranges from \$45 per user license/per month to \$99 per user license/per month depending upon the type of access available to the user and the amount of cloud storage supplied. The Taser system requires a separate user license for every camera used by the agency. *See, Body Worn Camera Video Technology*. (Feb. 2015). Arvada Police Department. Inter-Agency Version of Staff Study 14-09.



route – how long should they be retained? Most organizations and agencies evaluating this question suggest non-evidentiary recordings should be stored for some standard period of time in case it turns out they are connected to an evidentiary matter and to promote the goals of transparency and accountability. Immediately deleting the footage might suggest the agency was attempting to hide the conduct of its officers. On the other hand, retaining this type of footage potentially compromises the privacy of the people recorded since body camera recordings can be requested pursuant to open records laws. As the ACLU points out, if someone were to request and potentially publicize body camera recordings about non-evidentiary recorded incidents, it would be a serious intrusion into the recorded individuals' privacy.<sup>13</sup> This privacy issue is compounded when the non-evidentiary event may have occurred in someone's home – for example, a call for assistance for medical treatment. For these reasons, some agencies have chosen to retain non-evidentiary recordings for only short periods of time, anywhere from seven to ninety days. Reducing the amount of time the video is available reduces the chances of wanton privacy intrusions.

- Storage cost is another factor leading agencies, especially the larger ones, to set short retention periods for non-evidentiary video. Reducing the amount of time such footage is stored means a reduced need for off-site cloud storage capacity or internal server capacity. Agencies can consider whether alternate and less expensive storage methods are appropriate for non-evidentiary recordings if they are going to be retained for only short periods of time. Or, in the alternative, an agency could store evidence recordings in another manner, perhaps burned to DVD and placed in the case file, to reduce storage costs.

9. *How will the department handle the release of recordings as discovery in criminal matters? How will prosecutors be given access to the recordings?*

- As with other forms of police reports and recordings, body-worn camera footage that is evidence in a criminal matter will be subject to discovery by the defense pursuant to the definite schedule set by law.<sup>15</sup> Police agencies, therefore, have to create a method of associating recordings with the necessary case file (paper or electronic), and providing access or copies of the recordings to the district attorney's office. In larger jurisdictions, discovery requirements alone would require the access and copying of thousands of recordings per year. Consultation with an agency's local prosecutor's office is

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<sup>13</sup> *Police Body Mounted Cameras: With Right Policies in Place, a Win for All* (ACLU).

<sup>15</sup> Colorado Rules of Criminal Procedure, Rule 16 §§ (I)(a) and (b) require most evidence to be disclosed to the defense no later than 21 days after the defendant's first appearance after charges are filed. Practically speaking, copies of body-worn camera recordings would have to be available for discovery at the time of a felony case filing, at the time of a misdemeanor pre-trial conference and at the time a traffic case is sent up to court.

suggested to develop a streamlined, coordinated process that addresses any legal issues arising in this area.

10. *How will the department handle requests for copies of recordings based upon open records laws? What criteria will be used to decide if the footage will be released? Who in the department will make the determination? Who will redact footage as necessary?*

- The intersection of open records requests with body-worn camera recordings is a critical issue. It is addressed in detail in Section V below.

### **III. When to Record Using Body-Worn Cameras**

Once a law enforcement agency decides to use body-worn cameras, the fundamental question is “when to record.” There are two general policy answers. The first possible policy is to record everything – to have the camera on for every contact with civilians and all calls for service, turning it off only when an officer is on break, using the restroom or otherwise not performing official duties. Proponents of a “record everything” policy argue that a simple, bright-line rule on recording means officers cannot be accused of selectively recording events to hide misconduct. If the goal of using body-worn cameras is transparency and accountability, there is no better way of achieving it than by recording all events, no matter what happens. Also, by always recording, officers cannot inadvertently miss capturing statements, actions or other events that might be evidence of a crime or infraction.<sup>16</sup>

The second possible answer to “when to record” is a policy that gives officers discretion to turn the camera on and off. Such a policy might give wide discretion to officers or narrow discretion based upon certain specified circumstances. However, once discretion is allowed, the policy no longer relies on a bright-line standard like “record everything.” Some events simply will not be recorded. Those in favor of granting officer discretion point out the following scenarios, among others, where officers should be able to decide in the moment whether to record with a body-worn camera.<sup>17</sup>

- Encounters inside a private residence, although officers might use a Fourth Amendment analysis in deciding whether to record (i.e. consent, execution of a search warrant, exigent circumstances, etc.)<sup>18</sup>

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<sup>16</sup> See, *Police Body Mounted Cameras: With Right Policies in Place, a Win for All*. American Civil Liberties Union (ACLU). For additional discussion, see: (1) *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* (PERF) (2) *Police Officer Body-Worn Cameras: Assessing the Evidence* (COPS); (3) *Body-Worn Cameras* (IACP); (4) *Body Worn Camera Video Technology* (Arvada Police Department).

<sup>17</sup> See, PERF, IACP, COPS and Arvada reports described above. The IACP report recommends officers employ a Fourth Amendment “reasonable expectation of privacy” analysis to all recorded encounters.

<sup>18</sup> See, IACP report described above, as well as PERF, White and ACLU reports.

- Incidents involving nudity – which might include body searches of suspects or arrested individuals
- Incidents involving juveniles
- Interactions with sensitive victims - such as victims of sexual assault, domestic violence or other violent assaults
- Interactions with informants or undercover officers
- Incidents during which medical, mental health, religious, attorney-client or other privileges/sensitivities are implicated
- Everyday encounters with civilians who have no involvement in any police response, call for service, investigation or other official duty

From the policies described in the POST survey, the cited reports on body-worn cameras, and national media accounts, it appears that most police departments are opting for discretionary policies. Once discretion is allowed, however, officers are open to accusations of turning off the camera to hide improper or unprofessional conduct. In order to counter such allegations, all organizations studying the use of body-worn cameras – from the International Association of Chiefs of Police (IACP) to the American Civil Liberties Union (ACLU) – recommend the following steps:<sup>19</sup>

- 1) Create a written policy that details the circumstances during which officers should always have the camera on and when they have the discretion to turn the camera off;<sup>20</sup>
- 2) Publicize the written policy through department publications, websites, community meetings, and other outreach programs;
- 3) Require officers to announce that an encounter is being recorded;
- 4) If an approved circumstance leads an officer to turn off the camera – for example, an interview of a sexual assault victim who does not want to be on video – the officer should record his or her reason for turning off the camera before doing so;
- 5) Officers’ written reports should document the existence of body-worn camera recordings of an incident and, where relevant, the circumstances under which an officer turned off the camera; and
- 6) Departments should monitor and periodically re-evaluate discretionary policies to ensure compliance and appropriate protection of privacy issues.

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<sup>19</sup> Model policies and policy recommendations are available in the IACP, PERF and COPS reports.

<sup>20</sup> According to the POST survey, at least 30 of the Colorado law enforcement agencies currently using body-worn cameras have a written policy for use of the cameras or are in the process of creating a written policy.

In choosing whether to record everything or how much discretion to give to officers, technical and cost considerations also come into play. Two of the primary financial expenditures associated with body-worn camera technology are the cost of the equipment itself and the cost of storing the digital footage once it is recorded. The more encounters a policy requires to be recorded, the more battery power and storage capacity is needed. The National Institute of Justice's market survey of available body-worn camera products shows a wide range of options for features like battery life, storage capacity, and the amount of time needed to recharge the camera battery.<sup>21</sup> Therefore, departments choosing a camera system need to weigh how much recording footage they expect their officers to generate under the chosen "when to record" policy. If their recording policy will result in a high volume of digital footage, the camera system must be able to handle the volume, likely requiring the purchase of a higher-priced system.

Similarly, the recording of more footage will require police personnel to spend more time reviewing and sorting recordings. Depending upon the size of the department and the volume of recordings, this process could require substantial manpower hours by supervisors or other personnel assigned to or hired for this task. Moreover, as discussed earlier, the secure storage itself can be quite costly. The more footage generated, the more potential cost in managing and storing the data. These costs can be factors in deciding how broad an agency's "when to record" policy will be.

Policies giving officers discretion over recording also will impact criminal prosecutions. Body-worn camera footage could capture essential evidence of crimes whether catching a suspect in the act, recording admissions or documenting physical evidence recovered at a crime scene. Whenever a body-worn camera recording is going to be introduced in court, officers will be required to explain, through their own reports/testimony and on cross-examination, why they turned the camera on to record an incident. And, even more significantly, whenever body-worn camera recordings are absent in a criminal case, officers will have to explain why they decided not to turn on the camera or why they turned it off at some point during the events at issue. The more an officer can rely upon his or her agency's stated policy as the basis for discretionary use of the camera, the easier it will be to explain the presence or absence of video footage. Without a clear policy, the officer will be open to accusations of wanton, sloppy, rogue or malicious conduct. If the body-worn camera footage is essential evidence in a case and the officer's work in obtaining the footage is discredited, the video could be excluded as evidence altogether by a court or seriously undermined in the eyes of a jury.

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<sup>21</sup> *Body-Worn Cameras for Criminal Justice: Market Survey (v.1.0)*. (NIJ).

#### **IV. Privacy Concerns and Preparing to Handle Open Records Requests**

The job of a police officer is to interact with the public, often during the most difficult, stressful and unhappy moments of people's lives. Many of those interactions do not involve criminal incidents or other enforcement activities. Now that body-worn cameras can record all police interactions with the public, inherent questions about the privacy rights of the people in the video footage are raised.

When the recorded events involve a criminal, traffic or other official investigation, these questions are more easily answered. If the footage is potential evidence, it needs to be preserved, secured and otherwise treated as any other evidence would be. When the recordings do not involve enforcement of a law or other regulation, however, more difficult policy questions arise, such as:

- Will the agency retain copies of body-camera footage that is not potential evidence?
- If the recordings are retained, for how long?
- Does someone recorded by a police body-worn camera have the right to a copy of the footage? If so, how much time will they be given to request it?
- If individuals have a right to recordings in which they appear, how does that affect whether and how officers announce the camera is on?
- What should be done when recordings depict more than one individual, but only one has requested a copy?
- What should be done when recordings implicate potentially privileged information – like medical or mental health treatments?

It is easy to imagine the emergence of a myriad of similar questions as the prevalence of body-worn cameras grows and knowledge of their existence spreads among the public.

Organizations like the ACLU emphasize the potential problems of a government agency recording private individuals on the large scale created by body-worn cameras. But the privacy issues are massively compounded by the intersection of body-worn camera recordings with open records laws. Because the law in Colorado permits anyone to request copies of most records held by public agencies, the concern is not simply that law enforcement might be recording and storing footage of encounters with private individuals. The bigger privacy concern is that members of the public (not depicted in the video footage) may begin requesting copies of this footage and indiscriminately sharing the recordings online.

Given the current interest in scrutinizing police activities and the prevalence of social media, this chain of events is highly likely. In fact, a recent situation in the State of Washington has given the rest of the nation a preview of the worst-case scenario. In that state, an anonymous resident has sent open-records requests to numerous local and state agencies requesting every minute of their body-worn camera footage. Whatever recordings he receives, he then posts publicly on Youtube.com. The resident claims he is

seeking to promote transparency and accountability. Some agencies are saying it would take years to comply with his requests, while the Seattle Police Department is trying to develop the technical means to post released video online directly.<sup>22</sup>

Since open-records requests are so likely to occur, the next section is dedicated to analyzing the applicability of Colorado's Open Records laws to body-worn camera recordings. In thinking about how to correctly apply the law as it stands, law enforcement agencies will need to address practical issues, like the following:

- Who in the agency will handle the requests when they come in?
- What will be the agency's policy for release of body-worn camera recordings? Will it vary depending on its status as evidence or non-evidence? Will it matter if it was evidence in a closed case?
- Will the agency redact footage, either to protect depicted individuals' privacy or for other reasons? If so, who will perform the redactions?
- On what grounds will open records requests be denied?
- Will the district attorney's office be alerted to any open records requests regarding criminal matters? Who in the agency will make the notifications?
- Will the recording officer be notified of any open records requests for footage he or she recorded?

While the law on open records helps answers some of these questions, others will require agencies to make decisions based upon their own technical capabilities and the policy goals of their body-worn camera programs.

## **V. Colorado Law Governing Open Records Requests**

Colorado agencies should prepare themselves for handling open-records requests. The Colorado Open Records Act ("CORA") governs the availability, inspection, and disclosure of government records. CORA is divided into several parts. Part three, the Colorado Criminal Justice Records Act ("CCJRA") provides guidelines for the disclosure of "criminal justice records."<sup>23</sup> This section analyzes the possible disclosure requirements for body-worn camera footage under the CCJRA section of CORA.

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<sup>22</sup> Dozens of media articles have been written about the events in Washington. For a representative example, see, *Washington State Police Overwhelmed by Public Requests for Dash- and Body-Cam Footage*. (11/27/2014). Homeland Security News Wire. <http://www.homelandsecuritynewswire.com/dr20141127-washington-state-police-overwhelmed-by-public-requests-for-dash-and-bodycam-footage>.

<sup>23</sup> The CCJRA authorizes criminal justice agencies to assess "reasonable fees, not to exceed actual costs, including but not limited to personnel and equipment, for the search, retrieval,

➤ *Do recordings from police body-worn cameras fall under the CCJRA section of CORA?*

Police body camera recordings are likely “criminal justice records” within the scope of the CCJRA. The CCJRA states that (1) criminal justice records held by criminal justice agencies *may* be open for inspection, and (2) criminal justice records which are also records of “official action” *must* be open for inspection.

“Criminal justice records” are defined as:

[A]ll books, papers, cards, photographs, tapes, **recordings**, or other documentary materials, regardless of form or characteristics, that are **made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law** or administrative rule, including but not limited to the results of chemical biological substance testing to determine genetic markers[.]

C.R.S. § 24-72-302(4) (emphasis added).

“Criminal justice agency” is defined broadly to include any “law enforcement authority that performs any activity directly relating to the detection or investigation of crime.”<sup>24</sup> Any police or sheriff’s department would obviously fall within this definition. The CCJRA distinguishes certain criminal justice records as records of “official action,” subject to mandatory disclosure. “Official action” by a law enforcement agency includes any arrest, charging by indictment or information, disposition, release from custody, and other decisions of magnitude related to sentencing.

Under these definitions, body camera recordings are likely criminal justice records but not records of official action.<sup>25</sup>

➤ *If body-worn camera recordings are CCJRA records, but not records of an “official action,” do they have to be released in response to a CORA request?*

Generally, the custodian of criminal justice records may allow or deny inspection at his or her discretion.<sup>26</sup> A custodian may deny access to records of “investigations

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and redaction of criminal justice records.”<sup>23</sup> § C.R.S. 24-72-306(1). Agencies may waive fees at their discretion. *Id.* See also § 24-72-301 to 309, C.R.S.

<sup>24</sup> C.R.S. § 24-72.302(3).

<sup>25</sup> See, *Harris v. Denver Post Corp.*, 123 P.3d 1166, 1173 (Colo. 2005) and C.R.S. § 24-72-302(7).

<sup>26</sup> Disclosure of records to members of the public under the CCJRA is separate from mandatory disclosure of discovery materials. In criminal cases, agencies must disclose relevant records to the defendant pursuant to Rule 16 of the Colorado Rules of Criminal

conducted by or of intelligence information or security procedures of any sheriff, district attorney, or police department or any criminal justice investigatory files compiled for any other law enforcement purpose” if disclosure would be “contrary to the public interest.”<sup>27</sup> The custodian must apply a balancing test on a case-by-case basis in determining whether to allow or deny inspection, and a denial is subject to judicial review.

In determining whether to allow or deny an inspection of a criminal justice record, a custodian must “balance the pertinent factors,” which include:<sup>28</sup>

- 1) The privacy interests of individuals who may be impacted by a decision to allow inspection;
- 2) The agency’s interest in keeping confidential information confidential;
- 3) The agency’s interest in pursuing ongoing investigations without compromising them;
- 4) The public purpose to be served in allowing inspection; and
- 5) Any other pertinent consideration relevant to the circumstances of the particular request.

There is not yet a published opinion discussing the application of this test to police body-worn camera recordings, but a few opinions may provide some insight as to when disclosure of a recording is not appropriate. The cases that have visited the issue illustrate the fact that, when it comes to body-worn camera recordings, record custodians will need to take into account the interests of *any* person depicted in the recording, as well as the law enforcement agency’s interest in maintaining investigative secrecy, and the public’s interest in transparent and open law enforcement.

A recording may be kept confidential under the public interest exception if it is part of an ongoing criminal investigation.<sup>29</sup> For example, a court ruled that a ten-month delay in disclosure of records under CCJRA was permissible while awaiting conclusion of grand jury investigation.<sup>30</sup> Other courts approved the denial of open-records requests under the public interest exception when the records concerned an interaction that

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Procedure. In a civil case, for example an excessive force claim against an officer, Rule 26 of the Colorado Rules of Civil Procedure requires disclosure of all relevant “documents, data compilations, and tangible things” through discovery.

<sup>27</sup> C.R.S § 24-72-305(5).

<sup>28</sup> These factors were set forth in *Harris v. Denver Post Corp.*, 123 P.3d 1166, 1176 (Colo. 2005).

<sup>29</sup> See *Prestash v. Leadville*, 715 P.2d 1272, 1273 (Colo. App. 1985) (record custodian may deny access to records to avoid “disclosure of investigations of potential criminal conduct not ripe for prosecution”).

<sup>30</sup> *Madrigal v. City of Aurora*, 2014 Colo. App. LEXIS 836 (Colo. App. May 22, 2014).



became the subject of an internal affairs investigation, while the investigation was pending.<sup>31</sup>

These cases also stress the proper role of the custodian and the reviewing court. Generally, record custodians are given great deference in their balancing and ultimate determination. In several instances, courts have been unwilling to second-guess custodians' decisions about whether CCJRA records should be released.<sup>32</sup>

In summary, the CCJRA provides an exception for disclosure of criminal justice records where disclosure would be contrary to the public interest. When body camera recordings are requested, the record custodian will need to apply the *Harris* factors to determine whether to invoke this exception or not. If the custodian properly performs that role, his or her determination will not be overturned absent an abuse of discretion.

➤ *If body-worn camera recordings are CCJRA records, what must be released if the requested footage happens to involve an "official action"?*

Because the CCJRA defines "official action" to include any arrest, it is possible that body camera recordings depicting an arrest will be deemed records of "official action" and thus will be subject to mandatory disclosure. Records of official action are required to be available for inspection:

Each official action ... shall be recorded by the particular criminal justice agency taking the official action. Such records of official actions shall be maintained ... and **shall be open for inspection by any person at reasonable times**, except as provided in this part 3 or as otherwise provided by law.<sup>33</sup>

In one case, *People v. Thompson*, 181 P.3d 1143, 1145-46 (Colo. 2008), the court said, "[T]he CCJRA does not grant any criminal justice agency ... any discretion as to whether to disclose a record of official action in its entirety, in part, or not at all."<sup>34</sup>

There is little case law addressing what exactly constitutes a record of official action.<sup>35</sup> While it is unlikely that the General Assembly contemplated technology like

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<sup>31</sup> See, *Husperi v. El Paso County Sheriff's Dep't*, 196 P.3d 892 (Colo. 2008); *Romero v. City of Fountain*, 307 P.3d 120, 124 (Colo. App. 2011); *Johnson v. Dep't of Corrections*, 972 P.2d 692 (Colo. App. 1998).

<sup>32</sup> See *Husperi*, 196 P.3d at 900 (a court applies the wrong legal standard under the CCJRA "when it independently engage[s] in balancing the public and private interests involved in [an] inspection request."); *Romero*, 307 P.3d at 125 ("While this court, or the district court, may have balanced the respective interests differently on these facts, it is not the role of any court to do so."); *Madrigal*, 2014 Colo. App. LEXIS 836, at 14 ("Because the General Assembly has consigned this determination to the custodian's sound discretion, we may not reweigh the custodian's balancing of the interests.")

<sup>33</sup> See § C.R.S. 24-72-303(1) (emphasis added).

<sup>34</sup> *People v. Thompson*, 181 P.3d 1143, 1145-46 (Colo. 2008).

body-camera recordings in addition to traditional paper documents (such as an arrest report) when the CCJRA was drafted in 1977, it is unclear whether a body camera recording *depicting an arrest* could be deemed a record of official action and thereby be subject to mandatory disclosure.

➤ *What can happen when an agency denies access to body-worn camera recordings if they are considered CCJRA records?*

If a custodian denies access to CCJRA records, the applicant may request a written statement of the grounds for denial which must be provided within 72 hours and must cite “the law or regulation under which access is denied or the general nature of the public interest to be protected by the denial.” A custodian’s decision to deny access to records is subject to judicial review in district court under an abuse of discretion standard. The court must hold a hearing “at the earliest practical time.” If the court finds that the custodian’s denial was arbitrary and capricious, it may order the custodian to pay the applicant’s court costs and attorney’s fees, as well as a \$25 penalty for each day that access was denied.<sup>36</sup>

➤ *Are there any other exemptions under the CCJRA to releasing body-worn camera recordings?*

The CCJRA, by its plain language, gives way to any other Colorado statute with regard to the availability of any type of public record. The CCJRA requires that records be maintained and made available for inspection, but this requirement is qualified with “except as otherwise provided by law.” This is the case with regard to all criminal justice records, including records of official action, a category further discussed below.<sup>37</sup>

In a separate section, the CCJRA also prohibits the inspection of any record where “such inspection would be contrary to any state statute.”<sup>38</sup> In other words, legislation may exempt body camera recordings from the requirements of the CCJRA, in part or in whole, or may establish separate rules and guidelines for their disclosure. **Considering the events in Washington State, law enforcement agencies should consider whether new legislation is needed to create exemptions protecting body-worn camera recordings from massive open-records requests.**

One example of a current statute that overrides the CCJRA is § 19-1-304 of the Colorado Children’s Code, which provides that “the records of law enforcement officers concerning juveniles, including identifying information, shall be identified as juvenile

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<sup>35</sup> See, *Thompson*, 181 P.3d at 1145-56 (grand jury indictments are records of official action); *Harris*, 123 P.3d at 1168, 1172 (recordings seized from private homes for investigation are not records of official action); *Husperi*, 196 P.3d at 895 (police internal investigation files are not records of official action); *Madrigal*, 2014 Colo. App. LEXIS 836, 7 (records pertaining to fatal police shooting are not records of official action).

<sup>36</sup> See §§ C.R.S. 24-72-305(6) and § 24-72-305(7).

<sup>37</sup> See § C.R.S. 24-72-304(1) and § 24-72-303(1).

<sup>38</sup> See § C.R.S. 24-72-305(1)(a).

records and **shall not be inspected or disclosed to the public.**” The statute provides a list of specific exceptions, including inspection by the juvenile, their parent or guardian, or another law enforcement agency.<sup>39</sup> The CCJRA itself also requires that any name or other information that would identify any victim of an alleged sexual assault must be deleted from any criminal justice record prior to an inspection.<sup>40</sup>

➤ *How are Colorado law enforcement agencies currently handling requests for body-worn camera footage?*

Several Colorado agencies have already implemented body-worn cameras, to widely varying degrees. Some agencies have established written policies for records requests in accordance with the CCJRA, while others are still working on finalizing policies. One city agency currently utilizing 50 body cameras reported a recent increase in public requests for body camera footage. The most common issue this agency deals with is recordings that depict or identify juveniles or victims of sexual assault. Because they cannot afford the time or resources to redact this information, they summarily deny requests for these recordings. Otherwise, their policy favors disclosure. None of their decisions to deny access has yet resulted in litigation.

➤ *How have other states dealt with open records requests for police body-worn camera recordings?*

○ *New Jersey*

A New Jersey Superior (trial) Court has held that police dashboard camera recordings are public records under New Jersey’s Open Public Records Act, N.J.S.A. § 47:1A-1 to -13 (“OPRA”).<sup>41</sup> At issue was the recording, held by the local prosecutor’s office, of an altercation involving an officer, a police K-9, and a woman; the altercation led to charges of aggravated assault and official misconduct against the officer.<sup>42</sup>

OPRA provides an exception for any “criminal investigatory record” which (1) was not required to be made by law, and (2) was made in connection with a criminal investigation. Notably, the court first held that “required to be made by law” also includes any record made pursuant to “guidelines, directives and policies that carry the force of law such that they bind local police departments in the day-to-day administration of the law enforcement process.” The court then held that the prosecutor’s office failed to meet both prongs of the exception, by (1) failing to demonstrate that no statute or

<sup>39</sup> See C.R.S. §§ 19-1-304(2), 19-1-304(2)(a)(I)-(XVII).

<sup>40</sup> C.R.S. § 24-72-304(4)(a); *People v. Thompson*, 181 P.3d 1143, 1146 (Colo. 2008).

<sup>41</sup> See “N.J. police dashboard video recordings are public records, state judge rules,” NJ Advance Media, available at [http://www.nj.com/politics/index.ssf/2014/10/nj\\_police\\_dashboard\\_video\\_recordings\\_are\\_public\\_records\\_state\\_judge\\_rules.html](http://www.nj.com/politics/index.ssf/2014/10/nj_police_dashboard_video_recordings_are_public_records_state_judge_rules.html).

<sup>42</sup> *Paff v. Ocean County Prosecutor’s Office*, 2014 N.J. Super. Unpub. LEXIS 1899, \*8-9 (July 31, 2014) (unpublished).

regulation required the recording to be made, and also by (2) failing to produce “specific, reliable evidence” that the video was created as “the work product of a criminal investigation.”<sup>43</sup>

OPRA also provides an exception for “ongoing investigations” or “investigations in progress.” However, the court held that this exception “does not work retroactively to render public documents confidential once an investigation begins.” The court ruled similarly with regard to records of internal investigations, holding that the exception was not retroactive and the video was a public record when it was created. Finally, the court rejected the prosecution’s argument that disclosure of the video would violate the woman’s reasonable expectation of privacy, since it was recorded in a public place at 11:00 a.m.<sup>44</sup>

- Ohio

An Ohio appellate court recently affirmed a police department’s decision to deny access to a dashboard camera recording. At issue was a patrol car dashboard camera recording of a traffic stop and subsequent DUI investigation. Ohio open records law provides an exception for “confidential law enforcement investigatory records,” disclosure of which “would create a high probability of disclosure of ... [s]pecific confidential investigatory techniques or procedures or specific investigatory work product.”<sup>45</sup>

The court held that the video was within this exception and disclosure was properly denied, because the video depicted investigatory work product (the officer’s investigation of a traffic violation), and also depicted specific investigatory techniques (road-side sobriety tests).

- Washington

As mentioned above, in Washington, an anonymous citizen requested access to *all* Seattle Police Department patrol car camera recordings under the state’s open records law, as well as the body-worn camera recordings of other local police departments. The requests proved to be too voluminous to fulfill, requiring hundreds of hours of review before any of the videos could be disclosed.<sup>46</sup> The Seattle Police Department has since begun working with the individual in developing a plan and the technology required to grant access to the public.<sup>47</sup>

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<sup>43</sup> See N.J.S.A. § 47:1A-1.1 and *Paff v. Ocean County Prosecutor’s Office*.

<sup>44</sup> See N.J.S.A. § 47:1A-3 and *Paff v. Ocean County Prosecutor’s Office*.

<sup>45</sup> See, *State ex rel. Miller v. Ohio State Highway Patrol*, 14 N.E.3d 396 (Ohio App. 2014) and R.C. 149.43(A).

<sup>46</sup> “Costly public-records requests may threaten SPD plan for body cameras,” *The Seattle Times* (November 19, 2014), available at [http://seattletimes.com/html/localnews/2025060346\\_spdcamerasxml.html](http://seattletimes.com/html/localnews/2025060346_spdcamerasxml.html).

<sup>47</sup> “Seattle police body cameras plan revived by deal with anonymous programmer,” *Reuters U.S.* (November 21, 2014), available at

Washington's open records laws are similar to Colorado's, and feature a similar exemption for "investigative, law enforcement, and crime victim information." A law enforcement agency denying access must prove that the nondisclosure of each individual record "is essential to effective law enforcement or for the protection of any person's right to privacy."<sup>48</sup>

## Conclusions

Body-worn camera programs are expensive and raise many conflicting policy questions. From how to spend hard-won budget dollars on the best configuration of cameras, data management software and personnel, to determining what recording policy best serves the goals of the agency and its budgetary limitations, law enforcement agencies face many difficult decisions in implementing a body-worn camera program. Add the variety of privacy issues at stake and the analysis becomes all the more complicated. Sound agency policies on body-worn camera recording may mitigate law enforcement's role in privacy intrusions, but the public's role in compromising privacy through open records requests is impossible to estimate at this time.

In the absence of legislation stating otherwise, police recordings almost certainly fall within the scope of the CCJRA as criminal justice records. Each agency's records custodians will have to perform a balancing test on a case-by-case basis, and the burden will be on law enforcement agencies to prove when individual recordings fit within the CCJRA's "contrary to public interest" exception. Carefully worded legislation may exempt police recordings from the requirements of the CCJRA, and may dictate separate rules concerning how and when the public can obtain those videos. But until a legislative change occurs, open records requests will be another thorny component of using body-worn cameras that law enforcement agencies will have to manage.

Body-worn camera technology is a national trend and Colorado officers may soon be on the witness stand presenting recordings as evidence in criminal matters or explaining why body-worn camera footage does not exist for a given case. The more law enforcement is prepared for these events, by crafting careful policies on the technology and use of body-worn cameras, the more effective the cameras will be as a policing tool, as a means of improving community relations, and as a potentially critical form of courtroom evidence.

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<http://www.reuters.com/article/2014/11/22/us-usa-washington-police-idUSKCN0J601Q20141122>.

<sup>48</sup> See, Rev. Code Wash. § 42.56.240 (2014) and *Sargent v. Seattle Police Dep't*, 314 P.3d 1093, 1097 (Wash. 2013).

# WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS BEST PRACTICES COMMITTEE

## USE OF BODY-WORN CAMERAS BY LAW ENFORCEMENT CONSIDERATIONS, ISSUES AND CONCERNS<sup>1</sup>

### **Background**

Law enforcement use-of-force events in 2014 and 2015 received, and continue to receive, intense media reporting and public scrutiny. Many of these events were recorded by law enforcement vehicle dashboard cameras, by officers' body-worn cameras or by private citizens, or a combination of these sources. There have been numerous calls at the federal, state and local level for all law enforcement agencies to implement body-worn camera programs.

The use of video recordings by law enforcement agencies is not a novel practice. For decades, Washington law enforcement agencies have used audio and/or video recordings for suspect and witness interviews. More recently, agencies have mounted cameras in patrol vehicles.<sup>2</sup> However, there are significant differences between the frequency, incidents and locations where body-worn camera recordings will occur and the recordings made by dashboard cams.<sup>3</sup>

There are law enforcement agencies in Washington State already using body-worn cameras. Some agencies are planning to implement body-worn camera programs or evaluating whether body-worn camera use should be implemented.

The Washington Privacy Act, Chapter 9.73, and the Public Records Act, RCW Chapter 42.56, present obstacles to the effective and responsible implementation of body-worn camera programs. Many agencies are waiting for the State Legislature to create a framework which addresses the significant public policy and legal considerations, issues and concerns surrounding the use of body-worn cameras and dissemination of recordings.<sup>4</sup> Law enforcement agencies may then address the practical issues of implementing body-worn camera programs.

This paper is intended provide a general discussion of the considerations, issues and concerns raised by the use of body-worn cameras.

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<sup>1</sup> Compiled by Steven M. Clem, Prosecuting Attorney, Douglas County, Washington.

<sup>2</sup> In 2000, the Washington State Legislature provided an exception for dashboard camera video and simultaneous audio recording from the restrictions of the Washington Privacy Act. RCW 9.73.090(1)(c), Session Laws 2000, Ch. 195, §1 (SHB 2903), amended by Session Law 2006, Ch. 38, §1 (SHB 2876).

<sup>3</sup> The use of body-worn cameras is not authorized under the Washington Privacy Act, as are dashboard cameras. To the extent that a body-worn camera is incorporated within a patrol vehicle dashboard camera system, the body-worn camera recordings are subject to RCW 9.73.090(1)(c). In November 2014, the Washington Attorney General issued 2014 AGO No. 8, opining that the use of body-worn cameras by law enforcement is not prohibited or regulated under the Washington Privacy Act because conversations between members of the public and law enforcement officers performing their official duties are not a private conversations subject to the Act.

<sup>4</sup> The State Legislature considered body-worn camera legislation during the 2015 session in HB 1917.

## **The Body-Worn Camera Debate**

The debate over the use of body-worn cameras has included the recommendations and positions of media editorials, local, state and federal officials, civil liberties activists<sup>5</sup> and, of course, law enforcement officials, agencies and associations. There is little research or empirical evidence supporting any particular position.<sup>6</sup>

Those advocating for body-worn camera use argue cameras and recordings will:

- Provide compelling evidence in criminal prosecutions
- Increase transparency and law enforcement legitimacy, and thereby enhance community relations
- Improve or “civilize” both citizen and officer behavior
- Expedite resolution of citizen complaints of officer misconduct and related lawsuits
- Provide opportunities officer training

Those opposing the use of body-worn cameras raise the following concerns:

- Large initial financial investment required, with significant, continuing expenditures for hardware, software, personnel and training
- Significant financial, technical and personnel resources are required to for managing, storing, copying and providing discovery of recordings
- There will be privacy right intrusions for persons being recorded, especially those based upon the location of recording, such as inside a home or medical facility
- There will be privacy right intrusions for officers
- Recordings will be subject to the Public Records Act, RCW Chapter 42.56
- Impacts on interviews with sensitive witnesses and informants
- Recordings of privileged information, such as medical, mental health, religious and marital communications create complex questions for officers, agencies and prosecutors
- Inadvertent recording of personal or embarrassing moments
- Public misconceptions that cameras are equal to or better than humans at capturing events
- Juror reaction when recordings are not available (the “CSI” effect), even though based on legal or technical issues

## **Law Enforcement Implementation Issues**

When a law enforcement agency decides to implement a body-worn camera program, a

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<sup>5</sup> ACLU proposed Model Act for Regulating the Use of Wearable Body Cameras by Law Enforcement, issued May 21, 2015, <https://www.aclu.org/model-act-regulating-use-wearable-body-cameras-law-enforcement>.

<sup>6</sup> See, *Police Officer Body-Worn Cameras: Assessing the Evidence*, Office of Justice Programs, U.S. Department of Justice (2014).

number of technical and practical decisions must be made which raise policy issues regarding the creation, use, storage and dissemination of body-worn camera recordings.<sup>7</sup> This paper highlights some of these issues.

### What camera should be purchased?

What camera model best serves the agency's needs and financial ability?<sup>8</sup> A recent market survey by the National Institute of Justice detailed 18 different camera models available to law enforcement agencies, ranging in price from \$120 to \$1,000 *per camera*.<sup>9</sup> Each camera model has different weight, size, acuity, field of view, light sensitivity, battery life, editing capability, recording format, storage capacity, weather durability and other specifications and features. Docking stations are used to charge cameras and transfer/upload digital recordings to storage, and may be an additional cost. A limited number of cameras simultaneously use each docking station.

Monthly maintenance fees may also be charged *per camera*. Maintenance fees may include, or provide as an option, use of the manufacturer's proprietary off-site or "cloud" file storage and management software.<sup>10</sup> Monthly fees vary upon price of the equipment, the scope of maintenance, and off-site file storage and management options.<sup>11</sup>

### What training will officers receive on use of body-worn cameras?

Officers must be trained not only on the cameras' technical aspects but on the agency's policies for use, transfer of recordings to storage, access and security, as well as documentation of camera recordings.

Will a specific camera be assigned to one officer, or are cameras shared among officers? This arrangement may impact responsibility for camera maintenance and

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<sup>7</sup> Video from police body cameras needs to be kept mostly private, The Washington Post, May 7, 2015, [http://www.washingtonpost.com/local/dc-politics/dc-police-chief-urges-council-to-keep-most-body-camera-videos-private/2015/05/07/ae5184fa-f40a-11e4-bcc4-e8141e5eb0c9\\_story.html](http://www.washingtonpost.com/local/dc-politics/dc-police-chief-urges-council-to-keep-most-body-camera-videos-private/2015/05/07/ae5184fa-f40a-11e4-bcc4-e8141e5eb0c9_story.html), viewed July 10, 2015.

<sup>8</sup> *For the Record: Understanding the Technology Behind Body Worn Cameras*, by Todd Newcombe, September 8, 2015, Digital Communities for City and County Leaders, <http://www.govtech.com/dc/articles/For-the-Record-Understanding-the-Technology-Behind-Body-Worn-Cameras.html>, viewed October 9, 2015; Stealth mode? Built-in monitor? Not all body cameras are created equal, . <http://www.npr.org/sections/alltechconsidered/2015/10/30/453210272/stealth-mode-built-in-monitor-not-all-body-cameras-are-created-equal>, viewed December 3, 2015.

<sup>9</sup> *Body-Worn Cameras: A Report for Law Enforcement*, by Antonia Merzon for the Colorado Best Practices Committee, citing *Body-Worn Cameras for Criminal Justice*, Market Survey (v. 1.0): Fairmont, WV; ManTech International Corporation for National Institute of Justice (NIJ) (2014).

<sup>10</sup> As an example, Taser, Inc. offers file storage and management through its website [www.evidence.com](http://www.evidence.com).

<sup>11</sup> Taser, Inc. cameras/docking stations range from \$650 to \$900 per camera, with monthly maintenance fees ranging from \$39 to \$79. Presentation by Taser, Inc. at Best Practices for Justice meeting, Phoenix, AZ, on March 3, 2015; Taser is charging stunning fees to handle police video, Bloomberg Business, June 16, 2015, <http://www.bloomberg.com/news/articles/2015-06-16/taser-is-charging-stunning-fees-to-handle-police-video>, viewed August 24, 2015; *Body Worn Camera Data Storage: The Gorilla in the Room*, by Todd Newcombe, September 9, 2015, Digital Communities for City and County Leaders, <http://www.govtech.com/dc/articles/Body-Worn-Camera-Data-Storage-The-Gorilla-in-the-Room.html>, viewed October 9, 2015.



transfer of recordings to storage.

Training in, an understanding of, and compliance with the agency's policies can be critical in admissibility of the recording as evidence in criminal prosecutions. Annual training should be required.

When is the camera turned on?

There are two general types of policies: record everything and record using discretion.

The "record everything" policy requires recording of every civilian contact and call for service, allowing the camera recording to be off only when the officer is on a break or otherwise not performing official duties. Proponents of "record everything" argue that officers cannot engage in or be accused of "selective recording."

Alternatively, policies may allow officer discretion. Some events will not be recorded. Proponents point to situations when an officer should decide whether recording is appropriate:

- Encounters inside a private residence (distinguishing execution of search warrants, arrest warrants, responses to exigent circumstances, or when the residence is a crime scene)
- Incidents involving nudity, such as injuries to victims, crime scenes, body searches of arrested individuals
- Incidents involving child victims and witnesses
- Interactions with emotional victims (sexual, domestic or other violent assaults)
- Interactions with informants or undercover officers
- Incidents where mental health, religious, attorney-client, medical or other privileges or privacy rights are implicated
- Community encounters with civilians where no suspicious activity, police response, call for service or investigation is involved

Allowing complete discretion can lead to accusations of "selective recording" to conceal improper conduct. An agency allowing officer discretion should include within its policy and training the specific events when recording is mandatory, those events when recording is discretionary, and those events when recording is prohibited. Officers should be required to articulate a reason for not recording before turning the camera off, or to include those reasons in the officer's incident report.

Some events when recording is mandatory could include:

- Suspect interrogations, including *Miranda* warnings
- Traffic stops
- *Terry* stops
- Vehicle and foot pursuits
- Search warrant execution
- Arrest warrant execution

- SWAT team deployments and entries

Some events, locations or situations when recording is prohibited could include:

- Undercover and confidential informant operations and interviews
- Bathrooms
- Locker rooms
- Telephone conversations (without consent of all parties)
- Conversations of others when officer is not a party to the conversation

The decisions reflected in the agency's policy will have impacts on the resources required to implement the body-worn camera program.<sup>12</sup> A "record everything" policy will lead to significantly more recordings and, importantly, many more recordings having no law enforcement or public value. More recordings require more battery power, transfers to storage, and storage capacity. More recordings require additional law enforcement personnel, as well as prosecutors and defense attorneys, to spend time managing, reviewing, and analyzing the recordings. More recordings increase the number of records subject to public records requests.

*How and when do officers upload data? What processes are in place to ensure the integrity and the security of the recordings?*

Do officers share cameras or is a camera assigned to each officer? Do officers transfer or upload the recordings at the end of each shift or at the end of an incident? Is the transfer of the recording to storage done via a mobile device (vehicle MDT, phone, iPad, etc.) or using a docking station located at the office?

It is vital to preserve both the integrity and chain of custody of the recording for later use as evidence in a criminal prosecution. Some manufacturers offer tamper-proof transfer/uploading as part of the equipment and/or maintenance package. Others offer the service at an additional cost. Agencies must develop policies and protocols for the transfer/uploading and storing of recordings that prevent editing or other manipulation.

*Who is tasked with tagging recordings and what are the tagging criteria?*

Recordings must be sorted or tagged prior to or at the time of transfer/uploading to enable to associate the recording with an incident or case file, and to enable effective searching and retrieval. Additional resources – hours or personnel – must be devoted to this process. Tagging/keyword criteria and formats must be established by the agency's policy. Typical tagging or keywords could include the agency's incident number, date, camera ID number, officer personnel number, event type, suspect name, etc. Some manufacturers' file management programs automatically provide limited tagging options, with additional custom fields. The agency's policy must assign responsibility for tagging recordings.

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<sup>12</sup> Police change body camera policy, San Diego Union-Tribune, May 7, 2015, <http://www.sandiegouniontribune.com/news/2015/may/07/police-change-body-cameras-policy>, viewed July 10, 2015.

How and where are recordings stored?

The recordings are a form of digital data and must be transferred/uploaded and stored in a tamper-proof and secure manner. Options are transfer to DVD or CD-R media, uploading to secure network servers, and uploading to off-site cloud-based storage.

Who has access to the recordings?

Will the officer whose camera made the recording have viewing access? Will the officer have access prior to completing the officer's incident report? Will the officer have access prior to court proceedings to prepare the officer's testimony?

Some agency policies allow officers to review their video recordings at the end of shift to (1) properly memorialize the existence of the recording in written reports and (2) write more accurate reports. Other agency policies prevent officers from viewing recordings, believing the officer's report should reflect the officer's independent memory of the events.

Regardless of the agency's general policy on viewing recordings, officer-involved use of force events present particularly critical and sensitive questions regarding the officer's access to recordings. Use of force events may require a separate policy statement and protocol. Recordings should not be regarded as determinative evidence on issues regarding use of force.<sup>13</sup>

Who, besides the officer, should have access to recordings? Other on-scene officers? Detectives/officers assigned incident follow-up or investigation? Supervisors and command staff?

Agencies must consider the type and number of supervisors, as well as command staff, who have authority to view recordings, the purposes for access and whether random viewing is allowed. Access by command staff and supervisors may involve collective bargaining considerations.

Agencies must consider approaches to handling stored recordings that provide access

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<sup>13</sup> It should be noted that camera recordings will record more detail and a greater field of view than available to an officer's "naked eye." Additionally, an officer's eyes may be scanning the environment for threats and visual cues, while a body-worn camera remains focused on a particular, independent field of view determined by the camera's location on the officer's body - helmet/hat, eyeglasses, chest or shoulder - and the position of the officer's head and/or torso. RCW 9A.16.040 provides those circumstances when homicide or use of deadly force by a law enforcement officer is justifiable. An officer's good belief that use of force was justifiable under RCW 9A.16.040 is a defense to criminal prosecution. RCW 9A.16.040(3). The United States Supreme Court, in *Graham v. Connor* (1989), held that an officer's use of deadly force "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Body-worn camera recordings may contain details that were unclear to or not observable by the officer at the time of an incident. Recordings may be part of the evidence gathered during a use of force investigation, but will not provide definitive answers relating to the officer's decision-making and conduct.

as needed for reports, discovery, training or other legitimate purposes. Many file management systems provide auditing features for logging the details of access.

Issues under the Public Records Act, RCW Chapter 42.56, are discussed below.

### *How do officers document recordings in incident reports?*

Officers should note the existence of body-worn camera recordings in their incident reports. Agencies should consider adding check-boxes and fields to existing report form templates to facilitate documentation of recordings.

What if an on-scene officer does not submit an incident report due to lack of any material involvement in the event, but has a body-worn camera recording of the event? The officer having responsibility for the event should document the additional recording. The lack of a body-worn camera recording, where a body-worn camera was worn by the officer, should be documented in the incident report and the reasons for not recording articulated.

If officers are allowed to view recordings prior to writing incident reports, should officers differentiate between the events personally observed during the incident and the events as recorded? How is this best done in incident reports?

### *How will prosecutors access recordings and assure compliance with discovery obligations?*

Body-worn camera recordings are subject to disclosure as discovery in a criminal prosecution. Prosecutors must be provided all recordings relating to the incident through direct access to the file management system or by transfer to DVD or CD-R media.

Will prosecutors have direct access to file storage and management systems to view and retrieve recordings? Will law enforcement select relevant recordings and submit the recordings to prosecutors?

Procedures to assure prosecutor access to recordings will depend upon the file management systems used by the law enforcement agency. Law enforcement agencies and prosecutors must create a process for prosecutors to obtain unfettered, audited access to recordings.

### ***The Washington Privacy Act, RCW Chapter 9.73***

The Washington Privacy Act, RCW Chapter 9.73, makes it unlawful for *any* individual to record *any private conversation* without first obtaining the consent of *all* the persons engaged in the conversation. For there to be consent, the recording party is required to announce to *all* other parties, in any reasonably effective manner, that such communication or conversation is about to be recorded. That announcement also must be recorded. RCW 9.73.030.

Whether a conversation is private - intended only for the persons directly involved in the conversation regarding something confidential or private - is a question of fact. In determining whether a conversation is private, the courts look to the subjective intentions of the parties to the conversation, as well as a number of factors bearing on their reasonable expectations and intent. Among those factors considered are (1) the duration and subject matter of the conversation; (2) the location of the conversation; (3) the presence or potential presence of third parties; and (4) the role of the non-consenting party and his or her relationship to the consenting party. *State v. Kipp*, 179 Wn.2d 718, 729 (2014).

The Washington Privacy Act does not address the use of body-worn cameras, but does specifically address dashboard camera video recording at RCW 9.73.090(1)(c):

(c) Sound recordings that correspond to video images recorded by video cameras mounted in law enforcement vehicles. All law enforcement officers wearing a sound recording device that makes recordings corresponding to videos recorded by video cameras mounted in law enforcement vehicles must be in uniform. A sound recording device that makes a recording pursuant to this subsection (1)(c) must be operated simultaneously with the video camera when the operating system has been activated for an event. No sound recording device may be intentionally turned off by the law enforcement officer during the recording of an event. Once the event has been captured, the officer may turn off the audio recording and place the system back into "pre-event" mode.

No sound or video recording made under this subsection (1)(c) may be duplicated and made available to the public by a law enforcement agency subject to this section until final disposition of any criminal or civil litigation which arises from the event or events which were recorded. Such sound recordings shall not be divulged or used by any law enforcement agency for any commercial purpose.

A law enforcement officer shall inform any person being recorded by sound under this subsection (1)(c) that a sound recording is being made and the statement so informing the person shall be included in the sound recording, except that the law enforcement officer is not required to inform the person being recorded if the person is being recorded under exigent circumstances. A law enforcement officer is not required to inform a person being recorded by video under this subsection (1)(c) that the person is being recorded by video.

To the extent that a body-worn camera is incorporated within a patrol vehicle dashboard camera system, the body-worn camera recordings are subject to RCW 9.73.090(1)(c). See, 2014 AGO No. 8.

Washington's courts have not addressed whether body-worn camera recordings involve private conversations subject to the Washington Privacy Act, but have held some contacts between law enforcement officers and citizens are *not* private conversations subject to the Act:<sup>14</sup>

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<sup>14</sup> In November 2014, the Washington Attorney General issued 2014 AGO No. 8, opining that the use of

- *State v. Clark*, 129 Wn.2d 211, 226 (1996) (no reasonable expectation of privacy in a conversation with an undercover police officer which took place on public thoroughfare within sight and hearing of passersby or in front of third party, and not private conversation)
- *State v. Bonilla*, 23 Wn.App. 869 (1979) (conversation with police dispatcher not private conversation)
- *State v. Flora*, 68 Wn.App. 802, 808 (1992) (Arrestees recording of conversation with arresting officer not private conversation)
- *City of Auburn v. Kelly*, 127 Wn.App. 54, 61 (2005) (pre-arrest conversations between police officer and driver stopped on public road for suspicion of DUI not a private conversation) (subsequently overruled by *Lewis v. State*, in so far as RCW 9.73.090 is applicable to recording conversation)
- *Lewis v. State, Dept. of Licensing*, 157 Wn.2d 446, 466 (2006) (traffic stop conversations are not private conversations, but specific requirements imposed by RCW 9.73.090 must be met condition of recording)

Should body-worn camera recordings be treated similarly to dash cam recordings under the Washington Privacy Act, with specific authorization for use by law enforcement, restrictions on dissemination and prohibitions on use? Should body-worn camera recordings have more restrictions on dissemination, re-dissemination and/or non-law enforcement use because of inherent, heightened concerns regarding privacy?

As compared to public contacts between law enforcement officers and citizens, the Washington Privacy Act, RCW 9.73.090(1)(b), requires that any recording of custodial interrogations “conform strictly to the following:”<sup>15</sup>

- (i) The arrested person shall be informed that such recording is being made and the statement so informing him or her shall be included in the recording;
- (ii) The recording shall commence with an indication of the time of the beginning thereof and terminate with an indication of the time thereof;
- (iii) At the commencement of the recording the arrested person shall be fully informed of his or her constitutional rights, and such statements informing him or her shall be included in the recording;
- (iv) The recordings shall only be used for valid police or court activities[.]

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body-worn cameras by law enforcement is not prohibited or regulated under the Washington Privacy Act, because conversations between members of the public and law enforcement officers performing their official duties are not a private conversations subject to the Act.

<sup>15</sup> In addition to the required announcements, officers typically include the officer's identity, the suspect's identity, location of the interrogation and the names of all other persons present during the interrogation.

To what extent *should* the requirements of RCW 9.73.090(1)(b) apply to a body-worn camera recording of a suspect’s custodial interrogation?

If the incident involves continuous recording, including the arrest of the suspect, what purpose is served by the required announcements, other than constitutionally mandated *Miranda* warnings?

These Washington Privacy Act issues are matters for legislative consideration and action.

**Washington’s Public Records Act, RCW Chapter 42.56**

Body-worn camera recordings are subject to the Public Records Act. RCW 42.56.010 defines a public record as “any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” The definition of “writing” includes “every other means of recording any form of communication or representation including, but not limited to, motion picture, film and video recordings . . . [and] sound recordings.”

The dissemination of body-worn camera recordings as public records is subject to the same exemptions and disclosure prohibitions as any other public record. Frequently used exemptions and prohibitions that could likely apply to body-worn camera recordings include:

- RCW 42.56.050 Right to privacy for which disclosure would be highly offensive and there is no legitimate public concern.
- RCW 42.56.230 Personal identifying information, addresses, telephone numbers and social security numbers of specified persons
- RCW 42.56.230(5) Bank and financial account numbers
- RCW 42.56.230(7) Any record used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver’s license or identicaid
- 5 USC Sec. 552(a);  
• 42 USC § 405(c)(2)(C)(viii) Social security numbers
- RCW 7.69A.030(4)  
• RCW 7.69A.050 Names, addresses and photographs of child victims and witnesses
- RCW 10.52.100  
• RCW 10.97.130 Records identifying child victim of sexual assault

- RCW 42.56.240(5)
- RCW 42.56.240(2) Information regarding the identity of witnesses or victims disclosure of which would endanger any person’s life, physical safety or property
- 18 USC Sec. 2721 Driver’s license number
- RCW 42.56.240(1) Investigative records compiled by law enforcement agencies essential to effective law enforcement or for the protection of any person’s right to privacy
- RCW 46.52.120; Department of Licensing driving records
- RCW 46.52.130
- RCW 10.97.040, .050; Criminal history record information;
- RCW 42.56.070(1); Secondary dissemination prohibited
- RCW 43.43.834(5);
- RCW 43.43.710;
- 28 USC Sec. 534;
- 28 CFR 513.20(b)
- RCW 70.48.100(2) Jail records

Policy considerations regarding the security, privacy and dissemination of body worn camera recordings present the most significant non-technical issues facing implementation of body worn camera programs.<sup>16</sup>

The redaction of body-worn camera recordings in response to requests under the Public Records Act presents significant financial, personnel and technology resource issues for both state and local law enforcement agencies. Each video and audio track on a recording must be reviewed and separately redacted.

If an individual’s identity or image is exempt or prohibited from dissemination, then redaction of the face or other identifying features will be required for each frame, by “black out” or “pixilation.” Standard video format uses a stream of 30 still images or “frames” per second. Each minute of video recording contains 1,800 frames subject to redaction. Proprietary video formats used by manufacturers may use less than 30 frames per second, with a corresponding decrease in motion smoothness.

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<sup>16</sup> *Body Worn Cameras: How Privacy Drives Video Security*, by Todd Newcombe, September 10, 2015, Digital Communities for City and County Leaders, [http://www.govtech.com/dc/articles/Body-Worn-Cameras-How-Privacy-Drives-Video-Security.html?utm\\_source=related&utm\\_medium=direct&utm\\_campaign=Body-Worn-Cameras-How-Privacy-Drives-Video-Security](http://www.govtech.com/dc/articles/Body-Worn-Cameras-How-Privacy-Drives-Video-Security.html?utm_source=related&utm_medium=direct&utm_campaign=Body-Worn-Cameras-How-Privacy-Drives-Video-Security), viewed October 9, 2015; Police body cameras spark debate about privacy in Tennessee, *The Tennessean*, November 2, 2015, <http://www.tennessean.com/story/news/politics/2015/11/02/police-body-cameras-spark-debate-privacy-tennessee/74756528/>, viewed December 3, 2015.



Advances in technology may provide for “global” redaction of a recording, rather than requiring frame-by-frame redaction. Regardless of the technology, the redaction process requires substantial investment in personnel, training, hardware and software.

Audio recordings can be redacted by deletion of selected segments, leaving silence or replacing the deleted sound with a “beep” or other indication of deletion.

How does law enforcement address the issue of redaction when the person’s voice can lead to knowledge of the person’s identity (e.g. child victims and witnesses)?

The Public Records Act raises additional concerns regarding body-worn camera recordings.

Should the ability to request and receive body-worn camera recordings be prohibited in the same manner as dash cam recordings under RCW 9.73.090(1)(c) (e.g. disclosure prohibited until final disposition of any criminal or civil litigation which arises from the event)? If the recording involves a criminal investigation, then should disclosure be allowed in the same manner as law enforcement reports (as soon as a charging decision has been made)?

What criteria should be required to request an “identifiable public record” as pertains to body-worn camera recordings?<sup>17</sup>

To what extent does the unrestricted dissemination of body-worn camera recordings impact the rights of a criminal defendant?

Should the ability to request and receive body-worn camera recordings be limited to particular requestors? Should dissemination be allowed, as it is currently, to the general public and without restrictions on use or re-dissemination?<sup>18</sup>

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<sup>17</sup> Video recordings present unique search, retrieval and tagging/keyword issues. The visual and audio content of video recordings cannot be searched in the same manner as documents. One Washington county received a Public Records Act request for all “dash cam recordings during which the stopped driver asked the law enforcement officer the reason for the traffic stop.” The county faced the task of listening to approximately 17,000 dash cam recordings, containing over 2,800 hours of audio recording, to retrieve responsive recordings. The requestor abandoned the request during installment responses.

<sup>18</sup> A small example of media reporting: Cost and logistical issues limit local police interest in body cameras, *The News Tribune*, December 7, 2014, [http://www.thenewstribune.com/2014/12/07/3526070\\_cost-and-logistical-issues-limit.html?rh=1](http://www.thenewstribune.com/2014/12/07/3526070_cost-and-logistical-issues-limit.html?rh=1), viewed May 21, 2015; Seattle police may dump plans for body cams, citing records requests, *ARS Technica*, November 20, 2014, <http://arstechnica.com/tech-policy/2014/11/seattle-police-may-dump-plans-for-body-cams-citing-records-requests/>, viewed May 21, 2014; Anonymous “requestor turns police body camera programs upside down, *Government Technology*, November 25, 2014, <http://www.govtech.com/public-safety/Anonymous-Requester-Turns-Police-Body-Camera-Programs-Upside-Down.html>, viewed May 21, 2015; Washington State police overwhelmed by public requests for dash- and body-cam footage, *Homeland Security News Wire*, November 27, 2014, <http://www.homelandsecuritynewswire.com/dr20141127-washington-state-police-overwhelmed-by-public-requests-for-dash-and-bodycam-footage>, viewed May 21, 2015; State bills would limit access to officer body camera videos, *The New York Times*, March 20, 2015, [http://www.nytimes.com/aponline/2015/03/20/us/ap-us-body-cameras-public-access.html?\\_r=0](http://www.nytimes.com/aponline/2015/03/20/us/ap-us-body-cameras-public-access.html?_r=0), viewed

Once disclosed under the Public Records Act, should re-dissemination of the recordings, e.g. through social media, be limited in any manner?<sup>19</sup>

If a body-worn camera is unlawfully disseminated or used under new legislation, will law enforcement and prosecutors be provided enforcement tools to stop unlawful re-dissemination?

The pervasive, unregulated use of social media has caused civil liberties organizations to express strong concerns regarding the intrusion upon privacy rights of individuals. Recordings will depict persons who have not been the subject of an investigation, arrested or charged with a crime. Even if the intrusion by law enforcement is warranted, dissemination under the Public Records Act will currently allow use of the recordings by others for non-law enforcement purposes.

These Public Records Act issues are matters for legislative consideration and action.<sup>20</sup>

### **Agency Retention of Body-Worn Camera Recordings**

The Secretary of State, Washington State Archives, Law Enforcement Records Retention Schedule, Version 6.1 (January 2013), provides:

**LE09-01-08 Rev. 1 - Recordings from Mobile Units – Incident Identified**

Recordings created by mobile units which have captured a unique or unusual action from which litigation or criminal prosecution is expected or likely to result. Retain until matter resolved and until exhaustion of appeals process then Destroy.

**LE09-01-09 Rev. 1 - Recordings from Mobile Units – Incident Not Identified**

Recordings created by mobile units that have not captured a unique or unusual incident or action from which litigation or criminal prosecution is expected or likely to result. Retain for 90 days after date of recording then Destroy.

The law enforcement agency must determine at the time of transfer/uploading and tagging whether a body-worn camera recording is “incident identified” (evidentiary) or is “incident not identified” (non-evidentiary). Appropriate agency policies to assist in these determinations will be required. Neglect of retention and destruction schedules by a law enforcement agency will result in storage and file management issues, as well as increase the resources needed to respond to requests for body-worn camera recordings unnecessarily retained.

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May 27, 2105; Police cameras bring problems of their own, The Wall Street Journal, April 9, 2015, <http://www.wsj.com/articles/police-cameras-bring-problems-of-their-own-1428612804>, viewed June 3, 2015..

<sup>19</sup> Downside of police body cameras: your arrest hits YouTube, The New York Times, April 26, 2015, <http://www.nytimes.com/2015/04/27/us/downside-of-police-body-cameras-your-arrest-hits-youtube.html>, viewed May 21, 2015.

<sup>20</sup> South Carolina has adopted legislation to mandate state-wide use of police body-worn cameras, but has exempted the audio and video recordings from disclosure under the state’s Freedom of Information Act. [http://www.scstatehouse.gov/sess121\\_2015-2016/bills/47.htm](http://www.scstatehouse.gov/sess121_2015-2016/bills/47.htm)

## **Conclusion**

The use of body-worn cameras by law enforcement raises significant public policy, legal and practical issues and concerns and the debate is ongoing. Although there is little empirical research regarding the actual benefits and impacts of using body-worn cameras, the considerations and issues raised by both proponents and opponents express genuine concerns.

The implementation of body-worn camera programs is expensive, requiring significant investments in equipment, ongoing maintenance expenditures and increased resources devoted to personnel, training, and technology. The decision to implement programs is made more difficult by increasingly scarce criminal justice funding.

Law enforcement agencies choosing to fund and implement body-worn camera programs must be prepared to develop policies and protocols addressing numerous personnel, equipment, technology, privacy, public records issues, as well as partner with local prosecutors to assure compliance with discovery obligations. However, the Legislature must first provide the framework in which these programs may be implemented, addressing several issues under the Washington Privacy Act, RCW Chapter 9.73, and Washington's Public Records Act, RCW Chapter 42.56.

The Washington Association of Prosecuting Attorneys looks forward to working with the Legislature and our criminal justice partners to address these considerations raised in this paper and to bring the best possible public policies and law enforcement practices to the people of Washington.

Acknowledgements: The Washington Association of Prosecuting Attorneys acknowledges the prior excellent work of the North Carolina Conference of District Attorneys' Best Practices Committee, and the Colorado District Attorneys' Council and Attorney General's Office's Best Practices Committee, which contributed significantly to this paper, and the resources provided by the efforts of Kristine Hamann, J.D., Visiting Fellow, Department of Justice Bureau of Justice Assistance, to improve prosecution practices.

**Subject:** Did You Know, January 14, 2016  
**Date:** Thursday, January 14, 2016 at 9:05:25 AM Eastern Standard Time  
**From:** Prosecutors' Center for Excellence <khamann@pceinc.org>  
**To:** khamann@bestpracticesforjustice.org <khamann@bestpracticesforjustice.org>



*January 14, 2016 – Volume 5*

The National District Attorneys Association, the voice of America's prosecutors, sponsors the Articles of Interest series and is partnering with Prosecutors' Center for Excellence to improve the criminal justice system and to address emerging issues.



## Did You Know?

In addition to the *Articles of Interest Series*, occasional articles entitled "Did You Know?" will be distributed. These articles will feature a particular topic with a short explanation, along with source materials that provide detailed information. Please send suggestions for "Do You Know?" articles that might be of interest.

## Body Worn Cameras – Tips for Prosecutors

Police departments around the country are purchasing body worn cameras (BWC) at an accelerating pace. Prosecutors should get involved in this process as early as possible. Here is a brief overview of some of the issues prosecutors may consider. Also attached is a selection of model policies, articles and reports that provide more detailed information.

- **Who is Using BWC?** Reach out to your police departments.
  - Are they buying body worn cameras?
  - Are different departments using different technologies?
  - Are they developing different policies?
- **BWC Policy:** Get involved in the development of the BWC policy.
  - When should the officer record?
  - Are the recordings tagged with incident or arrest information and if so, how?
  - How and when does the prosecutor get access to the recordings?
  - Where and how are the recordings stored and for how long?
- **Discovery and Evidence:** Develop procedures within a prosecutor's office.
  - Who will gather and review the recordings?
  - How does a recording get associated with an arrest?
  - When and how are the recordings turned over to the defense?
  - When and how can a recording be redacted?

- **Funding:** What additional costs will BWC impose on the prosecutor's office?  
Possible costs include:
  - Personnel for viewing and redacting
  - Equipment for viewing, storing and redacting
  - Licensing fees for viewing and storing
- **Stakeholder Meetings:** Consider convening stakeholder meetings about BWC.
  - Prosecutors can lead meetings with law enforcement, victim groups, courts, defense, community groups and/or elected officials to discuss BWC.
- **Freedom of Information Laws and Release of Recordings:**
  - Assess how to respond to a freedom of information request for a recording.
  - When should recordings be released to the public?

## Additional Materials

### BWC Summit Flier:

CDA National Body Cam Technology & Policy Summit and Expo  
*California District Attorneys Association* (February 22-24, 2016, Anaheim California)  
[Read](#)

### Articles by Prosecutors:

Model Body Worn Camera Policy for Police: An Aid for Prosecutors  
*California District Attorneys Association and Prosecutors' Center for Excellence*  
 (7/14/2015) [Read](#)

Body-Worn Cameras: A Report for Law Enforcement  
*The Colorado Best Practices Committee for Prosecutors* (February 2015) [Read](#)

Use of Body-Worn Cameras by Law Enforcement: Considerations, Issues and Concerns  
*Washington Association of Prosecuting Attorneys Best Practices Committee* (12/3/2015)  
[Read](#)

These Are the Police Body Camera Questions State and Local Stakeholders Must Address Quickly  
*Route Fifty* (9/20/2015) [Read](#)

What Body Camera Data Should Police Collect and When?  
*Route Fifty* (10/15/2015) [Read](#)

With Body-Worn Cameras, Here Comes the Hard Part  
*Route Fifty* (11/23/2015) [Read](#)

### Technical Resources:

Bureau of Justice Assistance BWC Tool Kit: <https://www.bja.gov/bwc/>

For the Record: Understanding the Technology Behind Body Worn Cameras  
*Digital Communities* (September 2015) [Read](#)

### Articles by Other Groups:

A Model Act for Regulating the Use of Wearable Body Cameras by Law Enforcement  
*ACLU* (May 2015) [Read](#)

Police Body Cam Footage: Just Another Public Record  
*Abrams Institute* (December 2015) [Read](#)

Mayor Rawlings-Blake's Working Group on the Use

and Implementation of Body-Worn Cameras  
City of Baltimore (2/18/2015) [Read](#)

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*These articles and more are available in the National Resource Center for Prosecutors ([www.NRCFP.com](http://www.NRCFP.com)) which resides on Prosecutors' Encyclopedia (PE). The NRCFP is a resource that contains thousands of articles on topics impacting prosecutors, including ethics, technological developments, social science, innovative law enforcement practices, and evolving trends in crime. To access these resources, go to [www.NRCFP.com](http://www.NRCFP.com) and log in to request an account.*

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For membership and program information, please visit NDAA's Website at: <http://www.ndaa.org> NDAA is located in Alexandria, Virginia, 703.549.9222.

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# LOS ANGELES POLICE DEPARTMENT



## MEDIA RELATIONS HANDBOOK

## *Mission Statement*

**Preamble:** The Los Angeles Police Department is committed to serving the community while protecting the rights of all persons. Consistent with this commitment, the Department's Vision, Mission and Core Values, in concert with the Law Enforcement Code of Ethics and the Department's Management Principles, reflect the guiding philosophy of the Los Angeles Police Department.

**Vision:** It is the vision of the Los Angeles Police Department to, as closely as possible, achieve a City free from crime and public disorder.

**Mission:** It is the mission of the Los Angeles Police Department to safeguard the lives and property of the people we serve, to reduce the incidence and fear of crime, and to enhance public safety while working with the diverse communities to improve their quality of life. Our mandate is to do so with honor and integrity, while at all times conducting ourselves with the highest ethical standards to maintain public confidence.

## *Core Values*

**SERVICE TO OUR COMMUNITIES.** We are dedicated to enhancing public safety and reducing the fear and the incidence of crime. People in our communities are our most important customers. Our motto "To Protect and to Serve" is not just a slogan - it is our way of life. We will work in partnership with the people in our communities and do our best, within the law, to solve community problems that affect public safety. We value the great diversity of people in both our residential and business communities and serve all with equal dedication.

**REVERENCE FOR THE LAW.** We have been given the honor and privilege of enforcing the law. We must always exercise integrity in the use of the power and authority that have been given to us by the people. Our personal and professional behavior should be a model for all to follow. We will obey and support the letter and the spirit of the Law.

**COMMITMENT TO LEADERSHIP.** We believe the Los Angeles Police Department should be a leader in Law Enforcement. We also believe that each individual needs to be a leader in his or her area of responsibility. Making sure that our values become part of our day-to-day work life is our mandate. We must each work to ensure that our co-workers, our professional colleagues and our communities have the highest respect for the Los Angeles Police Department.

**INTEGRITY IN ALL WE SAY AND DO.** Integrity is our standard. We are proud of our profession and will conduct ourselves in a manner that merits the respect of all people. We will demonstrate honest, ethical behavior in all our interactions. Our actions will match our words. We must have the courage to stand up for our beliefs and do what is right. Throughout the ranks, the Los Angeles Police Department has a long history of integrity and freedom from corruption. Upholding this proud tradition is a challenge we must all continue to meet.

**RESPECT FOR PEOPLE.** Working with the Los Angeles Police Department should be challenging and rewarding. Our people are our most important resource. We can best serve the many and varied needs of our communities by empowering our employees to fulfill their responsibilities with knowledge, authority and appropriate discretion. We encourage our people to submit ideas, we listen to their suggestions, and we help them develop to their maximum potential. We believe in treating all people with respect and dignity. We show concern and empathy for the victims of crime and treat violators of the law with fairness and dignity. By demonstrating respect for others, we will earn respect for the Los Angeles Police Department.

**QUALITY THROUGH CONTINUOUS IMPROVEMENT.** We will strive to achieve the highest level of quality in all aspects of our work. We can never be satisfied with the "status quo". We must aim for continuous improvement in serving the people in our communities. We value innovation and support creativity. We realize that constant change is a way of life in a dynamic city like Los Angeles, and we dedicate ourselves to proactively seeking new and better ways to serve.



# Media Information

## Los Angeles Police Department

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# M E D I A   I N F O R M A T I O N

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This information is intended to assist the media in getting timely news information from the Los Angeles Police Department while providing both the media and our officers with a basic outline of releasable information.

This is only reference information and it is not intended to cover every possible situation pertaining to the LAPD's policy on the release of information.

Each area watch commander within the LAPD's 21 community police stations can provide information to the media for incidents, which have occurred within his/her Area. The locator inside this document will assist you in locating the watch commander for the area from which you are seeking information.

For general information about LAPD news releases, its policies, procedures, history, statistical data, area of jurisdiction, news conference information, media credentials, etc., contact Media Relations Section at (213) 485-3586, or, please log on to the LAPD Web site at [www.lapdonline.org](http://www.lapdonline.org).

Quite often, because of the nature of their duties, police officers are called upon to supply the media with information related to, and sometimes unrelated to, police work. The Los Angeles Police Department is committed to adopting an atmosphere of transparency with the media and the public. The Department views the media as an avenue by which to communicate with and educate the public on matters of importance. To accomplish this, the media must be given as much access as legitimately possible, to assist them in their news-gathering and reporting duties. When asked for information regarding a police matter, officers should decide if they possess sufficient facts and are qualified to respond, and whether the person asking is appropriately credentialed to receive the information. Officers should avoid representing their own opinions as facts.

When an event being investigated is so spectacular or unusual in nature as to stimulate general community interest, the news media may be notified. An Area commanding officer may make such notifications, however, Media Relations Section personnel may assume responsibility for releasing information regarding events of major proportions.

## **Public Disclosure Of Crime And Arrest Reports**

The following information will be provided upon request according to Government Code Section 6254 (f), unless the information would endanger the successful completion of an investigation, or a related investigation, or would endanger the safety of a person involved in the incident:

### **Arrest Reports**

- Arrestee's full name (except juveniles)
- Area of residence and occupation
- Physical description, age, sex, and descent

- Time, date, location of arrest
- Factual circumstances
  - Time and location
  - Resistance by the suspect
  - Pursuit necessary to arrest
  - Use of weapons by suspect
  - Use of force by officers
  - Identity of arresting/investigating officer
  - Limited description of evidence
  - The nature, substance, and text of charge
  - Any request for assistance from the public
- Amount of bail and location held
- All charges including warrants
- Parole or probation holds

The name of a victim of any crime defined by Sections 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent(s) or guardian if the victim is a minor.

## **Non-Releasable Information**

- Identity of suspect prior to arrest
- Results of investigation prior to arrest, unless release of the information will:
  1. Aid in investigation
  2. Assist in the apprehension of the suspect(s)
  3. Warn the public of danger
- Employee/personnel matters prohibited under Penal Code Section 832.5
- Prior criminal record, reputation or character of suspect

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- Confession or existence of a confession
- Any photograph or mug shots unless:
  1. The release will aid in arrest
  2. The release will aid in investigation
  3. The release will warn public of danger
  4. The arrestee has been booked for a particular crime
- Identity or any personal information regarding a juvenile arrestee or suspect without permission from a Juvenile Court
- The identity, credibility, or testimony of prospective witnesses:
  1. Any personal opinion as to the suspect's guilt, innocence, or merits of the case
  2. Any information known to be inadmissible in court
  3. Results of investigative procedures (e.g., fingerprints, polygraph tests, or ballistic tests)

**Note:** Pursuant to 5328 WIC, information regarding any 5150 WIC action when a person is taken into custody for on a 72-hour hold, shall not be disclosed to the general public and/or the news media.

## **Crime Scene Guidelines**

1. Do not establish artificial barriers. For example, do not hold the press at bay a block from the crime scene, while simultaneously allowing the general public to wander freely just beyond the crime scene tape.
2. Do not prevent the taking of pictures or interviews of person(s) in public places. News reporters may photograph or report anything or interview anyone they observe when legally present at an emergency scene. This includes officers, victims and witnesses.

3. Do not isolate the media outside the crime/incident scene unless the area has been secured to preserve evidence or their presence jeopardizes police operations.
4. Do not limit access based on safety concerns. The decision to assume the risk of danger remains with the individual news reporter. A safety hazard to the press does not justify restriction, however it is the LAPD's policy to warn the media of potential dangers before allowing access.

### **Access at Disaster Scenes**

The Los Angeles Police Department may close an area under authority of 409.5(a) P.C. when "... a menace to the public health or safety is created by a calamity such as a flood, storm, fire, earthquake, explosion, accident, or other disaster . . ." However, as stated in 409.5(d) P.C. "...Nothing in this section shall prevent a duly authorized representative of any news service from entering the area closed . . ."

**Disaster Scene Command Post areas may be closed to the media.**

**Note:** LAPD officers shall honor current media credentials from other local law enforcement agencies. Media vehicle restrictions may not necessarily apply to [media] foot pedestrian access.

### **Access at Incident/Crime Scenes**

*Incident/Crime Scenes and Command Posts  
may be closed to the media.*

Under most circumstances, the incident/crime scene and accompanying command post will be closed to the media. The purpose of such constraints is to protect the integrity of the investigation and to ensure a safe, coordinated and unrestricted response by law enforcement and other emergency personnel.

Limitations to media access to incident/crime scenes are subject to review by the responsible incident commander and/or appropriate Department command staff personnel. Limitations should be lifted as soon as the situation warrants and the decision to do so rests with the incident commander or appropriate Department command staff personnel.

*Whenever the media is denied access to an incident/crime scene, Los Angeles Police Department personnel shall:*

- Establish a “Media Area”, with maximum access under the circumstances
- Assign a public information officer or police supervisor at scene, to provide timely and updated information to the media
- Consider “Pool” access, (one TV camera, one TV reporter, one print reporter, one still photographer, one radio reporter) at the incident. Pool reporters and photographers will share information with other media personnel at the scene.

## **Access at Events Involving Public Assemblies**

Under the rights guaranteed by the First Amendment to the United States Constitution, it is not uncommon for large numbers of people to assemble for the purpose of demonstrating their opinions. At such demonstrations, it is the police Department’s obligation to protect individual’s First Amendment rights, maintain order, and protect lives and property. Occasionally, demonstrations become unlawful. In such circumstances, pursuant to California Penal Code Sections 407 and 409, an assembly may be declared unlawful, and all persons present, including members of the news media, may be lawfully ordered to disperse. The law provides that police officers may use reasonable force

to disperse an unlawful assembly and to affect the arrest of violators. The Department's Use of Force Policy applies to such actions. The Department's policies concerning interaction with the news media are described in the relevant provisions in Volume 1 of the Department Manual, the Department's Emergency Operations Guide, and the Department's Media Relations Handbook.

- The Los Angeles Police Department recognizes that the news media has the right, without interfering with police operations, to cover events that may result in the declaration of an unlawful assembly and order to disperse. To the extent reasonably possible under the circumstances, the LAPD will make efforts to accommodate this reporting obligation. However, such efforts will be made consistent with the LAPD's primary obligation to maintain public safety and order.
- With the exception of spontaneously occurring events, whenever the LAPD develops an operations plan for an event that the Department understands will involve a public assembly, the Department will, where practicable, designate an area outside of the anticipated, impacted area, but within reasonable viewing distance and audible range of the event, in which members of the news media may assemble. To the extent reasonably possible under the circumstances, the Department will try to prevent the news media viewing area from becoming part of any area impacted by an unlawful assembly declaration and order to disperse. However, the decision to assume the risk of danger involved in covering a public event remains with the individual news reporter



provided that any such decision does not constitute a waiver by a reporter of any constitutional or other legal rights.

- The selection of the news media viewing area will take into consideration public and officer safety, police tactics, input provided by the news media, if any, and the ability of the LAPD to prevent the location from becoming part of the impacted area. The Incident Commander (IC) in charge of the event will make the final selection of the viewing area location.
- To the extent reasonably possible without compromising public or officer safety or police tactics, the IC will relocate the news media viewing area if, due to changing conditions, the initial area no longer affords the news media reasonable view of the event or becomes a tactical concern for the IC.

## **Ride-Along Guidelines**

In order to prevent liability against the Los Angeles Police Department and its personnel, officers are responsible for ensuring that media and/or camera crews participating in ride-alongs abide by the following list of guidelines:

1. Media and/or camera crews who are accompanying Los Angeles Police Department personnel are prohibited from accompanying officers into areas that are not accessible to the public; specifically, areas wherein officers gain access due to their authority as peace officers, including, but not limited to, homes, backyards, ambulances, or any area where a reasonable expectation of privacy exists.

# M E D I A   I N F O R M A T I O N

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2. Any authorization from a person being taped, or to enter a non-public area, is solely an agreement between said person and the media and/or a camera crew. Los Angeles Police Department personnel shall not be involved in obtaining any such form of consent.
3. Authorized Department personnel shall conduct only tasks directly related to their normal law enforcement duties, and shall not grant media and/or camera crews any special treatment or access that exceeds what any other person is entitled to, during the course of a ride-along.
4. Authorized Department personnel shall not allow media and/or camera crews to disrupt the normal course of their law enforcement duties and shall terminate the ride-along immediately upon any such disruption.
5. All media and/or camera crews attending a ride-along shall have prior consent from Media Relations Section. Each member of the news media requesting to ride in a police vehicle shall sign a waiver releasing the City of Los Angeles and the Los Angeles Police Department from any liability during the course of that ride-along.
6. All persons approved for ride-alongs shall ride in a police vehicle with a supervisor. Under no circumstances shall persons engaged in ride-along activities be permitted to follow in “police convoy” style in a private vehicle.
7. Under no circumstances shall a member of the media accompany a member of the Department during the search of private property, with or without a warrant.

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8. Under no circumstances shall any member of the LAPD invite any member of the news media onto the private property of another person for the purpose of filming activity taking place thereon.

**NOTE:** Media personnel may follow officers onto private property when the officers have a legal right to be there, as long as the media personnel have consent from the person(s) in lawful control of the private property, and their presence does not inhibit the officers' ability to effect their duties. Additionally, the media may observe officers' activities from an area where they have a legal right to be.

9. Under no circumstances shall any member of the LAPD assist any member of the media in obtaining waivers from persons being filmed; nor shall officers mediate or otherwise act as an intermediary in obtaining such a waiver.
10. To ensure that the provisions of the Lanterman-Petris Short Act and Section 5328 of the Welfare and Institution Code (WIC) are fully complied with, Department personnel shall take all reasonable steps to protect the privacy of any person who they encounter, and who appears to have a mental disorder. This includes the evaluation, transportation, or detention of any person pursuant to the provisions of Section 5150 of the WIC.

***The Los Angeles Police Department does not allow media and/or camera crews in any areas, not accessible to the public, without prior consent from the person whose reasonable expectation of privacy exists. There is no exception to this rule.***



**HOOPER** - Hooper Memorial Heliport. Home of Air Support Division

**ASTRO** - Air Support to Regular Operations (Air Support Division's "patrol" flights)

**FLIR** - Forward Looking Infra-Red, one part of a dual-sensor camera system. The FLIR is a heat-sensitive imaging system, which makes it easier for the aircrew to detect the presence of individuals (i.e. suspects in hiding) on the ground due to the heat signature of their bodies. When the FLIR camera is activated, the terrain below the helicopter is displayed on a monitor inside the cockpit. The image appears much like that of a negative from a black and white photograph. Warm and hot objects are white, cool and cold objects are depicted in various shades from gray to black.

**Nightsun** - 50 million candle power searchlight assembly that can be "slaved" to the FLIR or Video Camera System.

**Video Downlink** - one part of the dual-sensor camera system. An on-board camera allows the aircrew to videotape activity unfolding on the terrain beneath the aircraft. Images recorded can be "down-linked" in real time to the ground-based incident commanders to assist in managing critical police incidents.

**Special Flights Section** - A section within Air Support Division which provides support to the investigative units within the Department with surveillance flights, transportation, etc.

**Eurocopter** - "A-Star" helicopter manufactured by American Eurocopter and utilized by Air Support Division during patrol missions. ASD currently operates a fleet of twelve A-Stars.

**206** - A Bell 206 B-3 "Jet Ranger" helicopter used by Air Support Division for patrol and flight training. The Department currently has four 206 helicopters.

**KING AIR BE200** - A twin turbo prop fixed wing aircraft. The King Air is utilized for transporting Department personnel ( i.e. Detectives) for investigative trips, prisoner transport and transportation of Department executives as directed by the Chief of Police.

**TFO** - Tactical Flight Officer. One of two aircrew members on board the helicopter, the TFO is the “observer” or “spotter” who supports the ground-based officers during the resolution of police incidents by providing tactical advice, facilitating radio communication, organizing and managing perimeters, coordinating suspect apprehension, etc.

**Moving Map** - A global positioning system (GPS) map on board the aircraft which assists the aircrew in navigating to various locations and through the congested airspace in the greater Los Angeles Area. The moving map image is very similar to that of the Thomas Brothers Map Guide and is displayed on a monitor inside the aircraft.

**LOJACK** - A stolen vehicle recovery system on board most ASD patrol aircraft which is similar to the equipment in many of the Departments marked police vehicles. The system actively searches for signals produced by stolen vehicles equipped with LOJACK transmitters, and a signal strength indicator directs the aircrew toward the location of the stolen vehicle. Aircrews work in conjunction with ground-based officers to pinpoint the location of the vehicle.

# EMERGENCY



# OPERATIONS

# E M E R G E N C Y O P E R A T I O N S

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**Access:** There are two types of access.

- **Limited Access.** Allows access to a closed area according to the criteria established by an Incident Commander.
- **No-Access.** Prohibits access to a closed area.

**Acid:** pH less than 2, burns skin.

**Acute Toxicity:** Short term poisonous effects.

**After-Action Report:** See Unusual Occurrence After-Action Report.

**Agency Representative:** An individual assigned to an incident from an assisting or cooperating agency who has been delegated authority to make decisions on matters affecting that agency's participation at the incident.

**Agitator:** A person who incites others to commit illegal acts.

**Alternate Routes:** Public traffic thoroughfares that are adjacent to an involved area and do not interfere with emergency control operations.

**Aqueous Film Forming Foam (AFFF or "A-triple F"):** Basic fire fighting foam.

**Area:** A geographic subdivision of an operations bureau. An Area includes an Operations Support Division, an Administrative Section, and patrol functions.

**Area Command:** An organization established to: 1) oversee the management of multiple incidents that are each being handled by an Incident Command System organization; or 2) to oversee the management of a very large incident that has multiple Incident Management Teams assigned to it. Area Command has the responsibility to set overall strategy and priorities, allocate critical resources based on priorities, ensure that incidents are properly managed, and ensure that objectives are met and strategies followed. Also refers to command of a geographic Area.



# E M E R G E N C Y O P E R A T I O N S

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**Area Command Vehicle (ACV):** Command Post vehicle assigned to geographic Areas for initial response to police incidents requiring coordination above routine patrol resources.

**Assembly Area:** An area ordinarily located within the Staging Area for congregating and deploying personnel to be used in an incident or held as available. The Assembly Area may also be used as a temporary booking and detention facility.

**Assisting Agency:** An agency directly contributing tactical or service resources to another agency.

**Atropine:** Drug to combat effects of nerve agents.

**Available Reserve:** Those officers who can be released from their regular duties and reassigned to an incident as needed. The Available Reserve includes all field-certified officers of an Area/division who have not been assigned to the Minimum Operating Force (MOF) or a pre-assembled Mobile Field Force (MFF). Officers constituting the Available Reserve remain within their assigned Areas, limiting their activities to police work of major importance until directed to respond to the emergency.

**Base:** The location at which primary logistics functions for an incident are coordinated and administered. There is only one Base per incident. (Incident name or other designator will be added to the term Base.) The Incident Command Post may be co-located with the Base.

**Beat:** A Beat is the smallest area of responsibility in an involved area that has been sectorized for control purposes.

**BioHazard:** Material that harbors or transmits microorganisms.

**Bureau Command Vehicle (BCV):** A command post vehicle assigned to an operations bureau which is deployed to incidents which require command coordination beyond the ability or resources of the effected Area.

# E M E R G E N C Y O P E R A T I O N S

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**Business Hours:** “Business Hours” shall mean 0830 hours to 1700 hours, Monday through Friday, excluding legal holidays.

**California Air Resources Board (CARB):** Responsible for regulations and enforcement of air emissions.

**California Specialized Training Institute (CSTI):** CSTI, located in San Luis Obispo, is the training arm of the Governor’s Office of Emergency Services and provides a wide range of training on emergency management, hazardous materials, and field officer tactics.

**Camp:** A geographical site within the general incident area separate from the Incident Base, equipped and staffed to provide sleeping facilities, food, water, and sanitary services to incident personnel.

**Cargo Tank:** Bulk tank vehicle (over 119 gallons).

**Check-In:** The process whereby resources first report to an incident. Check-in locations include: Incident Command Post (Resources Unit), Incident Base, Camps, Staging Areas, Helibases, Helispots, and Division Supervisors (for direct line assignments).

**Closed Area:** That portion of the City directly affected by an emergency (determined to be within the provisions of 409.5 Penal Code), when conditions present a menace to public health or safety to such a degree that public access is limited or prohibited.

**Code of Federal Regulations (CFR):** Federal regulations.

**Cold Zone:** Identified as a support zone at a HAZMAT incident (aka: green zone).

**Command Staff (ICS):** The Command Staff consists of the Information Officer, Safety Officer, Liaison Officer, and Executive Officer. They report directly to the Incident Commander.

**Contamination Reduction Zone (CRZ):** Decontamination area, also called the yellow or warm zone.

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**Control Point:** A designated geographic location maintained by officers as a means of controlling vehicular and pedestrian traffic. A Control Point is an essential element in perimeter control of a closed or involved area.

**Cooperating Agency:** An agency supplying assistance other than direct tactical or support functions or resources to the incident control effort (e.g., Red Cross, the telephone company, etc.).

**Cradle-to-Grave:** Accountability of hazardous waste from generation to final disposition.

**Critique:** A critical analysis of Department operations and procedures, and suggestions for improvement, submitted in writing subsequent to an Unusual Occurrence or training exercise, by persons in specified leadership positions.

**Crowd:** A group of individuals who have temporarily identified themselves with common values and who are experiencing similar emotions. It is characterized as law abiding, unorganized, without leadership, hesitant, ruled by reason, and lacking the intent to violate the law.

**Cryogenic:** Liquified gases stored or transported at more than 100 degrees below zero.

**Decon:** Decontamination

**Department Command Post:** A location staffed with personnel who develop and implement Department emergency control strategies during a disaster or other emergency. The Department Operations Center (DOC), if activated, is the Department Command Post during a Serious or Major Unusual Occurrence.

**Department Operations Center (DOC):** The Department Command Post during Serious or Major Unusual Occurrences. It is staffed to coordinate and provide police services, personnel, equipment, and supplies to incidents. It is located in City Hall East, four Sub-Level and is capable of communicating with all City departments and selected outside agencies.

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**DOC Cadre:** The DOC Cadre consists of personnel drawn from administrative assignments to staff the Department Operations Center.

**Director of Emergency Operations:** The Chief of Police, or his designee, is the Director of Emergency Operations. The Director of Emergency Operations (DEO) is responsible for directing all Department activities during Unusual Occurrences.

**Disaster:** An emergency that threatens or has caused extraordinary loss of life and/or property.

**Division (ICS):** Divisions are used to divide an incident into geographical areas of operation. Divisions are identified by alphabetic characters for horizontal applications and, often, by floor numbers when used in buildings.

**Dosimeter:** Instrument to gauge radiation.

**Emergency:** An incident involving potential or actual death, injury, and/or property loss.

**Emergency Operations Board (EOB):** The EOB supervises the EOO during all periods of emergency preparation, response, and recovery. The EOB consists of selected general managers from key city departments. The Chief of Police is the permanent Chair of the EOB.

**Emergency Operations Center (EOC):** The facility established by the City to coordinate the City's overall response and support to an emergency. Representatives from various City departments and agencies, including the Police Department, staff the EOC.

**Emergency Operations Guide (EOG):** Contains Department responsibilities, organizations and functions, operating procedures, command strategy and control tactics, and laws for Unusual Occurrence Control.

**Emergency Operations Organization (EOO):** The EOO is a unique City department consisting of representatives from all City departments and agencies. The EOO centralizes the direction and control of planning,

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coordination, and management of disaster preparedness, mitigation, response, and recovery.

**Emergency Operations Section (EOS):** Under the Commanding Officer, Special Operations Support Division (SOSD), consisting of the Emergency Preparedness Unit, Environmental Crimes Unit, and Special Events Planning Unit.

**Emergency Planning Coordinator (EPC):** Bureau/Area supervisor responsible for the operational planning of incidents, such as special events.

**Emergency Planning Unit (EPU):** A unit within Emergency Operations Section responsible for the preparation and maintenance of operation plans.

**Emergency Preparedness Department (EPD):** The City's Emergency Preparedness Department is responsible for day-to-day staff work supporting the EOO and City disaster preparedness.

**Evacuation:** An organized removal of persons and/or property from an involved or closed area during a threatened or actual disaster or other emergency.

**Evaluation:** The process of determining the quality of performance of individuals, sections staff and equipment, and the adequacy of concepts, procedures and tactics applied during emergencies or training exercises.

**Exclusion zone:** Hot Zone, immediately dangerous area.

**Federal Emergency Management Agency (FEMA):** FEMA's mission is to reduce loss of life and property and protect our nation's critical infrastructure from all types of hazards through a comprehensive, risk-based, emergency management program of mitigation, preparedness, response and recovery. FEMA also provides disaster assistance grants, through the State Office of Emergency Services, to reimburse local government disaster response personnel costs.

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**Field Jail Unit (FJU):** A field facility or temporary location for the preliminary reception, field identification, initial processing and detention of arrestees pending transportation to a designated detention facility for formal processing.

**Field Operations Guide:** A guide providing First Responders (Officers) with information about incident management.

**Flash Point:** Temperature at which liquids emit vapors capable of ignition.

**Fume:** Smoke, vapor, or gas.

**General Staff (ICS):** The group of incident management personnel reporting to the Incident Commander. They may each have a deputy, as needed. The General Staff consists of the Operations Section Officer-In-Charge; Planning and Intelligence Section Officer-In-Charge; Logistics Section Officer-In-Charge; Finance/Administration Section Officer-In-Charge.

**Group (ICS):** Groups are established to divide the incident into functional areas of operation. Groups are composed of resources assembled to perform a special function not necessarily within a single geographic division. (See Division.)

**Hazardous Material (HAZMAT):** A substance, material, or chemical that is capable of posing an unreasonable risk to health, safety, the environment, or property.

**Hazardous Material Response Team (HMRT):** Federal and local hazardous material response team task force.

**Hazardous Waste:** Hazardous material no longer of use and destined for disposal.

**Helibase:** The main location for parking, fueling, maintenance, and loading of helicopters operating in support of an incident. It is usually located at or near the incident base.

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**Helispot:** Any designated location where a helicopter can safely take off and land. Some helispots may be used for loading of supplies, equipment, or personnel.

**Hostage:** A person held against his will by a suspect as a pawn or pledge that agreements will be fulfilled, or promises kept, or terms met by another.

**Hot Zone:** Exclusion zone, high danger (contamination).

**Incident Commander:** The individual responsible for the management of all incident operations at the incident site. The Incident Commander is usually the highest-ranking person on scene from the agency with primary responsibility for the incident (e.g., a Battalion Chief for a fire, a police Captain for civil disturbance).

**Incident Command Post (ICP):** A temporary location, comprised of personnel and equipment established by an Incident Commander to direct incident operations toward control of an emergency, assemble and assign Department resources, collect intelligence, communicate with control forces, and maintain necessary records. An ICP may be mobile or fixed, according to the location, nature, and extent of the emergency.

**Incident Command System (ICS):** A standardized on-scene emergency management concept specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

**Intelligence Control Center (ICC):** A subordinate element of the Department Operations Center that provides a centralized location for the recordation, evaluation, and dissemination of information gathered during an Unusual Occurrence or other emergency as necessary.

**Involved Area:** That portion of the City directly affected by an emergency where there has been, or there exists, a threat to life and/or property and the boundaries have been, or are to be, prescribed.

**Law Enforcement Mutual Aid:** The support and assistance rendered by regular and reserve peace officers of one jurisdiction to another in

declared emergencies, which do not involve labor controversies, and in emergencies during war. Law Enforcement Mutual Aid is provided in accordance with the provisions of the California Law Enforcement Mutual Aid Plan, pertinent portions of other state codes, and agreements among local law enforcement agencies.

**Local Emergencies:** The Mayor may declare a local emergency when conditions are, or are likely to become beyond the control of the normal services of City government, or at any time a disaster or State of Emergency is declared by the President of the United States or by the Governor of California.

**Logistics:** The procurement, maintenance, and transportation of material, facilities, and personnel.

**Logistics Section:** The Section responsible for providing the procurement, maintenance, and transportation of material, facilities, and personnel for the incident.

**Management by Objectives:** In ICS, this is a top-down management activity that involves a three-step process to achieve the incident goal. The steps are: (1) establishing the incident objectives, (2) selection of appropriate strategy(s) to achieve the objectives, and (3) the tactical direction associated with the selected strategy. Tactical direction includes selection of tactics, selection of resources, resource assignments, and performance monitoring.

**Maneuver:** The movement of personnel under tactical conditions utilizing positions of advantage to minimize risks and enhance mission accomplishment.

**Martial Law:** The law administered by military forces that is invoked by a government in an emergency when the civilian law enforcement agencies are unable to maintain public order and safety.

**Memorandum of Agreement (MOA):** An agreement between the Department and other law enforcement agencies.



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**Metropolitan Transit Authority (MTA):** Primary public transportation entity of Los Angeles and surrounding communities.

**Military Assistance:** The support and assistance rendered by state or federal military forces during a riot, rebellion, insurrection, or other emergency in accordance with the California Emergency Services Act, California Master Mutual Aid Agreement, California Law Enforcement Mutual Aid Plan, and various state and federal codes.

**Minimum Operating Force:** The minimum number of personnel needed by an Area or division to perform essential police activities, e.g., police work of major importance during an Unusual Occurrence.

**Mob:** A group whose members, under the stimulus of intense excitement or agitation, lose their individual sense of reason and respect for law and follow leaders in lawless acts. Mobs are usually organized, have leadership, and a common motive for action, but are ruled by emotion.

**Mobile Field Force (MFF):** A platoon-size rapid response detail, highly mobile and capable of a variety of missions including crowd dispersal and mass arrests/bookings.

**Mobilization:** The principal Department plan to marshal personnel resources for control of a Major Unusual Occurrence. The preliminary stage of a Mobilization is a Tactical Alert. A Mobilization includes the immediate implementation of 12-hour A and B watches, the deferment of days off, and the recalling of off-duty officers.

**Mutual Aid:** See Law Enforcement Mutual Aid.

**Chemical, Biological, Radioactive and Chemical (CBRN):** Categories of Weapons of Mass Destruction Materials (Biological, Nuclear, Incendiary, Chemical, and Explosive).

**Office of Emergency Services (OES):** The State of California Governor's Office of Emergency Services coordinates overall state agency response to major disasters in support of local government. The office is responsible for assuring the state's readiness to respond to and

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recover from natural, man-made, and war-caused emergencies, and for assisting local governments in their emergency preparedness, response, and recovery efforts.

**Officer-In-Charge (OIC):** The term used in Law Enforcement Incident Command System (LEICS) to describe a person in charge of a section, branch, group, field force, squad, unit, or team. This position may also be referred to as a *Section Chief, Branch Director, Group/Division Supervisor, Unit Leader, or Team Leader* in disciplines other than law enforcement.

**Operational Area:** An Operational Area is one of the five levels of the State of California Standardized Emergency Management System (SEMS). An Operational Area consists of all the county government and all the political subdivisions located within a county including special districts. An Operational Area manages and coordinates information, resources, and priorities among local governments with the Operational Area and serves as a link between the local government level and the regional level.

**Operational Period:** The period of time scheduled for execution of a given set of operational actions as specified in the Incident Action Plan. Operational Periods can be of various lengths, although usually not over 24 hours.

**Operational Plan:** A single purpose plan.

**Operations Post:** An additional base of operations established at another location and subordinate to the Operations Section of the Incident Command Post.

**Operations Section:** The Section responsible for all tactical operations at the incident. Includes Branches, Divisions and/or Groups, Task Forces, Strike Teams, Mobile Field Forces, Platoons, Squads and Single Resources.

**Parade:** A march or procession consisting of persons, animals, or vehicles, or combination thereof, upon any public street, sidewalk, alley or

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other public place, which does not conform to usual traffic regulation and control.

**Perimeter:** An imaginary line or boundary of a closed or involved area that has been prescribed by an Incident Commander. A perimeter can designate the involved and/or closed area(s). There may be several types or a combination of perimeters employed during emergency control efforts.

**Personal Protective Equipment (PPE):** Garments to protect against chemical hazards and respiratory protection (i.e. Gas Masks).

**Planning and Intelligence Section:** The Section responsible for the collection, evaluation, and dissemination of tactical information related to the incident, and for the preparation and documentation of Incident Action Plans. The Section also maintains information on the current and forecasted situation, and on the status of resources assigned to the incident. Includes the Situation, Resource, Documentation, and Demobilization Units, as well as Technical Specialists.

**Planning Meeting:** A meeting held as needed throughout the duration of an incident to select specific strategies and tactics for incident control operations and for service and support planning. On larger incidents, the planning meeting is a major element in the development of the Incident Action Plan.

**Police Work of Major Importance:** Police activities, not in conjunction with an Unusual Occurrence, involving arrests, processing and detention of felony suspects, intoxicated drivers, and the arrest of other law violators in the interest of public safety. To be consistent with this definition, investigations should be limited to those involving felonies, deaths, serious injuries, traffic accidents with City property involved, and other investigations immediately necessary in the interest of public safety.

**Resources:** Personnel and equipment available, or potentially available, for assignment to incidents. Resources are described by kind and type, e.g., ground, water, air, etc., and may be used in tactical support or overhead capacities at an incident.

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**Sector:** A subdivision of an ICS Division established for more effective control of deployed personnel and to ensure accountability for a particular geographic portion of an emergency. A Sector may be divided into Zones.

**Security:** Measures taken to prevent surprise, preserve freedom of action and deny suspects information concerning police operations.

**Self-Contained Breathing Apparatus (SCBA):** Compressed breathing air equipment.

**Span of Control:** The ratio of resources (individuals or units) assigned to a supervisor. Acceptable ratios range from three-to-seven per supervisor, with one-to-five established as optimum.

**Special Events Planning Unit (SEPU):** A unit within Emergency Operations Section, which coordinates Citywide special events.

**Special Photography Incident Response Investigative Team (SPIRIT):** A tactical support element available to an Incident Commander for missions documenting events during civil disturbances, disasters, and other emergencies.

**Special Weapons and Tactics (SWAT) Platoon:** Specialized tactical resources available to an Incident Commander confronted with a barricaded suspect or other situations that may require the use of advanced tactics and superior weaponry. SWAT platoons may also provide protection for visiting dignitaries, other officers, and citizens, depending on the circumstances.

**Staging Area:** A location approved by the Incident Commander for the collection, storage, maintenance, disbursement, and accounting of personnel, vehicles, supplies, and equipment used or available. The Staging Area may also be used for the temporary storage of booked property and impounded vehicles.

**Standardized Emergency Management System (SEMS):** SEMS is the system required by Government Code §8607(a) for managing response to multi-agency and multi-jurisdiction emergencies in California. SEMS

consists of five organizational levels: field response, local government, operational area, region, and state. SEMS incorporates the use of the Incident Command System (ICS), the Master Mutual Aid Agreement, existing mutual aid systems, the operational area concept, and inter-agency coordination. Local governments must use SEMS to be eligible for funding of their personnel related costs under state disaster assistance programs.

**Tactical Alert:** The preliminary stage of the Department Mobilization Plan. A Tactical Alert is an announcement of the anticipated redistribution of on-duty officers to achieve personnel levels necessary for controlling an emergency.

**Tactical Alert, Modified:** Provides the Director of Emergency Operations, Incident Commander or Communications Division watch commander a method of holding over watches without the disruption of “routine” police duties.

**Tactical Area of Responsibility:** That portion of an involved area that is the responsibility of an Incident Commander, or assigned to any individual, unit, or Operations Section element.

**Traffic Perimeter:** An imaginary line, connecting traffic control points, established to isolate an involved area from entry by unauthorized persons or vehicles.

**Unified Command:** In ICS, Unified Command is a unified team effort which allows all agencies with responsibility for the incident, either geographical or functional, to manage an incident by establishing a common set of incident objectives and strategies. This is accomplished without losing or abdicating agency authority, responsibility, or accountability.

**Unity of Command:** The ideal goal where subordinates are subject to the direction of a single supervisor at any one time. Unity of command assures unity of effort by the coordinated action of all forces toward a common goal.

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**Unity of Effort:** The coordinated action of all forces toward the common goal of emergency control.

**Unusual Occurrence (UO):** An event involving potential or actual personal injury and/or property damage arising from fire, flood, storm, earthquake, tidal wave, landslide, wreck, enemy action, civil disturbance, or other natural or man-caused incident necessitating the declaration of a Tactical Alert or Mobilization.

An Unusual Occurrence has three classifications:

- 1. Minor:** An Unusual Occurrence which can be controlled by on-duty field personnel from the Area involved, Metropolitan Division, traffic divisions, and the assistance usually available from other Areas.
- 2. Serious:** An Unusual Occurrence of such proportion that the facilities usually available to one Area are inadequate to establish control and may require temporary modification of the Department organization.
- 3. Major:** An Unusual Occurrence which threatens the City to such an extent that it is necessary to mobilize the entire Department, or major portions of the Department, to fulfill its responsibilities. During a Major Unusual Occurrence, the Department will be reorganized to that extent necessary to accomplish control and termination of the emergency.

**Unusual Occurrence (UO) After-Action Report:** A report prepared subsequent to an emergency associated with a Tactical Alert or Mobilization which documents the activities of any individual, unit, or Department element involved in the control of an Unusual Occurrence.

**Warm Zone:** Contamination Reduction Zone.

**Weapons of Mass Destruction (WMD):** Terrorist weapon capable of producing mass casualties.

**Zone:** A subdivision of a Sector. A Zone may be divided into Beats.



**METROPOLITAN  
DIVISION**

## K- 9 PLATOON

**Alert:** When a K-9 has located a scent.

**Contact Report:** Report made by supervisor when a K-9 bites or contacts a suspect.

**Deployment Report:** Report done by each handler when they use their dog for a search.

**Dogs:** There are three types of dogs used by the LAPD K-9 Unit.

- **Belgium Malinois**
- **“Dutch” Shepherd**
- **German Shepherd**

**Fear Scent:** Enhanced scent caused by adrenaline when a suspect is in “Fight of Flight” Syndrome.

**Full Alert:** “Find and Bark” – What K-9s do when they locate a suspect, find him then bark to let handler know he has located suspect.

**Human Scent:** Odor that every human body emits.

**K-9 Announcement:** Announcement given prior to search starting either via Public Address system on black and white or by airship.

**Pin Pointing Scent:** Once a K-9 has alerted to scent, his attempt to narrow down the scent to the eventual suspect’s location.

**Scent Cone:** Scent emitting from suspect comes off in a cone shape.

**Work the scent:** Same as Pin Pointing, act of locating suspect after locating scent.



## METRO ARMORY

**37-MM Launcher:** A breach loaded, single shot, shoulder weapon used in a variety of applications, to launch gas or less lethal munitions.

**40-MM Launcher:** Delivers a soft less lethal impact round.

**Benelli:** A compact 12 gauge auto loading shotgun used by Metropolitan Division Officers.

**CAR-15:** The same as an M-16 rifle, with a collapsible stock and a shortened barrel used by SWAT team members.

### Less-Lethal Munitions:

- **Foam Baton Round:** A 37-mm round containing 5 foam batons. Used in crowd control situations to disperse aggressive/combative suspects.
- **Stinger Round:** A 37-mm round containing 42 rubber balls. Used in crowd control situations to disperse aggressive/combative suspects
- **Taser:** An electronic device used to physically immobilize a suspect.
- **Super Sock Round:** Fired from a 12 gauge shotgun. It is a 2 3/4" round which contains a cloth bag with 1oz of lead shot.

**M-16:** A select fire, 223 caliber, magazine feed, shoulder rifle used by SWAT team members. The semi-automatic version is used by all Metropolitan Officers.

**MP-5:** A 9-mm submachine gun manufactured by Heckler and Koch used by SWAT team members.

**RED Team:** Rapid Extraction & Dismantling Team: A unit trained and deployed to handle unusual incidents where demonstrators have blocked access to, or secured themselves to buildings or structures by mechanical means (i.e. bike locks, pipes, chains). Utilizing tactical rope operations, the RED Team can extract demonstrators who are secured in a position

of advantage above ground (i.e. buildings, bridges, construction cranes). Additionally, the RED Team can evacuate victims from high rise structures via rope rescue techniques in a Rapid Deployment-Immediate Action incident.

**Remington 870:** A versatile shotgun used in several applications. Used to fire Less-Lethal Munitions. Also used to breach doorways firing “lock buster” rounds.

## METRO’S TACTICAL RESPONSE FORCE AND IMMEDIATE ACTION-RAPID DEPLOYMENT

**Counter Assault Team:** A heavily armed team used on a mission specific basis, when an armed assault is anticipated against officers, a protectee or a protected location.

**Contact Team:** A team of Metropolitan Division officers sometimes deployed in crowd control missions and generally armed with a larger quantity of less than lethal weapons than a normal squad. These officers are deployed at a critical point of contact where the application of additional less than lethal munitions can be expected to influence the outcome of the event.

**Grenadiers:** Officers equipped with various types of less than lethal launchers, 37-mm, 40-mm launchers and beanbag shotguns deployed with a skirmish line and utilized when the deployment of less than lethal munitions are necessary.

**Linebackers:** Officers deployed immediately behind the skirmish line, controlling the integrity of the line.

**Skirmish Line:** Basic formation used in the movement of a crowd.

**Tactical Support Element:** A reinforced Metropolitan Division squad, task organized with equipment selected based on the mission.

**Utilities:** Tactical uniform worn by Metropolitan Division officers. Nomex coated for fire resistance, this uniform is worn when the mission requirements dictate a rough duty uniform to avoid unnecessary wear and tear on the regular uniform.

## METRO PLATOONS

### Metro Line Platoons - B & C

**Primary responsibilities:** Carrying out crime suppression missions.

**Selective enforcement details:** Deployed in high frequency crime areas, targeting repeat offenders and criminal predators.

**Types of crime:** Burglary, robbery, auto theft, burglary/theft from motor vehicle, etc...

**Special Details:** VIP Dignitary Protection Detail, R-100 Protection Detail, Stakeouts, Warrant Service, Crowd Control.

### M-Platoon

- Commercial Vehicle enforcement and related vehicle inspections within the City of Los Angeles.
- Administration of the Motor Officer program for the Department including vehicle and equipment research and development, vehicle testing, equipment/product evaluation.
- Motor Officer basic riding school, annual In-service training updates for LAPD and Allied agencies.
- Dignitary protection motorcades or escorts.
- Department funeral motorcades.
- Liaison with the Department's Motor Transport Unit who maintains the Department fleet of motorcycles.
- Crime suppression details.

## MOUNTED UNIT

**Ahmanson Equestrian Facility:** Home of the Metropolitan Division Mounted Platoon.

**Bokken:** A 42” wooden baton used by Mounted Unit officers as a defensive weapon.

**Column of Two's:** Squad formation where two squads of horses are aligned in a parallel fashion utilized to move the platoon from one location to another.

**Crowd Management:** Mounted Platoon mission at events involving large peaceful groups.

**Dismounted Tactics:** Any operation conducted by members of the Mounted Platoon off horseback.

**Face Shield:** Curved clear plastic cover that protects the face of the horse during crowd control missions.

**Pincher Movement:** Squad formation where a column or column of two's surrounds a crowd with a skirmish line facing the crowd.

**Skirmish Line:** Squad formation where a column of horses is placed right to left facing a crowd. This is a formation utilized to move a crowd.

**Spurs:** Used by officers for the movement/control of the horse.

**Tack:** Saddles, bridles and other equipment used when riding horses.

## SWAT

**Ballistic Shields:** Equipment that retards bullet penetration, used in tactical movements, searches and immediate response interventions.

**Breachers:** Specialized mechanical entry tools and/or tactics.

**Breaching tools:** Hand tools including sledge hammers, bolt cutters, rams, shotlock and breaching poles used to open windows and doors.

**Climbers:** SWAT Team personnel used in climbing related tactical operations.

**Covert/Stealth – SWAT Movement:** Slow and deliberate searching tactics for hiding suspects.

**Crisis Negotiation Team (CNT):** Department hostage negotiators. A CNT consists of a Primary Negotiator (primary communicator), Secondary Negotiator (supports primary negotiator), Detective (addresses investigative concerns), Department Psychologist (provides insight/consults during a crisis situation), and SWAT Supervisor (oversees the negotiation process). Typically deployed at all crisis situations.

**Drag Bag:** Equipment bag used by the sniper team.

**Dynamic Entries:** Swift tactical movement that floods and controls an environment, typically associated with warrant services.

**Emergency Medical Technicians (EMT):** SWAT team members who have an additional duty of being an EMT, assigned to support SWAT operations.

**Hostage Rescue Tactics (HRT):** Immediate tactical movement toward hostage(s) and the rescue of hostage(s).

**Immediate Action-Rapid Deployment (IARD):** Immediate tactical movement toward a threat/active shooter.

**Ladders:** Portable, collapsible ladders for access to roofs and attics.

**Less-Lethal Munitions:** See Terms Used By Metro Armory, Less-Lethal Munitions, page 17.

**Lights and Mirrors:** Battery powered bright lights and corner and pole mirrors used for slow and deliberate searches for hiding suspects.

**Noise Flash Devices (NFD):** A diversionary device that creates a loud sound and bright flash, usually tossed or thrown. (AKA “Flash-Bang”)

**Rescue Vehicle:** A contemporary armed sport utility vehicle.

**Shooting/Training Cadre:** Team that designs and implements training specific to the SWAT mission.

**Suburbans:** Vehicle used for personnel transportation, also used for tactical “door/window pulling.”

**SWAT – K-9 – Search Team:** Typically associated with an open air/area search.

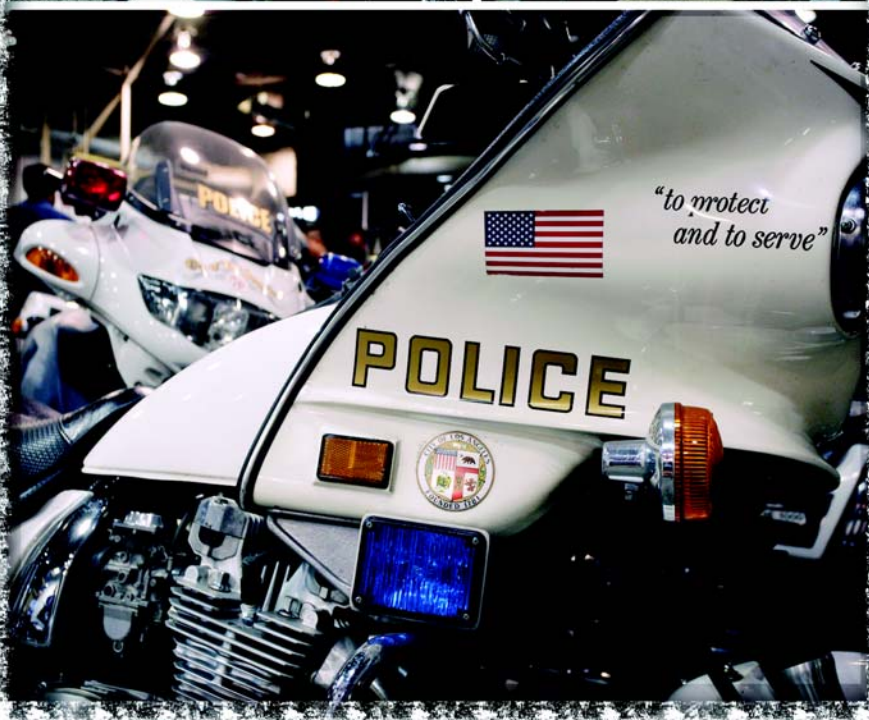
**SWAT Truck:** A 36-foot equipment transportation vehicle.

**Tear Gas:** Delivered by 37-mm tear gas weapon thrown or tossed hand-held canisters.

**Throw Phone:** A portable hostage phone that can be delivered to a crisis site, having a “hard line” that extends from the SWAT truck to the crisis site.

**Warrant Services:** Surround and “call-out” – secure location and initiate compliance with occupants of the involved site to exit their location/position.

# TRAFFIC OPERATIONS



**555:** CHP Form 555, which is the traffic collision report used by the Los Angeles Police Department.

**Bicycle Rapid Response Team (BRRT):** A team of bicycle officers whose primary duty is crowd control. A BRRT consists of 1 sergeant and 17 officers on bicycles.

**California Vehicle Code (CVC):** California statutes that primarily govern vehicles.

**City Property Involved (CPI) T/C:** A traffic collision involving City property or City liability.

**Collision Investigation (CI) Officer:** Department personnel assigned to a traffic division whose primary responsibility is to investigate traffic collisions.

**Commercial Motor (CM) Unit:** Motor officers whose primary duty is commercial enforcement as opposed to traditional traffic enforcement.

**Cycle Unit:** An officer assigned to a bicycle detail.

**Drug Recognition Expert (DRE):** A Drug Recognition Expert is an officer who has qualified as an expert in evaluating people under the influence of alcohol, narcotics, or a combination of both.

**Drug Recognition Expert (DRE) School:** An 80-hour school presented by the DRE Unit, which teaches students techniques of evaluating drivers under the influence of alcohol, narcotics, or a combination of both.

**Drug Recognition Expert (DRE) Unit:** A unit responsible for coordinating the DRE and Impaired Driver Apprehension Program schools.

**DUI T/C:** A traffic collision where one of the involved parties is under the influence of an intoxicant.



**E-Unit or E car:** Department personnel assigned to a traffic division whose primary duty is traffic enforcement. E-Unit officers work in a four-wheel vehicle as opposed to traffic enforcement officers who work on motorcycles.

**Enhanced CI School:** A 40-hour school presented by the SCID Team, which teaches students advanced techniques of traffic collision investigation with an emphasis on drawing complex intersections.

**Fatal T/C:** A traffic collision involving a fatality.

**Impaired Driver Apprehension Program (IDAP):** A 40-hour school presented by the DRE Unit, which teaches students techniques of evaluating drivers under the influence of alcohol.

**Intermediate CI School:** A 40-hour school presented by the SCID Team, which teaches students advanced techniques of traffic collision investigation with an emphasis on analyzing and interpreting tire “skid” marks. Prerequisite: Basic CI School.

**Locked Wheel Tire Marks:** Tire marks left by a vehicle that was braking in a straight line.

**Major Injury T/C:** A traffic collision where a person received incapacitating injuries including broken bones.

**Photo Red Light (PRL) Program:** Automated camera system that captures red light violations at designated intersections.

**Specialized Collision Investigation Detail (SCID):** A unit responsible for investigating complex traffic collisions and presenting Collision Investigation Schools.

**SCID Team Leader:** SCID members who are assigned to Traffic Coordination Section and are the lead investigators at a SCID callout.

**Specialized Enforcement Unit (SEU):** A unit responsible for commercial traffic enforcement, motorcades, and presenting the Department's Motorcycle Schools.

**Strike Team (Motors Only):** A squad of motor officers, made up of 2 motor sergeants and 16 motor officers on motorcycles, with specific training oriented toward crowd control.

**Strike Team (Standard):** A squad of motor officers with specific training in crowd control working in concert with officers in four-wheeled vehicles.

**Traffic Court Liaison Unit (TCLU):** A unit responsible for maintaining a liaison between the traffic courts and the Department.

**Traffic Enforcement (TE) Officer:** Department personnel assigned to a traffic division whose primary responsibility is to conduct traffic enforcement. TE officers ride motorcycles and are commonly referred to as "motors", or "Mary" units.

**Yaw Marks:** Tire marks left by a vehicle that was braking while turning.

# T R A F F I C      D I V I S I O N S

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## **CENTRAL TRAFFIC**

251 E. 6TH ST.  
(213) 972-2445

## **SOUTH TRAFFIC**

4125 S. CRENSHAW BLVD.  
(213) 485-7336

## **WEST TRAFFIC**

4849 W. VENICE BLVD.  
(213) 473-0222

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(213) 485-3265

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(213) 485-2909

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(213) 972-2420

## **JUVENILE DIVISION**

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GRANADA HILLS, CA  
(818) 832-3710

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---

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251 E. 6TH ST.  
(213) 972-1289
- 2 RAMPART AREA  
2710 W. TEMPLE ST.  
(213) 485-4061
- 4 HOLLENBECK AREA  
1936 E. 1ST ST.  
(323) 266-5909
- 11 NORTHEAST AREA  
3353 SAN FERNANDO RD.  
(213) 485-2563
- 13 NEWTON STREET AREA  
3400 S. CENTRAL AVE.  
(323) 846-6524

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(213) 972-2900
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4861 VENICE BLVD.  
(213) 473-0558
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1663 BUTLER AVE.  
(310) 444-0710
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12312 CULVER BLVD.  
(310) 482-6310
- 20 MID CITY AREA  
1130 S. VERMONT AVE  
(UNDER CONSTRUCTION)\*

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7600 S. BROADWAY  
(213) 485-4251

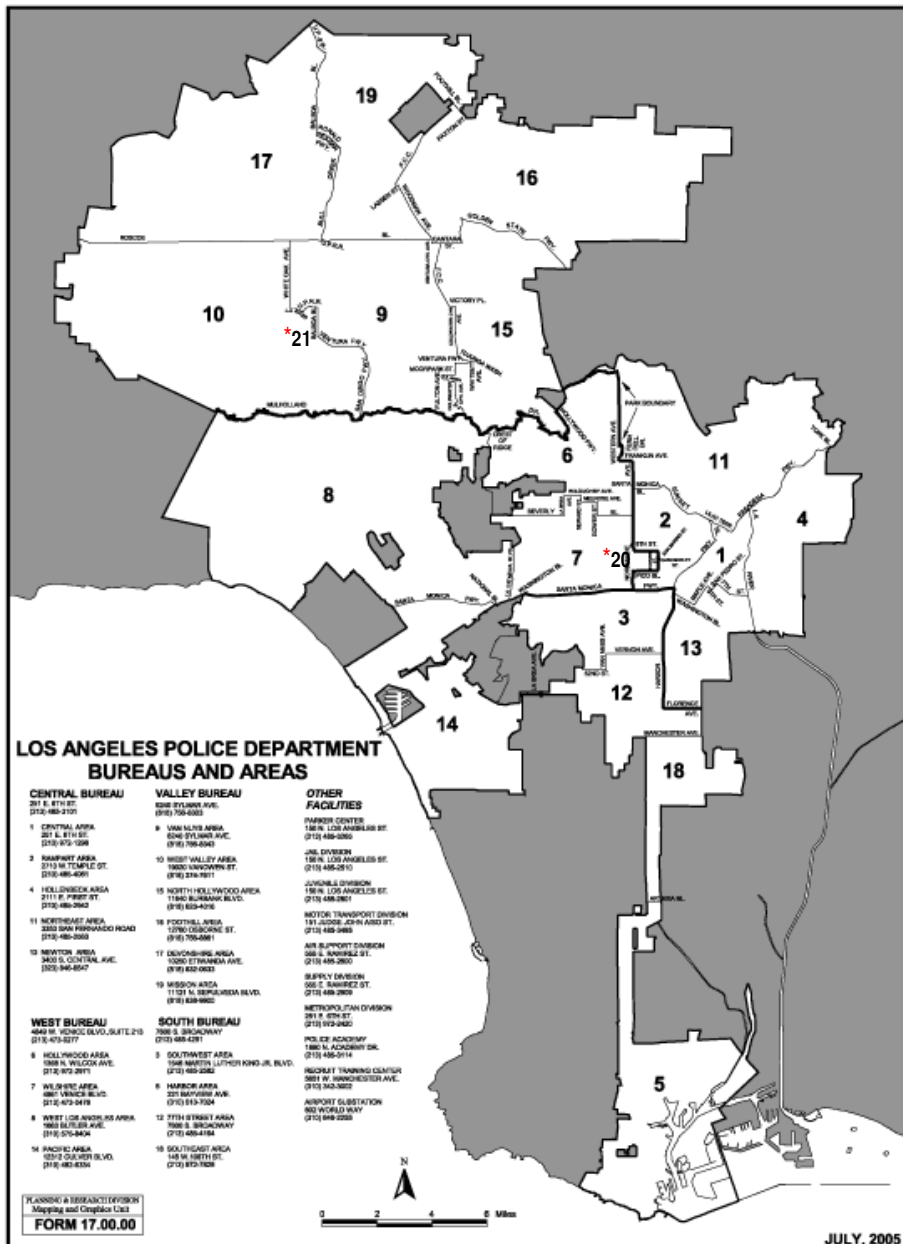
- 3 SOUTHWEST AREA  
1546 MARTIN LUTHER KING  
(213) 485-2581
- 5 HARBOR AREA  
221 N. BAYVIEW AVENUE  
(310) 513-7017
- 12 77TH STREET AREA  
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(213) 485-4185
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(818) 623-4016
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(818) 756-8860
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- 19 MISSION AREA  
11121 N. SEPULVEDA BLVD  
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- 21 NORTH VALLEY  
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# A R E A B O U N D A R I E S



# LOS ANGELES POLICE DEPARTMENT

## MEDIA INFORMATION AND TACTICAL TERMS

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# POLICE/PUBLIC MEDIA RELATIONS

FC No.: 1141

Date: 01/04/13

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law. (FOP Contract, Article 61)

## Contents:

- I. Policy
- II. ***Public Information Office***
- III. Responsibilities
- IV. Procedures
- V. Media Ride-Alongs
- VI. CALEA Standards
- VII. Proponent Unit
- VIII. Cancellation

### I. Policy

It is the policy of the department to establish and maintain cooperative working relationships with the ***community and*** members of the news media. In fact, to the extent possible, members of the media should be treated as invited guests at incident scenes rather than viewed as a hindrance. In most cases, their reporting of our involvement at newsworthy events will portray the work of our officers and employees in a positive light, which will help to enhance our image and reputation within the community. All employees will be cooperative with the media, subject to the restrictions outlined in this directive. This directive was written in conjunction with the County Attorney and the State's Attorney to be consistent with the Maryland State Government Article, ***Maryland Public Information Act***, Section 10 611-630, et seq.

### II. ***Public Information Office***

- A. ***The Public Information Office*** has been designated by the Chief of Police as the official representative for the department. ***The Public Information Office*** is responsible for providing a focal point for inquiries from the news media and for discussing department policy.
- B. Office Hours  
The office is staffed Monday through Friday, ***except holidays***, from 0800 to ***1900*** hours.
- C. On-Call PIO  
A designated Public Information Officer (PIO) will be on call, through ECC, when the office is closed. The PIO having on-call responsibility shall be available during off-duty hours to department personnel by either ***cell, home, or alternative landline telephone***.

### III. Responsibilities

#### A. ECC Responsibilities

Between 1900 to 0800 hours, and on weekends and holidays when ***the Public Information Office*** is closed, the responsibility for providing information to the news media shall first rest with on-duty

supervisory personnel at ECC. Most requests made by the news media for general information about incidents can be answered by ECC personnel. In those circumstances where ECC personnel are uncertain as to the propriety of the release of information, ECC personnel will request that the Duty Commander contact the news media requesting information.

B. Duty Commander Responsibilities

1. When requested by ECC personnel, the Duty Commander will ***first coordinate with the Director or the on-call PIO before contacting*** the news media requesting information about newsworthy events and release information in accordance with sections IV.C and D. Whenever necessary, and after consideration of the degree of immediate media attention generated by the incident, the Duty Commander may contact the on-call PIO for assistance.
2. To ensure that ***Public Information Office*** personnel are aware of newsworthy incidents that occurred after-hours, Duty Commanders will ***forward*** a copy of the press release and any related event reports, prior to completion of their tour of duty. A list of newsworthy incidents can be found in section IV.C.

IV. **Procedures**

A. On-Scene Authority of the Media and Public

On the scene of a newsworthy incident, members of the media should generally be allowed closer access to the scene than the public. Under no circumstances should the media be held back from an area where the general public has access. ***Officers in charge of a scene should plan to provide a safe and practical location for the media to stage. On a scene where members of the media and the public are present, the media, if possible, should be provided an area closer to the scene than the public. Officers should use yellow tape to define the areas for members of the media and the public. Media should always be given access to, and permitted to conduct interviews and videotape from all areas where the public is permitted, unless that activity would interfere with the safety of public safety personnel or the mission at hand.***

B. Suspects/Accused Persons

Interviews of person(s) in police custody shall not be granted to the news media.

C. Execution of Warrants

Officers will not bring members of the media into a home during the execution of a warrant. If the presence of media representatives is necessary during the execution of the search warrant, officers must obtain prior approval from the Chief of Police, or designee.

D. Notification of the Public Information Office

Certain newsworthy incidents require the immediate notification of ***the Public Information Office*** by an ECC supervisor during the hours of 0600 to 2000 hours. At all other times, the Duty Commander will first be notified about these incidents:

1. Homicides and deaths by other than natural causes (e.g., fire, electrocution, drowning, suicide).
2. Natural or man-made disasters resulting in loss of life and/or extensive property damage; major commercial fires and explosions.
3. Hostage/barricade situations; kidnappings; bomb plants or threats where a device is found.
4. Aircraft, railroad, and traffic collisions where serious injuries or fatalities result; school bus collisions involving any injuries.
5. Traffic problems (e.g., major collisions, road closures, traffic signals out, etc.) which are likely to tie up traffic (particularly important during rush hours).
6. Missing persons under 12 years of age or when foul play is suspected; or an elderly or mentally incapacitated person; or a manhunt when an extensive search is involved.
7. Raids, demonstrations, strikes, or disorders involving groups of people.
8. Shots fired (except legal target practice, hunting, etc.), under any circumstances, whether by police or citizens, and regardless of the shots taking effect or not.



9. Any incident involving prominent individuals, which by virtue of their position in society would be of interest to the news media.

E. Release of Information - General

1. Every effort will be made to establish and maintain a cooperative relationship in which the news media may freely obtain information unless such information is legally privileged or would violate the constitutional rights of an accused or is otherwise specifically prohibited in this directive.
2. From the commencement of the investigation of a criminal matter until the completion of trial or disposition without trial, an employee of this department shall not release or authorize the release of any extrajudicial statement, for dissemination by any means of public communication, if such statement poses a clear and present danger to the fairness of the trial. Further, in no event, shall department employees make extrajudicial statements or express their personal opinions.
3. ***All information released during ongoing tactical operations (barricade, large scale disorder, etc.) will be vetted and approved by the incident commander.***
4. The following information may be released:
  - a. The identity of an arrested adult to include age; home address; charges; circumstances of the arrest (time and place, whether or not pursuit was made, resistance offered, any injuries sustained, weapons used, etc.); bond information; and arresting officer's name and assignment. ***The identity of an arrested juvenile can be released when charged as an adult. The only exception is when such release would be in the best interest of public safety.***
  - b. ***The Public Information Office*** will discuss "current" arrests for seven days after charges are placed, including identifying the arrested person. After that time, any inquiries from the news media will be referred to the State's Attorney's Office.
  - c. Mug shots may be released, as they are public records. ***A mug-shot of anyone under the age of 18 years of age will not be released.***
  - d. The department's arrest information is public record and open to inspection at Records ***Management Section.***
5. Suspect Information - The existence of a suspect may be acknowledged without divulging names, as long as it will not interfere with the investigation. After apprehension and prior to being charged, a description of the suspect may be released without name or race (e.g., a 40 year old Silver Spring man is in custody).
6. Victim Information
  - a. Information concerning the name, address, occupation, and injuries ***will not be released.***
  - b. In cases involving a sexual assault, the victim's name and address will not be released. Only the age, sex, and geographic area may be released (e.g., a 39 year old Washington woman was assaulted while waiting at a bus stop in Wheaton).
  - c. Any death in the county, whether accidental, natural, or by homicide or suicide, automatically qualifies for media attention. (The crucial concern in releasing identity of the deceased is to first notify next-of-kin.) Once notification is made, the release of the decedent's name, age, home address, occupation (if known), cause and manner of death is proper. A release may be made when notification has been attempted, even though unsuccessful and within a reasonable period of time. (Twelve hours may be considered reasonable.)
7. Witness Information - The existence of a witness may be confirmed, but under no circumstances will a witness to a crime be identified.
8. Traffic Collisions/Non-Traffic Accidents - These incidents (automobile, construction, drowning, cave-in, etc.) frequently attract the attention of the news media. Information should be made available concerning the facts and circumstances of traffic collisions or non-traffic accidents as soon as they become available. The identity of victims (once notification has been accomplished), cause of the incident, and any charges (if appropriate) should be released. Of particular importance is a statement concerning use of seat belts or other safety equipment (e.g., helmet) and whether alcohol or drugs were a factor.

NOTE: Juveniles involved in these incidents are not exempted from public disclosure, and should be identified.

F. Information Not to be Released

1. Investigators or arresting officers shall not discuss their cases nor confirm arrest information with the news media prior to or during adjudication. Post-adjudication requests for interviews shall be coordinated with ***the Public Information Office***.
2. Investigative or sensitive information from Internal Affairs Division will not be disclosed except by authorization of the Chief of Police, or designee.
3. Criminal History Record Information (CHRI) is not to be released or confirmed by the Montgomery County Department of Police per the Maryland Criminal Justice Information System Act, Maryland Annotated Code (Article 27, Section 742, et seq.). Penalties are provided. Requests by the media to inspect an individual's arrest record will be denied, and if further information is requested, referral to the State's Attorney's Office may be made.

NOTE: Charging documents filed with the court are considered public record.

4. The following is an extensive list of information that is not to be released:
  - a. The existence or the contents of any confession, admission, statement, or alibi given by an accused; or the failure to make same.
  - b. The results of, or failure of a defendant to submit to, any test such as a polygraph, breathalyzer, etc.
  - c. The testimony, credibility, or character of any witness or victim.
  - d. Any opinion as to the innocence or guilt of the accused or the merits of the case such as evidence and arguments, whether or not their use in court is anticipated.
  - e. Transcripts, reports, or summaries of judicial proceedings from which the public and press have been excluded by judicial proclamation (gag order).
  - f. The home address, telephone number, or photograph of any employee of the department, unless the employee (employee's family if employee is incapacitated) consents to its release.
  - g. The exact dollar value ***and specific descriptions of items*** stolen from commercial institutions or private residences ***if it exposes*** them to further vulnerability.
  - h. Information which, if prematurely disclosed, would significantly interfere with an investigation or apprehension. Especially prohibited are premature disclosures of unchecked leads, unverified information, specific facts of an "MO," details known only to a suspect, and information which may cause a suspect to flee or avoid apprehension.
  - i. The identity of an arrested juvenile (under 18 years of age). It is permissible to state the age, sex, and home town (e.g., a 17 year old male and a 16 year old female, both of Gaithersburg, were arrested in a stolen car after police stopped them for speeding. They were both released to custody of their parents).  
NOTE: Inquiries concerning juveniles charged as adults should be directed to ***the Public Information Office***.
  - j. The existence, but not the contents, of suicide notes may be acknowledged.

V. **Media Ride-Alongs**

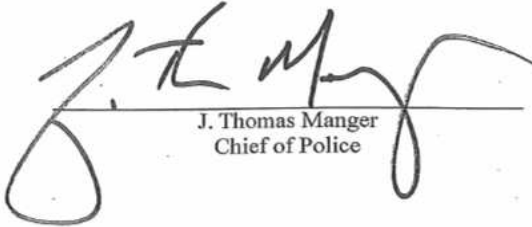
Whenever possible, ***the Public Information Office*** should be advised of all requests by the media to ride along or otherwise participate in police activities for purposes of a news story. This is to ensure that ***the Public Information Office*** can effectively respond to any follow-up questions by the news media regarding the interaction.

VI. **CALEA Standards:** 1.2.3, 41, 46, 54

VII. **Proponent Units:** ***Public Information Office***

**VIII. Cancellation**

*This directive cancels Function Code 1141, effective 12-29-2000*



J. Thomas Manger  
Chief of Police

[send to a friend](#) 

## Surviving the Circus: How Effective Leaders Work Well with the Media

By Gerald W. Garner, Chief of Police, Greeley, Colorado

**I**t is no secret that many police officers who would not pause before entering a darkened building to pursue an armed offender blanch at the approach of a twentysomething news reporter armed with a pad and pencil. The men and women who lead law enforcement agencies cannot afford to be so shy. For police leaders, the ability to communicate clearly is a necessity; communicating effectively with the public is an *absolute* necessity. The news media represent police leaders' most valuable tools for reaching that public.

The truth is that law enforcement executives' lives are better if they enjoy a good working relationship with the local media. That does not require that they "kiss up" to anyone. It also does not mean that they must like every reporter they encounter. It does require that they make an earnest effort to work constructively with the media and ensure that the other members of their agencies do the same.

An effective working relationship with the media starts with establishing credibility. Police leaders' reputations for integrity are their most precious assets. Personal integrity includes the responsibility for telling the truth—that includes being truthful with reporters. Police leaders really can survive the media circus—even when they find themselves in the center ring.

### Finding Common Ground for Mutual Benefit

Contrary to the opinions of some, law enforcement leaders and journalists actually can work together effectively. But police leaders and journalists looking to nourish mutually beneficial working relationships first have some baggage to overcome. In the "bad old days," many reporters tended to see cops as often brutal, frequently lazy, and not very bright. Police bosses were seen as evasive, if not outright liars. They were viewed as cynical and secretive.

For their part, police viewed journalists as bleeding hearts who were predisposed to believe a crook over a cop. Reporters were seen as self-appointed police experts who knew nothing about real police work or the dangers cops faced. Some law enforcement officers saw reporters as hating all authority figures. In that atmosphere, it is hardly surprising that law enforcement leaders and reporters viewed each other as enemies. In that environment, misbehavior on both sides was hardly a rarity.

In reality, police and reporters have a lot in common. Both law enforcement agencies and the media are highly visible, powerful institutions. Both professions attract ambitious, strong-minded employees who possess a strong sense of justice and a desire to help others. Both professions are frequently criticized by the public they serve and are highly sensitive to that criticism. The professionals of both can be highly defensive and feel that they are poorly understood by their critics. Both professions are sometimes secretive about their operations and their methods for gathering information. Professionals in both endeavors see themselves as vital to the public welfare.

As successful leaders in both law enforcement and journalism can relate, both sides can win in the police-media relationship. Getting along is much more rewarding than fighting. Each field of

work has a lot to offer the other. Reporters often view law enforcement agencies as their best sources for the type of news in which the public is interested. Peace officers are great sources of interesting information. The law enforcement community has the exciting, attention-grabbing visuals that electronic media require. Simply put, maintaining a good relationship with local agencies can make reporters' jobs much easier.

Nurturing a positive working relationship with the media can prove equally beneficial to law enforcement leaders. Through the press, they can tell the public of the good work done by their personnel. With a positive police-press relationship in place, agencies can educate their communities' residents to protect themselves and can warn them of imminent danger. On the other hand, hostile media can make the police leaders' jobs much harder. Although ethical law enforcement leaders would never curry favor with the press solely for selfish purposes, the fact remains that supportive media can make it a lot easier for chiefs to do—and keep—their jobs.

## Interview Guidelines

Law enforcement leaders can take several measures to encourage a favorable state of affairs with the media that cover their agencies. Perhaps the foremost of these measures is to ensure that the agency's message is delivered accurately to an interested public; the most effective means of disseminating these messages is through media interviews. Giving an interview while remaining in complete control should be the goal of every police leader. This can be accomplished by following some basic guidelines.

Potential interviewees should keep in mind that they have something interviewers want: information. Interviewees should have their own objectives in mind and produce the sought-after information when the opportunity presents itself. In that way, they can be sure to put the information *they* want in front of the public.

Next, leaders should determine if they are the appropriate individuals to answer reporters' questions. If, for example, the questions are anticipated to be of a highly technical nature, leaders may be better served by having a staff member with the appropriate specialized knowledge standing by to assist in answering questions.

Police leaders should attempt to see themselves in their interviewers' shoes. What would they want to know if the roles were reversed? It is also acceptable to ask interviewers what questions are going to be posed. This way, police leaders can then gather the facts they need and prepare themselves to answer the queries. Nevertheless, an interviewee should always expect surprise questions. This does not mean the interviewer is being devious; it may simply mean that the interviewee's responses have created additional questions in the mind of the reporter.

If there is any time at all to do so, police leaders should practice out loud answering the questions they are expecting. If there is not enough time for a full-scale rehearsal, interviewed subjects can at least practice their answers mentally.

Wise and ethical police leaders will always tell the truth, and nothing but the truth, during a media interview. They will remain mindful that their credibility is a precious asset not to be wasted. If they do not know the answer to their interviewers' questions, they will say so and offer to get the necessary information, if available, as soon as possible.

Interviewees should strive for a professional yet relaxed demeanor. If the interview is conducted on camera, they should avoid looking careless or sloppy but should also avoid a ramrod-straight posture that makes them look like robots. They likewise should avoid distracting mannerisms such as cramming their hands in their pockets or rattling their keys or pocket change. They should also make eye contact with interviewers throughout, rather than stare into the camera.

Media-savvy law enforcement officials will keep their voices at a normal, conversational level during a taped or live interview. There is no need to shout or otherwise speak abnormally. They will also keep their comments direct, concise, and brief, realizing that their words likely will merit no more than 15 seconds on the broadcast news. They will have very little time to get their point across, so it is vital that they choose their words well.

Police leaders should not hesitate to correct themselves, either during or immediately after the interview, if they realize they have answered a question incorrectly or provided inaccurate information. Accuracy is vital.

### Dealing with Difficult Questioners

Although most newsmen are honest, hard-working people who are simply trying to do a difficult job well, occasionally some will be less than above-board with their tactics. As a result, smart law enforcement leaders should be on the lookout for the tricks of less-than-straightforward interviewers.

*Convoluting questioners* will pose queries that are so long, multifaceted, and outright confusing that law enforcement leaders may have no idea what they are answering. The solution for interviewees is simply to ask questioners good-naturedly to slow down and repeat questions one part at a time. In this way, interviewees can complete their answers to one question before moving on to the next.

The wise leader also will remain on the lookout for *interrupters*. These reporters have the nasty habit of injecting their own opinions or comments before interviewees can finish answering a question. The best response interview subjects can give in this situation is to continue to talk, over the interviewer, if necessary, until they have finished answering. It may sound rude, but it may also be necessary for the speakers to get their important points across without interference.

*Misinterpreters* may also pose a problem for law enforcement executives. These individuals may lead off an interview by presenting false information or may later sum up comments incorrectly. Interviewees' response should be to correct misinterpreters immediately, even if the interview is live. The danger of leaving bad information in front of the public is too great to do anything less.

The *dead air ploy* can also take in the unaware. Reporters trying this stunt will silently and expectantly stare at their subjects when the latter have finished responding to a question. The hope is that the interviewees will become uncomfortable with the silence and talk some more, perhaps in the process revealing something they had not planned to say. The solution is as simple as it is effective: when finished with a reply, interviewees merely stop talking and stare back at their questioners. After a couple of rounds of this contest, interviewers often get the message and allow the session to proceed in an up-front fashion.

Finally, *ambush interviewers* present a special challenge. These characters may jump their prey in the station house parking lot or just about anywhere else where their quarry does not expect them. Their goal is to obtain an unrehearsed, emotional, and perhaps controversial response from their victims. If law enforcement professionals respond in an unprofessional manner, the ambushers have gotten what they want. Wise leaders refuse to be provoked into responses that will almost certainly guarantee them a spot on the evening news. Instead, they remain calm, courteous, and in control. Interviewees should respond just as they would in any other interview; that is, as professionals. Doing so will make them look good even as it disappoints their tormentors.

A final piece of interview advice is in order for police leaders. Many public figures have seen their careers unravel after an inappropriate comment was picked up by a camera and/or a microphone they thought was turned off. Intelligent leaders will eliminate inappropriate and off-color remarks from their vocabulary. They also will treat every microphone and camera in the area as perpetually live and act accordingly.

### Handling Bad News

As any law enforcement executive will admit, media duty is a lot more fun when the news being reported bathes the organization and its leader in a favorable light. The reality is, however, that sooner or later bad news visits

For more information on working with the news media, see the December 2007 issue of the *Police Chief*, which offers five different perspectives on the relationship between law enforcement agencies and the

every law enforcement organization. Whether emanating from a “bad” shooting, a pursuit gone sour, or some other episode of police misconduct, bad news will happen eventually. How law enforcement leaders handle it will go a long way in determining how well they and their agencies survive the crisis. Following some commonsense guidelines for handling bad news will help take some of the sting out of the disaster as well as help it pass more quickly. Survival steps include the following.

**Tell the Truth:** This is not the time for police leaders to lose their reputation for credibility. Wise leaders will say nothing at all rather than lie. A reputation for truthfulness, once lost, is difficult to reestablish.

**Never Say “No Comment”:** Responding to a question with “no comment” makes law enforcement leaders sound like gangsters in front of a congressional committee. There are better ways of saying essentially the same thing. “I can’t answer that just yet because the investigation is still in progress” is one alternative.

**Keep Consistent Media Rules during an Incident:** When organizations that are normally open and accessible to the media suddenly alter policies to allow no one to speak, they send a signal that they have something to hide. Indeed, a recent experience may convince law enforcement managers that media policies need revision. But rules should be revised only after the current incident is well in the past.

**Do Not Hide:** When normally accessible police leaders shove others out front during a crisis, they earn the mistrust of the news media and, very likely, the hostility of their own people. Leaders should remain highly visible both inside and outside their organizations during difficult times. They should be the individuals speaking for their organizations.

**Convey a Sense of Normalcy:** To maintain confidence in a law enforcement agency, both the media and the larger public must see the agency and its leaders carrying on “business as usual,” even during difficult times. For one thing, that means continuing to convey the story of the good work that the organization’s members are doing. Leaders must scrupulously avoid portraying their agencies as going into a “sandbagging” mode.

**Do No Harm:** Police leaders should follow the same advice that guides medical professionals: “first, do no harm.” One way they can make it worse is by lying. Another is by dribbling out the bad news and making the media “work” to get it. A third is by making the negative event a bigger story than it really is by overresponding to it, “hunkering down” for a siege, or launching a verbal attack on the news organization reporting the story. Media-savvy leaders keep things in perspective and recognize that Monday’s “big deal” is often largely forgotten by Friday.

**Stay Calm and in Control:** Law enforcement executives who lose their self-control and melt down in front of media reps have practically guaranteed themselves time on television channels 2 through 12. Such a performance will benefit neither them nor their agencies. It is vital that leaders maintain their professionalism and self-control even in the face of extreme provocation. It is worth remembering that bad news will pass, and sunnier days are ahead.

### **Fostering Positive Media Relationships**

Law enforcement leaders well-versed in using the media as a means to praise and protect their agencies follow some commonsense guidelines for governing their personal relationships with the press. They will, for instance, maintain good relations with their primary media contacts whenever given a reasonable chance to do so. That means they may have a social cup of coffee with reporters even when there is no pressing news. They are willing to trust their media contacts—up to a point. But they will never forget that even their friends in the media will “burn” them, on occasion.

Likewise, intelligent leaders are cautious about going “off the record” with even their closest media confidantes. They realize that once they say something, the reporter is under no legal obligation not to use it. Media-wise leaders follow a simple rule of thumb: “If you do not want to reveal it to the whole world, do not provide it to the media.”

Experienced law enforcement professionals know that it is generally better to get along than battle unnecessarily. That simple advice also applies to their personal relationships with the media. Recall the old saw that it does not pay to pick a fight with someone who buys ink by the barrel. At the same time, police leaders should not hesitate to complain loudly but professionally when they have evidence that they or their agencies have been skewered by unfair media

treatment. But shrewd leaders pick their battles well. They know not to air a grievance just because they do not like the news that a media organization is reporting. They reserve their criticism for inaccuracies, editorializing, or other examples of poor journalism disguised as legitimate news stories. When they do complain, they offer specifics rather than just an emotional tirade. They know that a calm, reasoned objection is more likely to get results than one that can be dismissed as the emotional response of a justly stung "offender."

Police leaders should also realize that it is not all about them. They should maintain a sense of modesty when dealing with reporters. They should know that their media contacts are seeking the insight and information they possess; the media are not out to make them famous. They should understand that when they are gone, the media will lavish equal attention on their replacements.

Finally, wise law enforcement executives use the full services of the media when they have good news to spread. They do not wait to be contacted by reporters about the exceptional work done by their employees. They instead take a proactive approach with radio, television, and print media by contacting media sources via news release, press conference, an offer of a personal interview, or all of these methods of disseminating information. They do not overlook the growing value of the Internet for getting out the good word, either. They are quick to go to the media when they need the public's help with a case or to spread important information, such as crime prevention advice, both quickly and widely. They know that maintaining a positive working relationship with the media will make it possible to count on the media's good offices when the chips are down and they need quick access to the public.

## Conclusion

Working with the media is not complicated. Collaborating positively is a lot more rewarding than fighting with each other. Police leaders and reporters have a lot to offer each other. Each can help the other succeed. Together, they can really achieve that rarest of scenarios: a win-win situation. But best of all, the taxpayers benefit, from learning about the threats to public safety and what their law enforcement officers are doing about those threats. The ensuing free flow of information benefits all involved. ■

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The United States Conference of Mayors

# STRENGTHENING POLICE-COMMUNITY RELATIONS IN AMERICA'S CITIES

A Report of The U.S. Conference of Mayors  
Working Group of Mayors and Police Chiefs

January 22, 2015



THE UNITED STATES CONFERENCE OF MAYORS



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The events which began in Ferguson, Missouri on August 9, 2014 with the shooting of Michael Brown, an unarmed Black teenager, by a White police officer have brought to the forefront serious social issues that must be addressed – issues of race, class, prejudice, poverty, and inequality that are often difficult for people to talk about. These issues also underscore the complex nature of policing in communities across the country.

The decision of a St. Louis County grand jury not to indict the police officer responsible for Brown's death compounded these issues, as did a similar verdict by a Staten Island, New York grand jury that declined to indict a White police officer in the death of Eric Garner, a Black man accused of selling cigarettes individually on the street, by an apparent chokehold. The tragic assassination of New York City police officers Rafael Ramos and Wenjian Liu on December 20 while they sat in their squad car, by an individual who claimed retaliation for the deaths of Michael Brown and Eric Garner, underscored the turmoil the nation is facing. Police officers are beleaguered and on alert and feel persecuted while risking their lives on a daily basis. These events have shaken some of the public's perceptions of policing in America and of the criminal justice system. They have highlighted both the rift that may exist between police officers and the communities they serve and protect, and the danger which those officers face every day.

Mayors and police chiefs know full well that effective community policing is practiced in a constitutional manner by many police departments, and that the vast majority of police officers have developed trusting relationships with the communities they serve. But they also believe that this country cannot let the deaths of Michael Brown and Eric Garner or of other men and boys of color who have died in encounters with police officers, or of Rafael Ramos and Wenjian Liu or other officers who have lost their lives in the line of duty, to be lost in a set of statistics. They believe that the nation must learn from these painful experiences and do everything possible to prevent them from happening again.

This report, developed by a working group of mayors and police chiefs appointed by U.S. Conference of Mayors President and Sacramento Mayor Kevin Johnson, provides a set of recommendations for local and national actions intended to improve police-community relations in America. These recommendations emerged from discussions held by the Conference of Mayors leadership when it met in Sacramento in September and from further discussions held by mayors and police chiefs who met in Little Rock in October on the occasion of the 20<sup>th</sup> anniversary of the Community Oriented Policing Services (COPS) program.

The recommendations are grouped into six areas: building police-community trust, improving police department practices, ensuring timely and accurate communications, conducting independent investigations, addressing racial and economic disparities, and providing national leadership. In some instances, the recommendations go beyond the purview of mayors and police chiefs and call for actions by the broader community in cities and the nation as a whole, and by the federal government.

## **I. Building Trust Between Police and Community**

Recent events have demonstrated that, despite instituting community policing in many departments and realizing substantial reductions in the crime rate in many cities, mistrust between the police and the communities they serve and protect continues to be a challenge that must be addressed.

- A. Community policing is a philosophy, not just a program.
  - 1. Police officers need to interact on a daily basis with the community to develop credibility and establish an on-going dialogue with residents, including those with whom they may disagree, to help keep incidents from becoming crises.
  - 2. Community policing must be much more than one officer forming a relationship; it involves making inroads in the most challenged communities.
  - 3. Police officers should treat all people with dignity and respect. Given the history of tension, police should be particularly sensitive to minority communities. If people feel disrespected in their encounters with officers, the experience will leave a long-lasting negative impact that will be shared with family and friends.
  - 4. The police should engage in problem-solving partnerships with the community.
  - 5. Police should work to establish trusting relationships with community residents that can be the foundation for working together in times of crisis.
- B. Police officers should practice procedural justice, treating all people fairly and openly.
- C. Police departments should provide a consistent message that the police have a responsibility to protect protestors and their constitutional rights.
- D. Police departments should provide a consistent message about police officers' responsibility to ensure their own safety and that of the community when they use force.
- E. Residents need to understand that police officers are doing their job, that it's a complicated job, and that they also deserve respect.
- F. Citizen academies and other educational programs can provide an effective way to educate residents on the responsibilities of police officers, and provide a forum for interacting with them.
- G. Community leaders should be actively engaged by the police and the city government as a whole in their efforts to build trust.
- H. It is important to recognize that there can be mixed feelings about the relationship that exists between the police and the communities they serve, and that mayors can play a critically important role in working to improve those relationships.

## **II. Improving Police Department Practices**

Police departments, like all well-run organizations, should be reviewing their operations on a continuing basis and working to improve their procedures and practices. This effort should extend to all levels of the organization and to all

areas of work. The International Association of Chiefs of Police, Major Cities Chiefs Police Association, the Police Executive Research Forum, and the COPS Office all have materials available, some of which provide model policies that can assist departments in doing this. Recent events have highlighted some areas of particular importance. Among them: the role of the chief, recruitment, training, supervision, use of equipment, and how progress is measured.

A. The Role of the Chief

1. The chief's leadership, direction, focus and credibility are critical to the department's success and to how it is viewed by the community.
2. It is generally appropriate for the chief to take the lead, independent of the mayor, when serious incidents occur.
3. The chief should be skilled in providing leadership in a crisis.
4. The chief should be aware of resources and help available.

B. Officer Recruitment

1. Police departments need to review recruiting and hiring practices to ensure they are reflective of the community they serve.
2. Departments may need to use non-traditional means to attract recruits who are representative of the diversity in the community.
3. At the same time, departments need to perform thorough background checks on all applicants to help ensure that those who are accepted will become good police officers.

C. Officer Training and Supervision

1. Training should cover more than the procedures of policing. It should help police officers understand their role in a democratic society – how to engage in constitutional policing.
2. Training must concentrate on preventing unwarranted use of force, offer officers alternatives to the use of lethal weapons, and clarify when use of lethal weapons is appropriate.
3. Training also must concentrate on community engagement and must reinforce the importance of treating residents with dignity and respect.
4. Officers must be trained in how to defuse incidents.
5. Police officer training also must include methods for handling individuals exhibiting mental illness.
6. People from outside of the department, including the clergy, should provide at least some of the training.

D. Equipment

1. Many departments already have appropriate standards for the deployment of, and training related to, military and other equipment provided by the federal government to local police departments. These standards should be in place in all departments that have such equipment.
2. Body-worn cameras can be an important tool, and funding to assist in purchasing cameras, providing training in and standards for their use, and appropriately storing data collected via cameras is essential if more departments are to be camera-equipped.

3. Also important is other technology, including vehicle-mounted cameras, license plate readers, and facial recognition software. Here again, additional resources must be provided to police departments to enable their use.

E. Metrics

1. Changes are needed in the way police departments measure the efficacy of their activities. The measurement system should reflect the community policing culture and importance of prevention so that success is not based solely on rates of reported crimes and arrests.
2. Research into how to make these changes is needed. It should include evaluation of current measurement tools and development of a new measurement system that can be used by departments across the nation.

### **III. Ensuring Timely and Accurate Communications**

How a police department communicates with the public and the media is crucial to the success of its relationship with the community, especially when officer-involved shootings and other high profile incidents, such as demonstrations or significant crimes, occur.

- A. Departments should have procedures in place to ensure that communications will be timely, transparent, honest, and as accurate as possible.
- B. It is important to take into account optics – how things look.
- C. Departments should understand, monitor, and make use of social media.
- D. The mayor and police chief should coordinate their communications around an incident. They should:
  1. Identify when the police chief should handle the incident and when the mayor needs to be involved;
  2. Identify appropriate roles for each;
  3. Deliver a unified message, keeping individual perspectives consistent with that message.
- E. The mayor and chief should develop a network of organizations with which they can communicate when an incident occurs – organizations that will be helpful in assuring the community that any incident will be appropriately investigated and addressed.

### **IV. Conducting Independent Investigations of Deaths Relating to Police Encounters**

Recent events have heightened the importance of conducting independent, transparent, and thorough investigations so that, when an incident involving a police officer occurs, the affected community and the public are confident that all of the facts will be examined and a just decision made. This applies to both departmental and prosecutorial investigations. Investigations are dependent on state laws and regulations, and some prosecutors are required to rule on use of deadly force.

- A. To increase public confidence, police departments should call on independent or outside investigators and agencies when a death occurs during an encounter with an officer. While the exercise of deadly force by an officer does not necessarily constitute a federal crime, federal authorities should be available to any city needing additional help to ensure consistent, independent and transparent investigations of deaths that occur during an encounter with a police officer.
- B. There should be a vehicle to conduct independent investigations of police officer deaths, just as the National Institute for Occupational Safety and Health (NIOSH) does for firefighter deaths.

**V. Addressing Racial and Economic Disparities and Community Frustration with and Distrust of Governmental Institutions**

Many of the fault lines exposed by the events in Ferguson and elsewhere stem from basic problems of racism and inequality that, sadly, still exist in this country. Reducing community frustration with and distrust of the police and other governmental institutions requires a complex set of actions (some of which are specified elsewhere in this document). This cannot be fully accomplished, however, unless the nation adequately addresses the problems and inequality experienced primarily by young men and boys of color and undertakes a conscious effort to reduce racism and discrimination. Additional federal resources must be provided if this is to be accomplished. Mayors and police chiefs are encouraged, to the extent possible, to:

- A. Employ best practices associated with the six goals of the My Brothers' Keeper initiative, ensuring that all:
  1. Children enter school cognitively, physically, socially and emotionally ready;
  2. Children read at grade level by 3rd grade;
  3. Youth graduate from high school;
  4. Youth complete post-secondary education or training;
  5. Youth out of school are employed; and
  6. Youth remain safe from violent crime;
- B. Utilize techniques such as study circles, community dialogues, and town hall meetings to hear from community residents, engage them in police department and other city activities, and build trust between them and institutions of government;
- C. Ensure that local human rights and human relations commissions are functioning in communities and are focused in part on police-community relations;
- D. Connect with state human rights commissions to determine whether a statewide plan/approach is feasible;
- E. Implement the action steps called for in the Conference's U.S. Coalition of Cities Against Racism and Discrimination, which has been adopted by more than 100 cities.

- F. Concerted efforts must be made to change the dynamics of the anger focused on, and the fear of cooperating with, law enforcement that too often exist in communities. The police clearly have a role to play, along with the full range of public and private agencies, in neighborhood improvement efforts.

## **VI. Providing National Leadership**

Ensuring police protection is primarily a local responsibility in the United States. Municipalities account for 47 percent of the nation's expenditures on police protection and employ 48 percent of the nation's police personnel. National action is important, however, to ensure that mayors and police chiefs are able to work together to solve common problems, share promising approaches, and influence the development of national policy. The federal government has a key role to play in supporting these efforts with both financial and technical resources.

- A. Mayors and police chiefs should work together on an ongoing basis through the U.S. Conference of Mayors and police chief organizations to:
  - 1. Examine and develop recommendations relating to national issues and problems;
  - 2. Promote mayor-police chief partnerships;
  - 3. Provide guidance to mayors and chiefs for use in their cities when events occur.
- B. The federal government should provide sensitivity, cultural, and ethnicity training, as well as training in how to defuse incidents, through the Justice Department's Community Relations Service and other appropriate federal agencies.
- C. The federal government must increase its financial support to local police departments that can be used for hiring officers, providing them needed training and equipment, and improving practices.



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