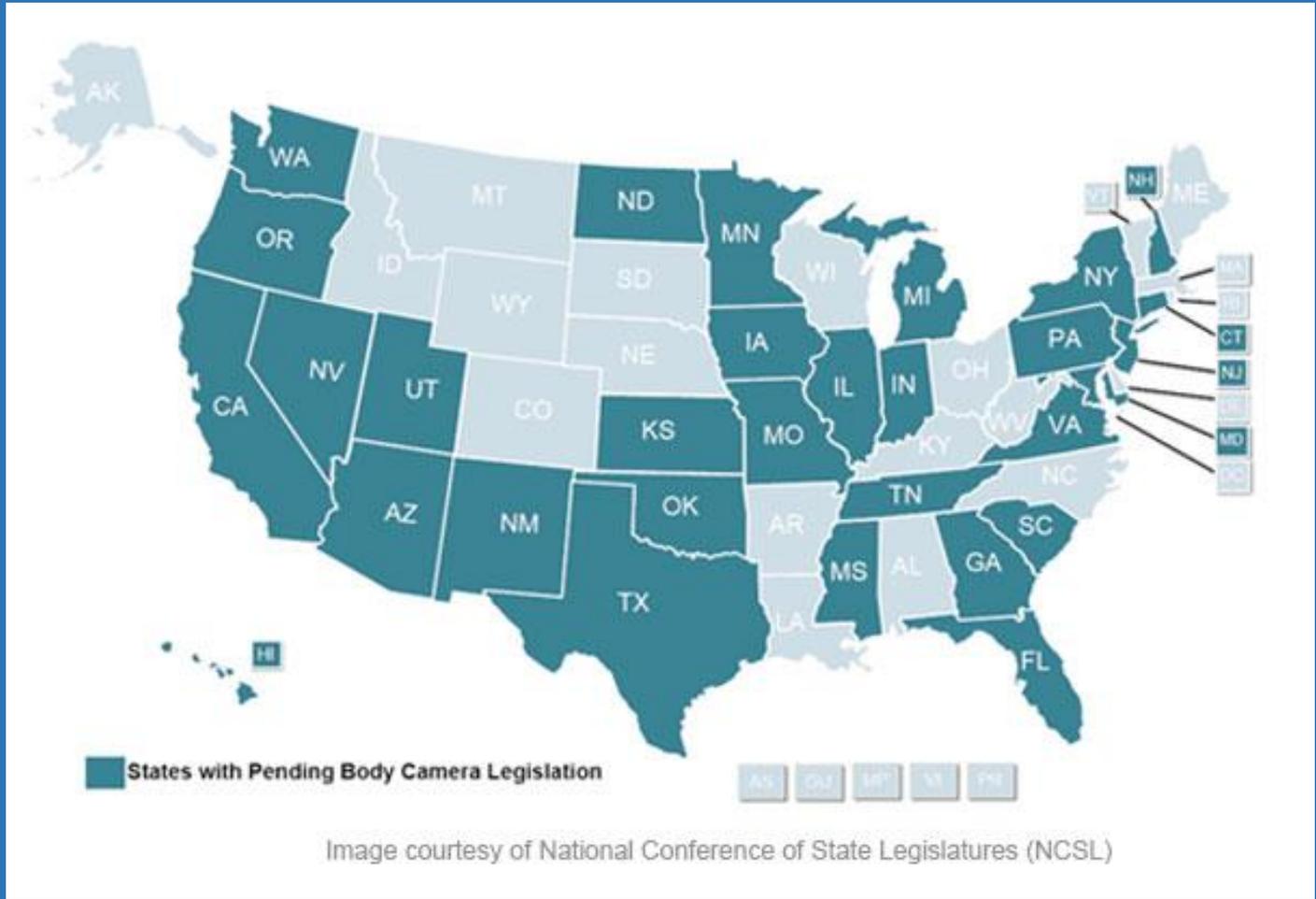


# Benefits and Issues Relating to the Use of Body-Worn Cameras

Tyson Skeen







2015 – 37 states had pending  
Body-Worn Camera legislation

# Status of Law: Body-Worn Cameras (BWC)

Legislation – with a brief history

# 2015 – HB 386

Attempted to enact Utah Code section 77-7a-108:

“If a law enforcement officer alters, deletes, or destroys a recording, or fails to record a law enforcement encounter in violation of this chapter, there is a rebuttable presumption in any related criminal proceeding that a recording favorable to the defendant existed or was not captured.”

- “If you knew where this started, you might feel better about that language.” -Quote in House committee meeting from bill sponsor

# 2016 Legislative Session

Two bills were proposed

## HB 300

The bill that ultimately passed with slight modifications from how it was introduced

## SB 94 (did not pass)

- Any department using BWC must have a written policy
- Stated that POST creates minimum standards



Many different styles of BWC, but legislative definition does not include dash cams or cameras recording clandestine investigation activities.



# HB 300

- Requires a written policy
- Policy shall:
  - Comply with and include the requirements in this chapter
  - Address the security, storage, and maintenance of data collected by BWC
- Does not prohibit agency from adopting more expansive policies so long as minimum standards are met

Finally- an officer does not have to jeopardize the safety of the public, other officers, or him/herself in order to activate or deactivate a BWC



# Minimum Standards for BWC Policies

1. Officer using camera shall verify that is functioning properly
2. Officer shall report to supervisor any malfunction if:
  - a) BWC is not functioning properly upon initial inspection; or
  - b) Officer determines any time while on duty that BWC is not properly functioning
3. Officer shall wear camera so it is clearly visible to person being recorded

# Minimum Standards Continued

4. Officer shall active BWC prior to any “law enforcement encounter,” or as soon as reasonably possible.

So what is a “law enforcement encounter?”



# Law Enforcement Encounter

- a) An enforcement stop;
- b) A dispatch call;
- c) A field interrogation or interview;
- d) Use of force;
- e) Execution of a warrant;
- f) A traffic stop, including:
  - a) A traffic violation;
  - b) Stranded motorist assistance; and
  - c) Any crime interdiction stop.
- g) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.



# Minimum Standards Continued

5. Officer shall record in an uninterrupted manner until after the conclusion of a “law enforcement encounter” (with some exceptions)
6. Officer shall record name, ID #, date and time when going on and off duty, unless that is already part of the functionality of the BWC
7. If BWC was present during “law enforcement encounter,” officer shall document the presence of BWC in any report or official record of the contact
8. Once BWC activated, must not be deactivated until the officer’s “direct participation” is complete (with some exceptions)

# Finally, the exceptions!

9. An officer may deactivate a BWC:

- a) To consult with a supervisor or another officer;
- b) During a significant period of inactivity; and
- c) During a conversation with a sensitive victim of crime, a witness of a crime, or an individual who wishes to report or discuss criminal activity --- IF:
  - a) the individual who is the subject of the recording requests that the officer deactivate the BWC; and
  - b) The officer believes that the value of the information outweighs the value of the potential recording **AND** records the request by the individual to deactivate the BWC.



# Notice and Privacy Requirements

1. When officer enters a private residence with BWC, they shall give notice (when reasonable under the circumstances) to the occupants of the residence that a BWC is in use by:
  - a) Wearing a BWC in a clearly visible manner; or
  - b) Giving an audible notice that the officer is using a BWC
2. Agency shall make BWC policy available to the public, and when possible, shall place it on the agency's public website

# Prohibited Actions

- Using BWC for personal use
- Making personal copy of recording created while on duty or acting in official capacity
- Retaining a recording of activity or information obtained while on duty or acting in official capacity
- Duplicating or distributing a recording, except as authorized by the employing agency
- Altering or deleting a recording



# Retention of Records



“Any recording made by an officer while on duty or acting in the officer’s official capacity as a law enforcement officer shall be retained in accordance with applicable federal, state, and local laws.”



# HB 300 and GRAMA

Automatically makes BWC recordings while inside a home or residence private — EXCEPT FOR WHEN THEY AREN'T!

Not private when:

- Depicts the commission of a crime;
- Records encounter that results in death or bodily injury, or when officer fires weapon;
- When encounter is subject of a complaint or legal proceeding against the officer or agency;
- When BWC records officer involved “critical incident;” or
- When subject of recording or their representative requests reclassification as not private.

# What is a “Critical Incident?”

Any of the following:

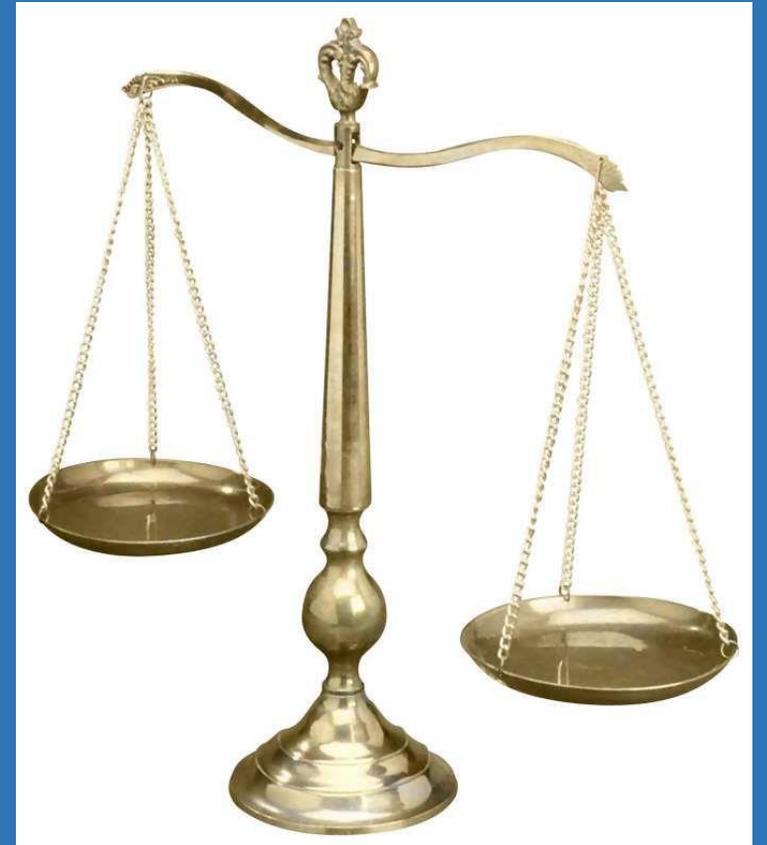
- i. The use of a dangerous weapon by an officer against a person that causes injury to that person;
- ii. A fatal injury to any person except the officer, resulting from the use of a motor vehicle by an officer;
- iii. The death of a person who is in law enforcement custody (not including results from disease, natural causes, etc.)
- iv. A fatal injury to a person resulting from the efforts of an officer attempting to prevent a person’s escape from custody, make an arrest, or otherwise gain control of a person.

# HB 300 and GRAMA

Is the record properly classified as “private?”

Determining entity must consider and weigh:

- a) Any personal privacy interests affected; and
- b) Any public interest served by disclosure.



# GRAMA vs Discovery

- A request for Discovery under Rule 16 is NOT a request for records under 63G-2-204.
- This means a GRAMA request cannot be denied simply because the same person requested and has received the same records via discovery.
  - State Records Committee has ruled on this numerous times

# Rule 16 – Discovery

Except as otherwise provided, the prosecutor shall disclose to the defense **upon request** the following material or information of which he has knowledge:

1. Relevant written or recorded statements of the defendant or codefendants;
2. The criminal record of the defendant;
3. Physical evidence seized from the defendant or codefendant;
4. Evidence known to the prosecutor that tends to negate the guilt of the accused, mitigate the guilt of the defendant, or mitigate the degree of the offense for reduced punishment\*; and
5. Any other item of evidence which the court determines on good cause shown should be made available to the defendant in order for the defendant to adequately prepare his defense.

(e) When convenience reasonably requires, the prosecutor or defense may make disclosure by notifying the opposing party that material and information may be inspected, tested or copied at specified reasonable times and places. The prosecutor or defense may impose reasonable limitations on the further dissemination of sensitive information otherwise subject to discovery to prevent improper use of the information or to protect victims and witnesses from harassment, abuse, or undue invasion of privacy, including limitations on the further dissemination of videotaped interviews, photographs, or psychological or medical reports.

# State v Kearns - 2006

Washington County case where a flat fee was being required for discover:

“No language in rule 16 leads logically to the conclusion that, as Defendant suggests, the prosecutor must provide criminal defendants with free copies of all discoverable material upon request. Unlike the constitutional and statutory rights discussed above, a defendant's rights to rule 16 discovery material are not protected against his having to pay fees to secure those rights. Therefore, the prosecutor's response to Defendant's discovery request gave Defendant opportunities for effectuating discovery of the sought after material that complied with rule 16(e).”

State v. Kearns, 2006 UT App 458, ¶ 12, 153 P.3d 731, 735

# Discovery Issues with BWC

## **77-38-6 Victim's right to privacy.**

- (1) The victim of a crime has the right, at any court proceeding, including any juvenile court proceeding, not to testify regarding the victim's address, telephone number, place of employment, or other locating information unless the victim specifically consents or the court orders disclosure on finding that a compelling need exists to disclose the information. A court proceeding on whether to order disclosure shall be in camera.
  
- (2) A defendant may not compel any witness to a crime, at any court proceeding, including any juvenile court proceeding, to testify regarding the witness's address, telephone number, place of employment, or other locating information unless the witness specifically consents or the court orders disclosure on finding that a compelling need for the information exists. A court proceeding on whether to order disclosure shall be in camera.

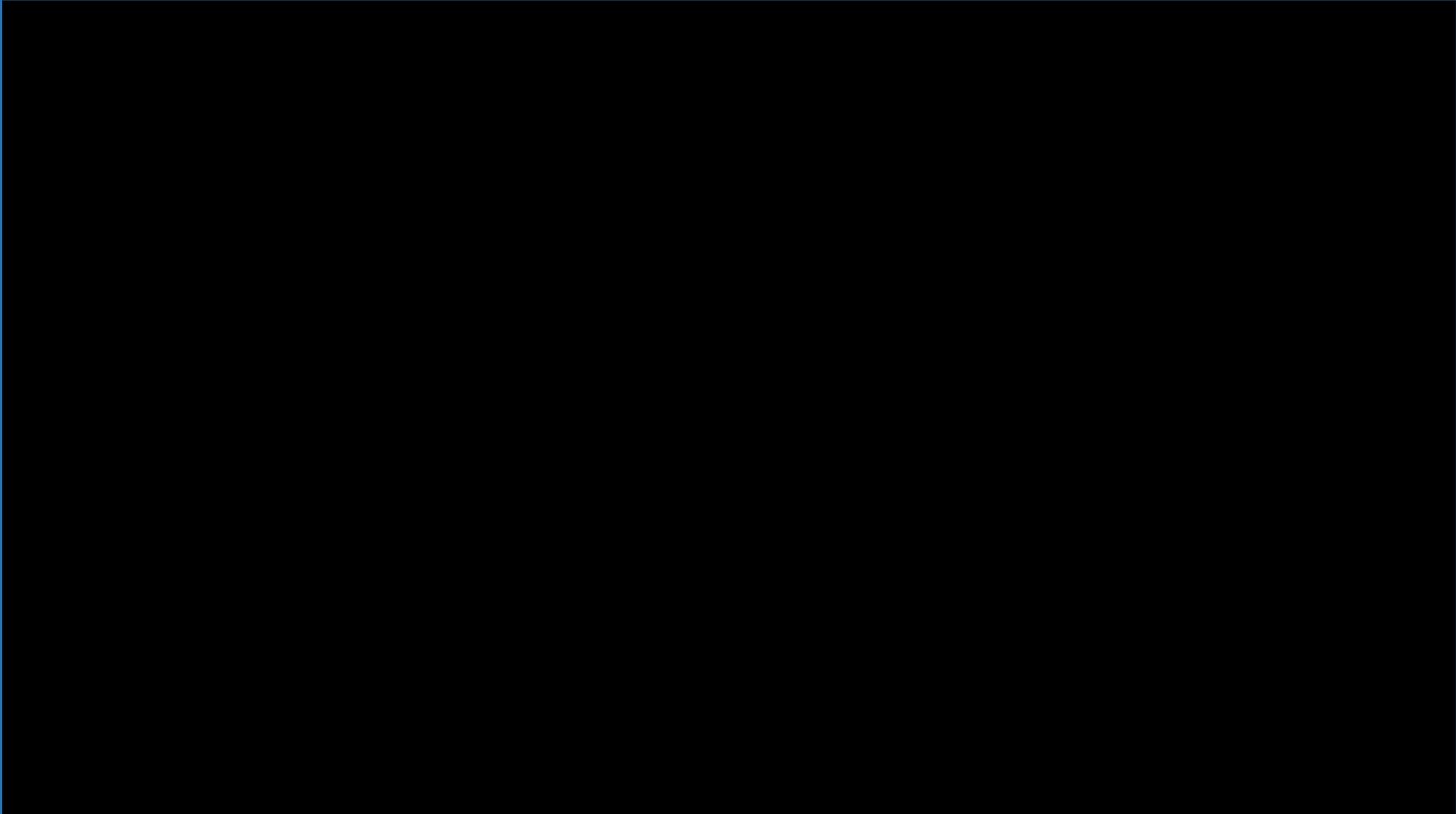
# Redacting Discovery



- Names of children
- Faces
- Identifying Information
  - DL #
  - SS #
  - Financial Information
- Dates of birth
- Addresses
- License Plates



# Redacting Discovery --



# Implementing a Body-Worn Camera Program

Recommendations and Lessons Learned



# Reducing use of force and complaints against officers

## Rialto, CA Study

- 60% reduction in use of force after BWC deployment
- Half the number of use of force incidents on shifts with BWCs than those shifts without BWCs
- 88% reduction in number of citizen complaints from year prior to BWC deployment to year following

## Mesa, AZ Study

- Nearly 3x more complaints against officers w/out BWCs than officers w/BWCs
- 40% fewer total complaints for officers w/BWC during pilot program
- 75% fewer use of force complaints during pilot period

“There’s absolutely no doubt that having body-worn cameras reduces the number of complaints against officers.”

“We’ve actually had citizens come into the department to file a complaint, but after we show them the video, they literally turn and walk back out,” -**Ron Miller, Chief of Police of Topeka, Kansas**

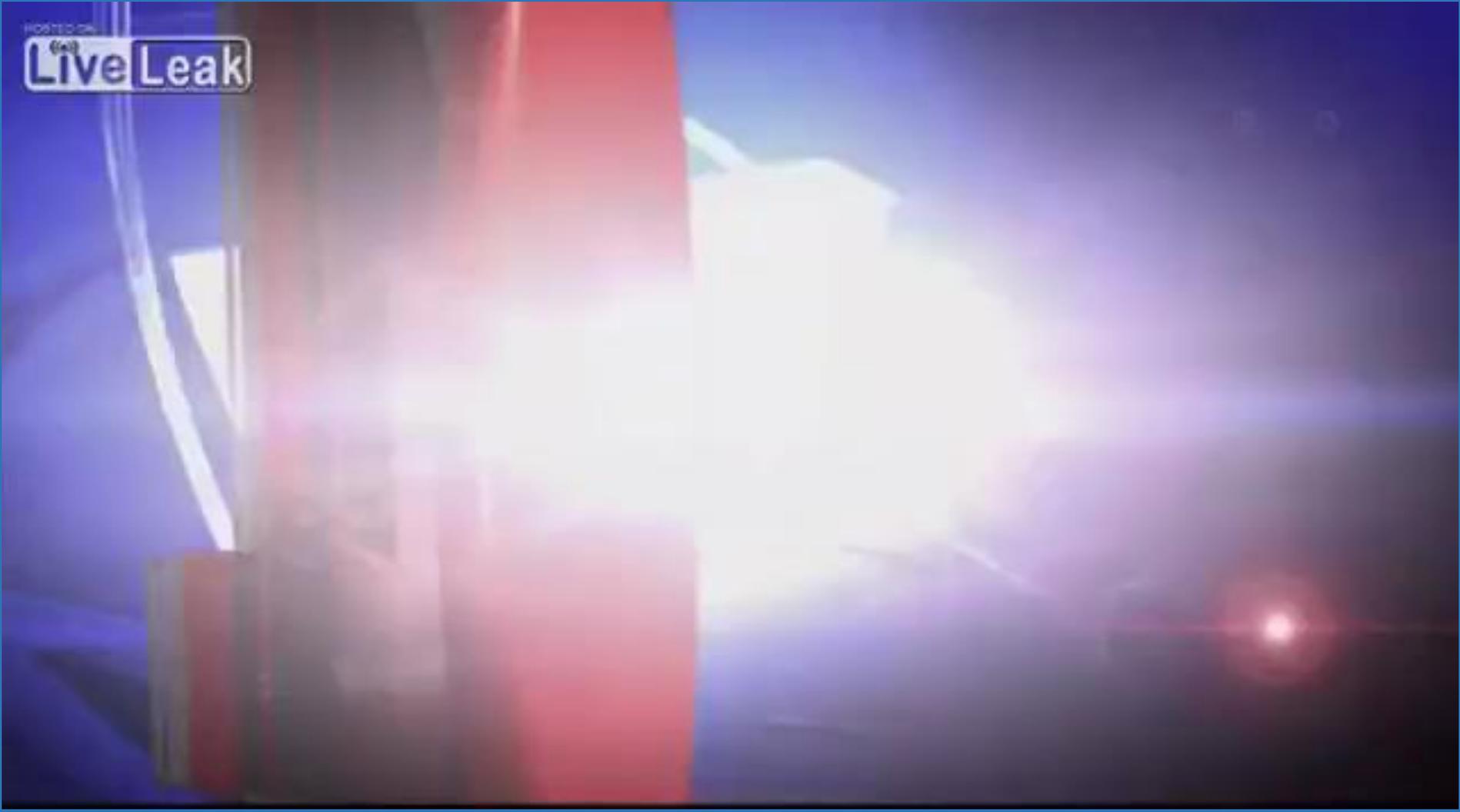
“In the testing we did [of body-worn cameras], we had a number of tenured officers who wanted to wear the cameras and try them out, and their feedback was very positive. They said things like, ‘You’ll be amazed at how people stop acting badly when you say this is a camera, even if they’re intoxicated.’ And we also know that the overwhelming majority of our officers are out there doing a very good job, and the cameras will show just that.” – **Douglas Gillespie, Sheriff, Las Vegas Metropolitan Police Department**

“We actually encourage our officers to let people know that they are recording. Why? Because we think that it elevates behavior on both sides of the camera.” - **Ken Miller, Chief of Police of Greensboro, North Carolina.**

“Anytime you know you’re being recorded, it’s going to have an impact on your behavior. When our officers encounter a confrontational situation, they’ll tell the person that the camera is running. That’s often enough to deescalate the situation.” -**Lt. Harold Rankin, Mesa, AZ**

“After testing out body-worn cameras, the overwhelming response from officers was that the cameras increased their professionalism because they knew that everything they said and did was being recorded.” -**Stephen Cullen, Chief Superintendent, New South Wales, Australia**

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# Use for problem identification and training

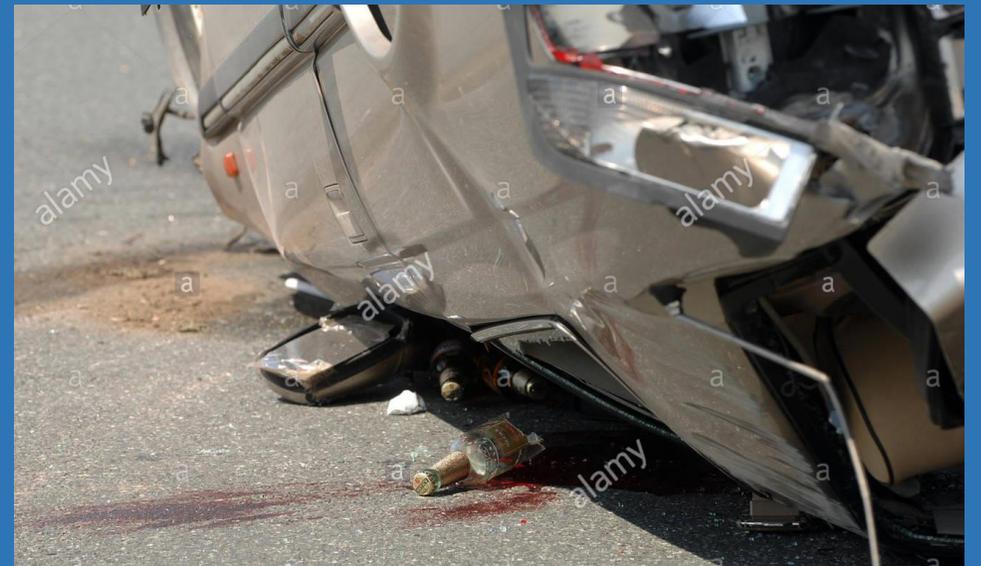
- Use to review performance for new officers on FTO
- Use to review complaints and identify problem behavior
- Corrective action, including termination, if incidents are severe and/or frequent enough

# Evidence Collection



# Evidence Collection for DUI





 alamy stock photo

DAWGK6  
www.alamy.com



# Evidence Collection for Domestic Violence



- Evidence of injuries
- Excited utterances and presence sense impressions
- Statements to confront recanting victim
- Statements to confront defendants
- Painting picture of scene for jury
  - Broken lamps, turned over furniture, etc.

# Evidence Collection at Crash Scenes



- 150 vehicles involved
- I-94 shut down for 12 hours
  - 12 degrees outside



Videos can give the jury a perspective that they wouldn't otherwise get



# Limitations of BWCs

“You want officers to record all the situations, so when a situation does go south, there’s an unimpeachable record of it—good, bad, ugly, all of it. This is an optimal policy from a civil liberties perspective.” –Scott Greenwood, ACLU

Are cameras truly “unimpeachable?”

- Lighting
- Obstructions
- Directional
- Won’t capture all 5 senses
- Can’t fix unreasonable people



# Angles – Capabilities - Perspective



**CCTV Camera Pros**

Video Surveillance Systems for Home, Business, & Government



PRO-680DN

## CCTV Camera Lens Comparison

2.8mm, 6mm, 12mm, 60mm, 100mm  
lens views compared side by side

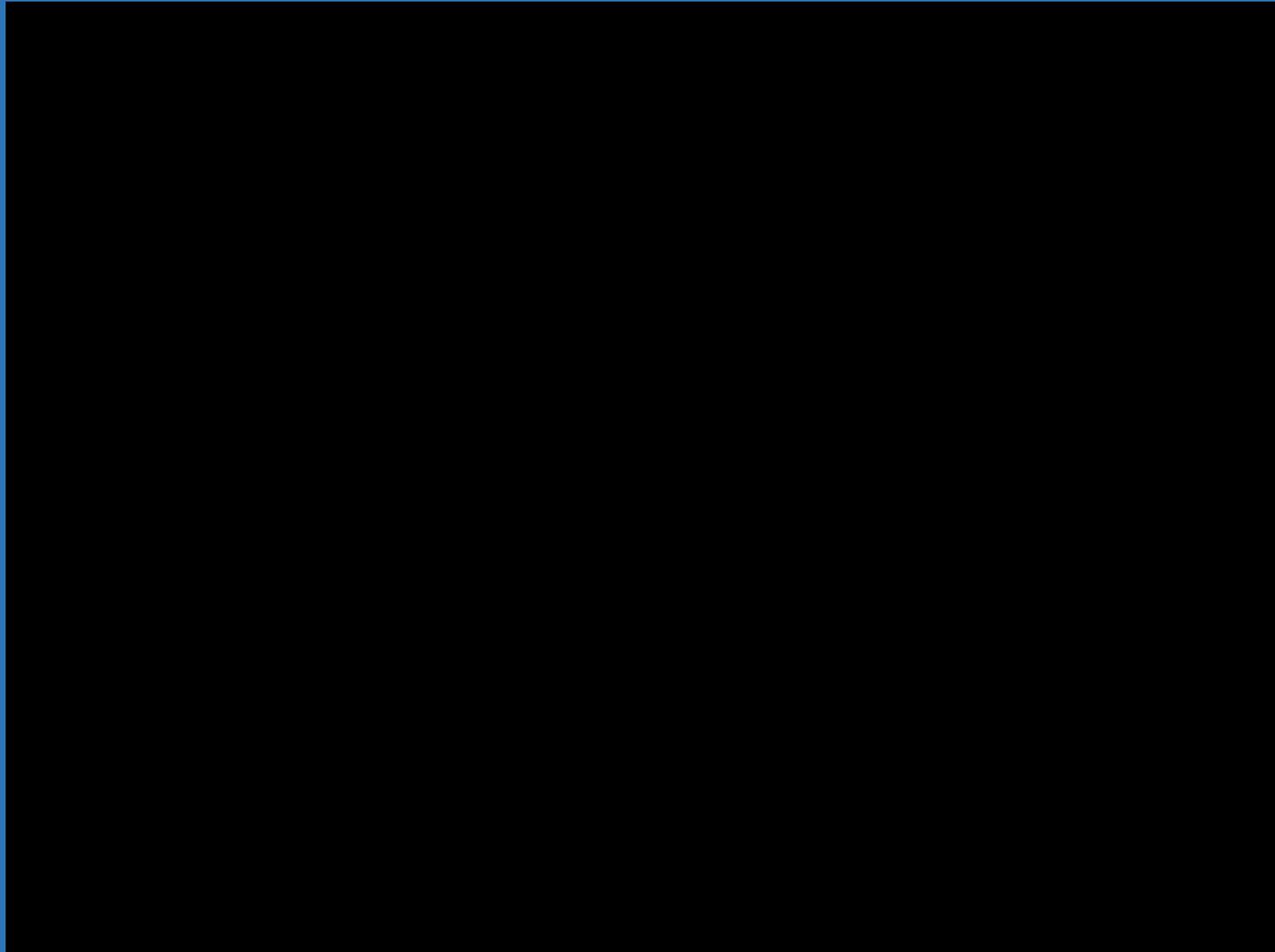


[www.cctvcamerapros.com/lens-test](http://www.cctvcamerapros.com/lens-test)

# Angles – Capabilities - Perspective



# Human Limitations



# Privacy and Determining When to Record

## ACLU Position

“You don’t want to give officers a list and say, ‘Only record the following 10 types of situations.’ You want officers to record all the situations, so when a situation does go south, there’s an unimpeachable record of it—good, bad, ugly, all of it. This is an optimal policy from a civil liberties perspective. Mandatory recording is also what will protect an officer from allegations of discretionary recording or tampering.” –Scott Greenwood

## Police Executive Research Forum (PERF) Position

There are situations in which not recording is a reasonable decision. An agency’s body-worn camera policy should expressly describe these situations and provide solid guidance for officers when they exercise discretion not to record.

- Sensitive victims/witnesses
- People in various states of dress
- Sex Assault examinations

# Minimum Standards Reviewed

Officer shall active BWC prior to any “law enforcement encounter,” or as soon as reasonably possible.

So what is a “law enforcement encounter?”



# Law Enforcement Encounter

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When officer enters a private residence with BWC, they shall give notice (when reasonable under the circumstances) to the occupants of the residence that a BWC is in use by:

- a) Wearing a BWC in a clearly visible manner; or
- b) Giving an audible notice that the officer is using a BWC

\*\*\*One major factor for our legislature was the privacy aspect of BWCs

# Sharing with the Public

- Providing in discovery
- Redaction procedures
- Privacy policies
- Public interest in disclosure
- What other issues will you see?



# Questions?

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