



The Colorado Best Practices Committee for Prosecutors

Presents

Body-Worn Cameras: A Report for Law Enforcement

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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.¹ 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

¹ 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.²

- 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:³

- 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;

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

³ 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;⁴ 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.⁵ 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.⁶ 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

⁴ 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.

⁵ 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.

⁶ 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.⁷ 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

⁷ 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.⁸

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.⁹

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.¹⁰ 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

⁸ 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.

⁹ *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.

¹⁰ 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.¹¹ 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.

¹¹ 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.¹² 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

¹² 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.¹³ 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.¹⁵ 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

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

¹⁵ 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.¹⁶

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.¹⁷

- 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.)¹⁸

¹⁶ 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).

¹⁷ 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.

¹⁸ 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:¹⁹

- 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;²⁰
- 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.

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

²⁰ 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.²¹ 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.

²¹ *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.²²

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."²³ This section analyzes the possible disclosure requirements for body-worn camera footage under the CCJRA section of CORA.

²² 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>.

²³ 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.”²⁴ 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.²⁵

➤ *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.²⁶ A custodian may deny access to records of “investigations

and redaction of criminal justice records.”²³ § 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.

²⁴ C.R.S. § 24-72.302(3).

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

²⁶ 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.”²⁷ 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:²⁸

- 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.²⁹ 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.³⁰ Other courts approved the denial of open-records requests under the public interest exception when the records concerned an interaction that

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.

²⁷ C.R.S § 24-72-305(5).

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

²⁹ 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”).

³⁰ *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.³¹

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.³²

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.³³

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."³⁴

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

³¹ 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).

³² 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.")

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

³⁴ *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.³⁶

➤ *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.³⁷

In a separate section, the CCJRA also prohibits the inspection of any record where “such inspection would be contrary to any state statute.”³⁸ 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

³⁵ 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).

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

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

³⁸ 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.³⁹ 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.⁴⁰

➤ *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").⁴¹ 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.⁴²

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

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

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

⁴¹ 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.

⁴² *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.”⁴³

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.⁴⁴

○ 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.”⁴⁵

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.⁴⁶ 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.⁴⁷

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

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

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

⁴⁶ “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.

⁴⁷ “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."⁴⁸

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.

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

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