

City of Salinas

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July 28, 2016

The Honorable Judge Mark E. Hood
Presiding Judge, Superior Court
County of Monterey
240 Church Street
Salinas, California 93901

Re: 2015-2016 Monterey County Civil Grand Jury Final Report – “The Slowly Expanding Use of Body-Worn Video Cameras by Law Enforcement Agencies in Monterey County”

Dear Judge Hood:

This letter is the City of Salinas’s response to the Findings and Recommendations of the 2015-2016 Monterey County Civil Grand Jury Final Report “The Slowly Expanding Use of Body-Worn Video Cameras by Law Enforcement Agencies in Monterey County.” I would first like to thank the members of the Civil Grand Jury for their time and effort taken to assist us in improving our ability to provide services to our community. In its Final Report, the Civil Grand Jury made a total of three Findings and two Recommendations specific to the Salinas Police Department.

As requested by the Civil Grand Jury, the City of Salinas respectfully submits the following responses to the Findings and Recommendations identified for a response in Final Report.

Final Report

Finding F5: *At a minimum in California, written department policies must comply with the requirements of Penal Code Section 832.18. (Appendix 3)*

Response: The City Council agrees with this finding.

Finding F27: *The Salinas Police Department provides BWC’s for its officers’ use in accordance with a written department policy regarding their use.*

Response: The City Council agrees with this finding.

Finding F28: *The Salinas Police Department’s written BWC policy does not meet all of the requirements of Penal Code Section 832.18.*

Response: The City Council disagrees wholly with this finding. California Penal Code 832.18(b) only requires agencies, departments, or entities to *consider* the best practices regarding the downloading and storage of body-worn camera data. It does not *require* it. As the law, technology and best practices pertaining to the use, storage and release of BWCs and the data obtained is rapidly evolving, the Legislature incorporated language that provides latitude for the subject matter experts to determine which practice(s) will or will not be incorporated. The respondent will implement the best-practices it determines to be appropriate for its agency and community, in accordance with a recommendation from its subject matter expert and legal requirements, at the time of implementation.

Recommendation R40: *The Chief of the Salinas Police Department shall meet with the department's legal counsel as soon as the meeting can be arranged to review the legal sufficiency of the department's existing body-worn camera policy and to revise the policy to include, at a minimum, the "best practices" set forth in California Penal Code 832.18.*

Response: This recommendation has been implemented. The chief and his designees met with the Salinas City Attorney at the initial implementation of the BWC policy. The policy that was implemented was determined to be appropriate and within the "best practices" for the agency and community and met all legal requirements at the time of implementation.

Recommendation R41: *The Chief of the Salinas Police Department shall meet with the department's legal counsel at least annually to review the then current state law relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws.*

Response: This recommendation has been implemented. The Chief of the Salinas Police Department has met with the City Attorney and will continue to meet on an annual basis, to discuss the BWC policy to ensure the current policy complies with all current laws and practices.

Thank you for the opportunity to respond to the Civil Grand Jury's Report.

Respectfully submitted,

Joe Gunter
Mayor

cc:
City Manager
City Attorney
Police Chief

MONTEREY COUNTY



OFFICE OF THE COUNTY COUNSEL

168 WEST ALISAL STREET, 3RD FLOOR, SALINAS, CALIFORNIA 93901-2439

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CHARLES J. McKEE
COUNTY COUNSEL

Leslie J. Girard
Chief Assistant County Counsel

**CONFIDENTIAL
IMMEDIATE ATTENTION REQUIRED**

June 13, 2016

Via Hand Delivery
Salinas City Council
Attention: Joe Gunter, Mayor
201 Lincoln Avenue
Salinas, CA 93901

Re: 2015-2016 Monterey County Civil Grand Jury Final Report – “The Slowly Expanding Use of Body-Worn Video Cameras by Law Enforcement Agencies in Monterey County”

Dear Salinas City Council:

On behalf of the 2015-2016 Monterey County Civil Grand Jury, and pursuant to Penal Code section 933.05(f), I am enclosing for your review the Grand Jury’s Final Report entitled “The Slowly Expanding Use of Body-Worn Video Cameras by Law Enforcement Agencies in Monterey County”, which has been approved for publication. The Grand Jury intends to publish the report to the public no sooner than 48 hours following delivery of the report to you.

This report constitutes a Final Report for purposes of Penal Code section 933. Pursuant to that section, you must submit comments on the report to the Honorable, Mark E. Hood, Presiding Judge of the Superior Court, 240 Church Street, Salinas, CA 93901, within ninety (90) days following its transmittal. You are responsible for Finding Nos. F5, F27, F28, and Recommendation Nos. R40-R41. With respect to each finding, the Council shall indicate one of the following:

- 1) That the City Council agrees with the finding; or
- 2) That the City Council disagrees wholly or partially with the finding, in which case the City Council must specify the portion of the finding that is disputed and shall include in the response an explanation of the reasons for the disagreement.

With respect to each recommendation, the City Council must report one of the following actions:

- 1) That the recommendation has been implemented, with a summary regarding the implemented action;
- 2) That the recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation; or

Salinas City Council

June 13, 2016

Re: The Slowly Expanding Use of Body-Worn Video Cameras
by Law Enforcement Agencies in Monterey County

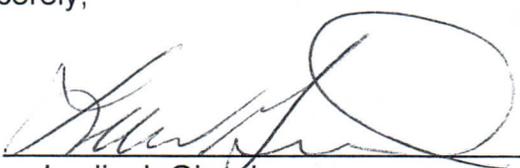
Page 2

- 3) That the recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the City Council (this timeframe not to exceed six months from the date of publication).
- 4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

Thank you for your attention to these matters; the Civil Grand Jury looks forward to your response.

Sincerely,

By:



Leslie J. Girard

Chief Assistant County Counsel

LJG:so

Enclosure

cc: Grand Jury

Hon. Mark E. Hood, Presiding Judge

Kelly McMillin, Chief of Police

**THE SLOWLY EXPANDING USE OF BODY-WORN VIDEO CAMERAS
BY LAW ENFORCEMENT AGENCIES IN MONTEREY COUNTY**



Photo courtesy of The Safariland Group. www.viewu.com

THE SLOWLY EXPANDING USE OF BODY-WORN VIDEO CAMERAS BY LAW ENFORCEMENT AGENCIES IN MONTEREY COUNTY

SUMMARY

Citizens often take cell phone video recordings of police officers who are involved in a public confrontation with one or more individuals. In response, many law enforcement agencies are using officer body-worn cameras (BWCs) in order to help explain activities from the officer's perspective. In adopting the use of BWCs, it's of critical importance that law enforcement agencies also adopt clearly stated written policies directing their officers on how to use their BWCs, how to download and store recorded videos, and how to maintain the integrity of all recorded information at all times. Many "best practice" models have been published for use in guiding the creation of agency policies, although there are significant differences among those models. The California legislature recently enacted a new Penal Code section, which outlines the types of provisions that must, at a minimum, be included in any state or local agency BWC policy.

This report begins with a brief introduction to BWC technology. While all BWCs perform the same basic function, there are important differences in performance features among available BWC models. There is also continuing debate regarding certain controversial policy issues, which we briefly discuss. We also discuss various police attitudes and cautionary considerations regarding BWC use. Finally, this report presents its findings and recommendations regarding the extent to which BWCs are currently in use by Monterey County law enforcement agencies, specifically identifying those agencies that use BWCs, those that do not, and those who plan to use them at some future date.

We found that six of the fifteen local law enforcement agencies surveyed have obtained and use BWCs on a daily basis. These six agencies have adopted written policies to guide their officers on appropriate BWC use. None of those written policies, however, complies with the recently enacted California law pertaining to required BWC policy provisions.

Two local police departments are in the process of purchasing BWCs and implementing BWC programs for their departments. Seven law enforcement agencies are not using BWCs; however, six of them favor their use and plan to purchase and employ BWCs at some future date. Only one agency remains uncommitted to their eventual use.

BACKGROUND

The widespread use of cell phones in the United States has made it possible for ordinary citizens to routinely video record police conduct. In recent years there has been widely publicized reporting of bystander recordings that depict, or appear to depict, improper or even criminal conduct by law enforcement personnel.

Citizen videos of questionable police activities have varying quality and evidentiary value. In some cases, the evidentiary value of the recording is high, leaving little if any doubt as to what actually occurred. In other cases the poor quality or other features of the recording result in significant uncertainty and dispute regarding the exact nature or significance of the disputed citizen-officer interaction.

In response to the above uncertainties and resulting concerns, there has been growing interest, both by the public and by law enforcement agencies, in making BWCs (cameras that record both video and audio information) available for use by all law enforcement field personnel on a mandatory basis. BWCs, when appropriately used, respond to public demands for greater law enforcement transparency. They also provide recordings that are of potentially different durations and scope when compared with citizen cell phone recording of the same event. In addition, they are taken from the visual perspective of the officer or officers whose conduct has been called into question. Requiring law enforcement officers to use BWCs also serves as a risk management tool by causing officers to be more conscious of their conduct. Both the American Civil Liberties Union (ACLU) and law enforcement agencies have, in general, agreed that police use of BWCs, with appropriate safeguards, is a positive development.

The primary purpose of this investigation has been to explore the extent to which BWCs have been put into field use by each city and county law enforcement agency within Monterey County. We have also examined the extent to which each agency has adopted written policies and procedures to direct field officers in the appropriate use of their BWCs, including how to preserve and ensure the integrity of all BWC recordings. In addition, we have reviewed locally adopted policies and procedures in light of applicable California law and other "best practices" policy provisions suggested by various national organizations and by large law enforcement agencies elsewhere in our state.

METHODOLOGY

We conducted sixteen interviews including one or more high-level officials of the Monterey County Sheriff's Department and of every city police department within the County. We reviewed department policy documents and correspondence, news articles, video transcripts, camera manufacturer literature, model policy documents, and topical publications from many sources. In addition, we studied independently published "white papers", journal articles, and applicable California law.

DISCUSSION

Before discussing the extent of local BWC use and related department policies, we first consider if and when it is lawful for a citizen to video police officers during law enforcement actions. Then, we discuss various BWC models, compare selected BWC features, and review policy considerations. Finally, we present local department use decisions and practices.

A. CITIZEN'S RIGHT TO VIDEO POLICE AND LEGALLY PROHIBITED POLICE RESPONSES

Several federal appellate courts have ruled that "Recording governmental officers engaged in public duties is a form of speech through which private individuals may gather and disseminate information of public concern, including the conduct of law

enforcement officers.”¹ Furthermore, section 148 of the California Penal Code provides in pertinent part that:²

148. (a)(1) Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

(g) The fact that a person takes a photograph or makes an audio or video recording of a public officer or peace officer, while the officer is in a public place or the person taking the photograph or making the recording is in a place he or she has the right to be, does not constitute, in and of itself, a violation of subdivision (a), nor does it constitute reasonable suspicion to detain the person or probable cause to arrest the person.

Thus, California citizens have the right to video record police conduct, subject to Penal Code 148 (a) limitations and the usual “reasonable time, place, and manner” restrictions that are placed on acts protected by the First Amendment to the U.S. Constitution. For example, you cannot record police officers if you are knowingly trespassing on private property (as opposed to recording police in a public place); and you must comply with a police order to step back or record from a reasonable distance under circumstances where a suspect might have a gun or dangerous weapon; and you can’t impede police officers in the performance of their duties. Police officers violate the due process clause

¹ Gilk v. Cunniffe, 655 F.3d 78, 82 (1st Cir. 2011)

² California Penal Code, section 148

of the Fourteenth Amendment when they deprive individuals of their device and its recordings without first providing notice and an opportunity to object.³

In accordance with the law, many law enforcement agencies have adopted written policies that advise their officers that citizens have the right to video record police activity subject to the allowed limitations on that right.

B. THE BASICS OF BODY-WORN VIDEO CAMERAS

BWCs are small lightweight video cameras that law enforcement officers attach to their uniform in order to record their enforcement activities. The BWCs recording function must first be turned on before any event can be recorded. In most cases, once a recording is made, it cannot be edited or deleted in the field by the officer. At the end of an officer's shift, the camera's recordings are downloaded to a computer, a server, or the "cloud" and preserved for later viewing. There are over a dozen BWC manufacturers. Their cameras have many common features and performance functions; however, there are also a number of differences.

C. MANUFACTURE MAKES AND MODELS: THEY'RE NOT ALL THE SAME

Law enforcement agencies in Monterey County that currently provide BWCs for their officers use one of three BWC models, each manufactured by a different company.⁴

1. The "AXON" camera, manufactured by TASAR International, Inc.
2. The "LE3" camera, manufactured by VIEVU, LLC.
3. The "BODYCAM" camera, manufactured by Pro-Vision Systems.

Since each camera performs the same basic functions of video and audio recording, we compare only a few of the more interesting features as shown in **FIGURE 1**.

³ In Riley v. California, 134 S. Ct. 2473, 189 L. Ed. 2d 430 (2014) the United States Supreme Court held that an arresting police officer may not conduct a warrantless search of an arrestee's cell phone contents. Doing so constitutes a violation of the Fourth Amendment to the U.S. Constitution.

⁴ Two departments report that they are in the process of purchasing WatchGuard BWCs for future use.

**FIGURE 1
BODY-WORN CAMERA MODEL COMPARISON**

Feature	Axon ^a	LE3 ^b	BodyCam ^c
			
Weight	3.5 oz.	2.8 oz.	1.6 oz.
Dimensions	2.6x3.3x0.8 in	3x2.1x0.85 in.	2.5x2x1 in.
Field of View	130 degrees	68 deg.	170 deg.
Pre-record buffering	Max 30 sec.	No	No
Charging Time	6 hrs.	3 hrs.	3 hrs.
Recording Time with Normal Use	6-12 hrs.	6-12 hrs.	3-18 hrs.
Low Light Recording	Yes	Yes	Yes
Proprietary Mgmt. Software	Yes, optional	Yes, required	Yes, optional
Still Photos	No	No	Yes
Display Screen	No	No	Yes
Field Access to delete?	No	No	Yes, unless configured to prevent. Also, memory card is removable
BWC Cost (excluding storage)	\$400.00	\$1,000.00	\$580.00

^a AXON body™ Camera Specifications, 10/7/13
^b LE3 Detailed Specification Sheet
^c BODYCAM, HD Body Camera User Guide, undated.

D. LAW ENFORCEMENT BWC POLICIES AND PROCEDURES

There is widespread agreement among state and federal law enforcement agencies that to ensure transparency and increase public trust, it is critically important to have specific

BWC policies and procedures in place with strict enforcement by each agency. These policies must clearly spell out the specific circumstances under which a BWC recording should be made, necessary methods for video data storage for legally required periods of time, and procedures for maintaining data integrity at all times. However, the specific methods by which these goals can be achieved are in certain respects debated and remain unsettled. A few of these key issues are briefly identified in this report, but an in-depth discussion of competing opinions can be found in the list of recommended further reading set forth on **APPENDIX 1**.

1. California's Legislated Policy Requirements

In 2015, the California legislature enacted Assembly Bill 69, which added Section 832.18 to the Penal Code. The terms of that section require law enforcement agencies to implement various "best practices" when establishing policies and procedures for the use of body-worn cameras, including the downloading and storage of BWC video and audio recordings. The required policies and procedures must also prohibit the unauthorized use, duplication, or distribution of the recordings, and establish storage periods for downloaded evidentiary and non-evidentiary recorded data, as explained in the section.

Specifically, there is a listing of eight requirements to be addressed:

- 1) Identifying the person (or persons) who will be responsible for taking custody of and downloading the recorded data, 2) establishing when data should be downloaded and the cameras maintained for ongoing use and the tagging and categorizing of the downloaded data, 3) establishing specific measures to prevent tampering, deleting, and copying, including prohibiting unauthorized use, copying or distribution of any data, 4) categorizing and tagging the downloaded data according to the type of event recorded, 5) stating the length of time the data is to be stored, 6) stating where the recorded data is to be stored, 7) specifying requirements and safeguards if a 3rd party vendor will be managing the data storage system, and 8) requiring that recorded data be the property of the recording enforcement agency and shall not be accessed or released for any unauthorized purposes.

Section 832.18 (5) distinguishes between the storage of evidentiary and non-evidentiary content. Section 832.18 (c)(1) defines “evidentiary data” as recorded content of an incident or encounter that could prove useful for investigative purposes of a crime, arrest, detention, search, use of force, or a confrontational encounter with a member of the public. By contrast, Section 832.18 (c)(2) defines “non-evidentiary data” as recorded content without value to aid in an investigation such as the recording of an incident or encounter that does not lead to an arrest or citation, or of general activities that the officer might perform while on duty.

Subparagraph (b)(5)(A) in 832.18 requires that non-evidentiary recordings should be held for a minimum of 60 days, while subparagraph (B) requires that evidentiary recordings be stored for a minimum of 2 years if the recorded incident involves the use of force, involves an officer shooting, leads to the detention or arrest of an individual, or relates to a citizen complaint. If relevant to a criminal prosecution, in addition to the 2-year period, subparagraphs (b)(5)(C) and (b)(5)(D) require that the recording be retained for the same time as required by law for other evidence relevant to a criminal prosecution. There is a further requirement that each enforcement agency work with its legal counsel to ensure that storage policies and practices comply with all laws and preserve the evidentiary chain-of-custody. Subparagraph (b)(5)(E) requires that records or logs of any access to or deletion of recordings be retained permanently. Lastly, Section 832.18 (d) states that nothing in section 832.18 shall be interpreted to limit the public’s right to access cell phone or other electronically recorded information under the California Public Records Act.⁵

⁵ California Public Records Act. Gov. Code, § 6250 et seq.

2. Controversial BWC Issues

While Penal Code Section 832.18 may at first glance seem comprehensive, there are ongoing debates regarding a variety of issues. Three frequently publicized examples are summarized below. One key debate concerns whether or not an officer on duty should have his or her BWC continuously recording throughout the officer's shift, recording both evidentiary and non-evidentiary events alike.

In 2013, the ACLU, the leading group supporting civil liberties in the U.S., advocated that BWCs be turned on during an officer's entire shift. That policy would guarantee that an officer could not evade detection while engaging in abuse. Subsequently, a number of objections were raised by groups like the Police Executive Research Forum (PERF), which argue that there are certain 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.

For example, officer discretion is needed in sensitive situations, such as encounters with crime victims or witnesses who are concerned about retaliation if they are seen as cooperating with the police. In other cases, officer discretion is needed for routine or casual situations—such as officers on foot or bike patrol who wish to chat with neighborhood residents—and turning on a video camera could make the encounter disquieting and seems officious.

Many law enforcement agencies give officers discretion regarding whether to record interviews with victims of rape, abuse, or other sensitive crimes. Some departments also extend this discretion to recording victims of other crimes.

Influenced by these objections, the ACLU modified its position on this issue in 2015. The new policy recommends that BWC policies require an officer to activate his or her camera when responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a police officer and a member of the

public. That would include stops, frisks, searches, arrests, consensual interviews and searches, enforcement actions of all kinds, and any encounter that becomes in any way hostile or confrontational.

A second debate concerns whether or not an officer who records an event should be able to review the contents of the recording before writing his or her report of the event. Some civil libertarian groups contend that reviewing the recording before writing a report prevents the public from testing the credibility of the officer's written report (and the officer). For example, when an Oakland Police officer's BWC videoed a fatal shooting, trial attorneys and the ACLU questioned the policy stating that officers who shoot suspects should have access to such a video because that would give the officer "an opportunity to change [his] report to match the video."

On the other hand, law enforcement agencies argue that officers should be permitted to review video footage of an incident in which they were involved, prior to making a statement about the incident since "reviewing footage will help officers remember the incident more clearly, which leads to more accurate documentation of events. The goal is to find the truth, which is facilitated by letting officers have all possible evidence of the event."

Lastly, a third debate concerns the degree to which the public should have access to BWC recordings. Some agencies argue that a recording is akin to an officer's written notes and, as such, should not be available to members of the public not involved in a related criminal prosecution. On the opposite extreme, it is argued that such BWC recordings should always be available to the public at large as a matter of transparency.

According to news reports, these and other subjects were deliberately not addressed in Section 832.18 in order to reach a compromise on the legislation.

E. MODEL "BEST PRACTICES" POLICIES AND PROCEDURES

Apart from the California legislature's listing of minimum "best practices", several organizations have published their own, more comprehensive, "best practices" model

policies that in comparison reveal significant differences in policy perspectives. Such publications are too many and too lengthy to summarize in this report, but a representative few are briefly mentioned below. References for further reading on these and related BWC subjects are listed in **APPENDIX 1**.

1. Office of Community Oriented Policing Services (COPS)

COPS describes itself as the component of the U.S. Department of Justice “responsible for advancing the practice of community policing by the nation’s state, local, territorial, and tribal law agencies through information and grant resources.”⁶ It publishes materials for law enforcement and community stakeholders to use in collaboratively addressing crime. Its free publications are intended to provide those agencies “with best practice approaches” and “access to collective knowledge from the field.”⁷ In 2014, COPS published a report entitled “Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned”.⁸ Appendix A of that report contains a matrix summary of the COPS policy recommendations. Among many other provisions, the template contains the following recommendations:

- The policy should specifically define the circumstances when a user should record an event and when the user has the discretion to record or not to record.
- The camera should be switched on when a recording might support professional observations or would corroborate what would be written in a pocket book
- The decision to record or not record any incident remains with the user.
- Users should not indiscriminately record entire duties or patrols.
- Any recorded image must not be deleted by the user and must be retained as required by the procedures. Any breach of the procedures may render the user liable to disciplinary action or adverse comment in criminal proceedings.
- Officers should be permitted to review video footage of an incident in which they were involved, prior to making a statement about the incident.

⁶ <http://www.cops.usdoj.gov/about>

⁷ <http://www.cops.usdoj.gov/COPSPublications>

⁸ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. “Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned”. Washington, DC: Office of Community Oriented Policing Services (COPS). ISBN: 978-1-934485-26-2,” n.d.

- Written policies should clearly describe the circumstances in which supervisors will be authorized to review an officer's BWC footage.
- Agencies should have clear and consistent protocols for releasing BWC recordings to the public and the news media (a.k.a. public disclosure policies). Each agency's policy must comply with the agency's state public disclosure laws (often known as public records acts).
- Agencies should conduct periodic reviews of their BWC policies and protocols.

2. American Civil Liberties Union

The ACLU believes that cameras have the potential to be a win-win, helping protect the public against police misconduct, and at the same time helping protect police against false accusations of abuse. As mentioned above, the ACLU also agrees that because of privacy concerns, BWC policies should only require an officer to activate the BWC when responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a police officer and a member of the public. However, in those situations, recording should not be discretionary; it should be required in order to "preserve the core purpose of detecting police misconduct."

In addition to officer privacy concerns expressed by the ACLU, there are potential problems raised by recording activities protected by the First Amendment, by mass surveillance in crowded cities, and by facial recognition efforts. In addition, people recorded by BWCs should have access to, and the right to make copies of, those recordings, for however long the government maintains copies of them. That should also apply to disclosure to a third party if the subject consents, or to criminal defense lawyers seeking relevant evidence. In summary:

- For the ACLU, the challenge of a BWC is the tension between their potential to invade privacy and their strong benefit in promoting police accountability.
- It is vital that any deployment of these cameras be accompanied by good privacy policies, so that the benefits of the technology are not outweighed by invasions of privacy.

3. Lexipol

Lexipol is a commercial subscription service intended for use by law enforcement agencies. It describes itself as a “provider of risk management policies and resources,”⁹ including state-specific policy manuals and police updates based on federal and state statutes, case law, regulations and best practices. Several local law enforcement agencies rely on the Lexipol service for the creation of their written policies and policy-driven procedures. The Lexipol policies are basic templates, which can be edited and supplemented by the subscribing local agency to reflect local decision-making. Since the Civil Grand Jury is not a Lexipol subscriber, we can only examine those Lexipol publications that have been adopted by several local agencies as part of their policies and procedures manuals. These will be examined in detail later in this report for Lexipol’s position on key issues. An example of a Lexipol BWC policy is found in **APPENDIX 2.**

4. Conflicting California Agency Provisions

To illustrate the lack of policy uniformity among specific law enforcement agencies within the state, consider the following examples:

- Los Angeles Police Department’s Policy L.A.’s officers are required to review BWC recordings on their assigned device or authorized computer prior to documenting an incident, arrest, search, interview, use of force, or other enforcement or investigative activity to ensure that their reports, statements, and documentation are accurate and complete.
- Santa Clara Police Department’s Policy. In the case of an officer involved shooting or serious use-of-force incident, an involved officer will be required to give an initial account of events before being permitted to view the BWC video and give additional statements.¹⁰

F. CAUTIONARY FACTORS TO CONSIDER WHEN INTERPRETING BWC RECORDINGS

PoliceOne.com is an online resource for law enforcement. Its stated mission is “to provide officers with information and resources that make them better able to protect

⁹ <http://www.lexipol.com>

¹⁰ “Santa Clara Outfits Officers With Body-Worn Cameras”, San Jose Mercury News, 11/25/2015, <http://www.mercurynews.com>,

their communities and stay safer on the streets.” In September 2014, *Police One* published an article by The Force Science Institute entitled “10 Limitations of Body Cams You Need to Know for Your Protection”.¹¹ The suggested limitations are presented here in brief, without the explanations that accompanied each point.

1. A camera doesn't follow your eyes or see what or how they see.
2. Some important danger cues can't be recorded. For example, a suspect suddenly tenses while an officer holds the suspect's arm.
3. Camera speed differs from the speed of life.
4. A camera may see better than you do in low light.
5. Depending on location and angle, a picture may be blocked by your own body parts, from your nose to your hands.
6. A camera only records in 2-D.
7. The absence of time-stamping in seconds or fractions of seconds may prove critical.
8. One camera may not be enough to eliminate uncertainties.
9. A camera encourages second-guessing by the public.
10. A camera can never replace a thorough investigation.

G. POLICE OFFICER POINTS OF VIEW

In November 2014, PoliceOne polled 1500 police officers to explore officer experiences, thoughts and concerns regarding body cameras.¹² Some results were:

- Only 21.9 percent did not have body cameras or did not anticipate getting them in the near future.
- 33.7 percent said their biggest concern was “A lack of privacy of officers wearing them”.
- 28.7 percent said their biggest concern was that cameras could “pose a physical liability”.

¹¹ Institute, Force Science. "10 Limitations of Body Cams You Need to Know for Your Protection". PoliceOne, September 2014.

¹² Staff Writers. "Poll Results: Cops Speak Out About Body Cameras." PoliceOne. November 12, 2014. <http://www.PoliceOne.com>.

- An unspecified percentage was concerned about an invasion of privacy for people who call the police to their home.
- A second unspecified percentage was concerned about the “ability for public to ‘arm-chair quarterback’ decisions officers have to make in the heat of the moment.”
- A third unspecified percentage worried about becoming too concerned with camera activation, taking away from officer safety.
- A fourth unspecified percentage pointed out that what a camera records does not equate to the totality of what an officer perceives.
- Others, however, felt that such recordings made their department more transparent and would eliminate 90% of unfounded citizen complaints. Stated differently by some: “Video footage is much more likely to get a cop out of trouble than in trouble.”
- In addition, of those who had misgivings, 67.7 percent would want their department equipped with BWCs despite their concerns.

THE USE OF BODY-WORN CAMERAS BY MONTEREY COUNTY LAW ENFORCEMENT AGENCIES

The following are necessarily brief summaries regarding each of the fifteen law enforcement agencies in Monterey County.

A. CALIFORNIA HIGHWAY PATROL

The California Highway Patrol (CHP) does not currently employ BWCs. However, in June of 2015, Governor Brown signed Senate Bill 85, Section 1 of which requires the CHP to develop a plan for implementing a BWC pilot program on or before January 1, 2016. The budget to develop the pilot program is \$1 million. The implementation plan must include, among other things, the minimum specifications for BWCs to be used in a BWC program; the “best practices” for officer review of BWC recordings; and “best practices” for sharing BWC recordings internally and externally. A plan has been drafted and is currently awaiting final approval.

B. CARMEL-BY-THE-SEA POLICE DEPARTMENT

The Carmel-by-the-Sea (Carmel) Police Department does not provide BWCs for its officers, even though the Department's position is that such cameras are a "great tool" and that there is a very positive attitude regarding their use. It is the department's position, however, that the department's purchase and use of BWCs at this time would be premature. Management wants to see how available cameras perform in the field, and whether conflicting views relating to BWC policies and procedures become settled among police forces. Management also expects Lexipol to develop standardized policies and procedures as part of its subscription service. Management believes that its preconditions to BWC use will be resolved in the next 1-2 years. At that time, the department will purchase 15 cameras (Carmel has 15 sworn officers) with associated data management software and any additional storage capability that may be needed.

C. DEL REY OAKS POLICE DEPARTMENT

The Del Rey Oaks Police Department does not yet use BWCs, but is in the process of ordering six of them. The specific camera chosen is the Vista camera manufactured by WatchGuard. That selection was based on the reputation of the manufacturer. Five full-time officers plus the chief (total 6 officers) will be assigned the new cameras. BWCs will not be provided to the department's 18 reserve officers. The department does not yet have any written policy or procedures for using the cameras. After the BWCs have been delivered, the department will review policies published by others and adopt a policy for the department.

D. GONZALES POLICE DEPARTMENT

The Gonzales Police Department began using BWCs in August 2015. The camera selected is the BODYCAM by Pro-Vision. Although the department consists of only nine police officers, an animal control officer and the chief, 25 cameras were purchased so that each patrol officer could have a backup camera and there would be additional cameras for personnel expansion. The department has adopted a written policy related to video recording. It is the Lexipol policy entitled "Portable Audio/ Visual Recorders", which the department has labeled as Policy 465 in its own policy manual. Policy 465 provides guidelines for the use of various types of recording devices, including BWCs.

E. GREENFIELD POLICE DEPARTMENT

The Greenfield Police Department provides BWCs for their officers. The Department currently has 15 BWCs, with five more expected as personnel is added to the force. The camera selected is the LE3 manufactured by VIEVU. Downloaded recordings are stored on a local server. Greenfield also adopted a Lexipol policy entitled "Portable Audio/Video Recorders", which provides guidelines for using portable audio/video recording devices, including BWCs, by members of the department while performing their duties. Greenfield's BWC policy indicates that it was adopted in November 2014 and has been internally numbered as Policy 450.

F. KING CITY POLICE DEPARTMENT

The department recently appointed an interim chief, but prior to his appointment; the department had already acquired 32 BWCs for use by its 16 officers (one to be assigned and one as a backup). All officers were trained and the BWCs were put into daily use in January 2016. The BWC selected by the department is the BODYCAM model manufactured by Pro-Vision, and the department officials are very impressed by its clear sound and images. The King City department has adopted a version of the Lexipol Policy entitled "Portable Audio/Video Recorders", which provides guidelines for the use of portable audio/video recording devices, specifically including BWCs.

G. MARINA POLICE DEPARTMENT

The Marina Police Department does not use BWCs, but the department intends to do so and has assigned a department commander to research available choices, their cost, their recording storage requirements, and whether or not they can be integrated with the department's currently used in-car dashboard camera system. The department's storage capacity will probably have to be increased, but the department plan is to have BWCs available for routine use by the end of July 2016, the end of its fiscal year. If the cost of the cameras and storage system is more than can be covered within the department's current budget, the department will seek the necessary funding from the city council. When funded, the department expects to purchase 24-26 LE3 cameras, which are made by the same manufacturer that makes the department's in-car camera system. No written policies or procedures have yet been developed for BWC use, but

when developed they will reflect “best practices” provisions. For example, they will contain a provision allowing officers to review their recordings before writing up an incident report and will allow public access in accordance with the California Public Records Act.

H. CITY OF MONTEREY POLICE DEPARTMENT

In May 2016 this department announced the planned purchase of WatchGuard BWCs for use by its police officers. The Watchguard BWCs are manufactured by the same company that manufactures the department’s in-car camera system, and the two systems will be closely integrated. The BWCs are expected to become available and ready to use in early 2017.

I. MONTEREY COUNTY SHERIFF’S DEPARTMENT

The Monterey County Sheriff’s Department does not provide BWCs for its deputies. The Department is considering future BWC use but is not currently committed to their use. Management would first need to find funding for the cameras and related storage capacity; go through the camera and vendor selection processes; develop a “best practices” policy; and work through the issues with the police union before that could happen. It’s estimated that the department might obtain BWCs within 2-5 years.

J. MONTEREY REGIONAL AIRPORT POLICE DEPARTMENT

In 2012, the Airport Police Department became the first law enforcement agency in Monterey County to put BWCs into daily use. Five officers currently use the VIEVU camera and, like several other law enforcement agencies, the department has adopted a version of Lexipol Policy 450 relating to the use of audio/video recorders.

K. PACIFIC GROVE POLICE DEPARTMENT

This department does not provide BWCs for its officers, although past and present department officials are in favor of BWC use by the department. Lack of funding prevents the implementation of a BWC program during the current fiscal year. Initial review of various BWC choices and storage options is now in progress.

L. SALINAS POLICE DEPARTMENT

In mid-2015, the Salinas Police Department adopted and put into daily use the most sophisticated BWC program in Monterey County. It employs the Axon camera manufactured by TASAR International, Inc. and proprietary software,¹³ which enables the BWC to automatically download its recorded data to a third party cloud storage facility. The recordings are transferred at the same time that the camera is recharging in its charging station. The cameras are routinely worn by all patrol officers and sergeants, as well as supervisors when they are “on the street” in uniform. There are 110 BWCs, including those that are assigned to officers plus three extras. The cost of each camera was \$400, but averaging in monthly off-site video storage charges brings the monthly total cost of a camera and its storage charges to \$93.00.

As is commonly the case locally, the department has adopted a modified Lexipol policy, internally labeled as Policy 447 in the department’s policy manual. As with many law enforcement agencies, the policy allows for officer review of a recording before writing the corresponding incident report, and the policy only requires event recording under specified circumstances rather than continuously. This department’s BWC policy is more detailed than those of the other local departments’ written policies.

M. SAND CITY POLICE DEPARTMENT

This department does not provide BWCs for its officers. Although the use of BWCs is favored, lack of funding has to date prevented the implementation of a BWC program.

N. SEASIDE POLICE DEPARTMENT

This department does not provide BWCs for its officers. Although the use of BWCs is favored, lack of funding has prevented the implementation of a BWC program to date.

O. SOLEDAD POLICE DEPARTMENT

The department purchased BODYCAM units for its officers in December 2014. However, the BWCs have not been put into daily use due to prolonged technical difficulties in obtaining and properly configuring the necessary video storage capability.

¹³ Evidence.com™

In February 2016, the department terminated its reliance on the previously-hired technical service company and hired another in anticipation of correcting the existing technical problems in the near future. As of late May 2016 the technical video storage issues had not yet been resolved.

P. SUMMARY OF LOCAL LAW ENFORCEMENT'S BWC USE

A comparative summary of BWC use by the fifteen local law enforcement agencies in Monterey County is shown in **FIGURE 2**, along with selected features of the BWCs in use. Six agencies have BWCs and have put them into daily use by their officers. Two other agencies (City of Monterey and Del Rey Oaks) are currently moving forward with planned BWC acquisition and use. Six of the seven remaining agencies favor their use but are not yet moving forward because of a lack of funding or other considerations. One agency is currently not committed to the future use of BWCs. All six agencies using BWCs have adopted Lexipol-based written BWC policies.

LOCAL BWC POLICIES AND CALIFORNIA'S LEGAL REQUIREMENTS

As demonstrated in **FIGURE 3**, none of the local BWC policies meets current California legal requirements. However, prior to the adoption of Penal Code Section 832.18 in October 2015, law enforcement agencies in California were without guidance as to what might eventually be legally required for BWC usage in California. Each department structured its policy based on varying degrees of policy research. In addition, since the new Penal Code provisions did not become effective until January 1, 2016, it is possible that local policy revisions are now being considered by those agencies using BWCs.

THE EXTENT TO WHICH BODY WORN CAMERAS ARE CURRENTLY IN USE BY MONTEREY COUNTY LAW ENFORCEMENT AGENCIES						
LAW ENFORCEMENT DEPARTMENT	BODY-WORN CAMERAS CURRENTLY USED?	DEPTS PLANNING FUTURE BWC PROGRAM	CAMERA MAKE & MODEL	WRITTEN POLICY CONCERNING BWC USE AND DATA STORAGE	DATA RETENTION PERIOD	EXTENT OF OFFICER ACCESS TO RECORDED DATA IN FIELD
CALIFORNIA HIGHWAY PATROL	NO	YES - PILOT PROGRAM TO START IN 2016	NONE SPECIFIED	Not Applicable (N/A)	N/A	N/A
CARMEL-BY-THE-SEA	NO	YES - IN 2-5 YEARS	NOT APPLICABLE	N/A	N/A	N/A
DEL REY OAKS	NO	YES -CAMERAS ON ORDER	"VISTA" BY WATCH GUARD	NO	UNSPECIFIED	NONE
GREENFIELD	YES	N/A	"LES" BY VIEWU	YES	1-2 YRS.	NONE
GONZALES	YES	N/A	"BODYCAM" BY PRO-VISION	YES	MINIMUM OF 180 DAYS	ABLE TO REVIEW. CAN ALSO DELETE UNLESS CONFIGURED TO PREVENT
KING CITY	YES	IMPLEMENTED IN JANUARY 2016	"BODYCAM" BY PRO-VISION	YES	5 YEARS	ABLE TO REVIEW. CAN ALSO DELETE UNLESS CONFIGURED TO PREVENT
MARINA	NO	YES - NEED TO SECURE FINANCING	N/A	N/A	N/A	N/A
MONTEREY (CITY)	NO	CURRENTLY PURCHASING BWCs FOR OFFICER USE BEGINNING IN EARLY 2017	"VISTA HD W-FI" BY WATCHGUARD	N/A	N/A	NONE
MONTEREY (SHERIFF)	NO	INDEFINITELY CONSIDERING, BUT NOT COMMITTED TO THEIR USE.	N/A	N/A	N/A	N/A
MO. REGIONAL AIRPORT	YES	N/A	"LES" BY VIEWU	YES	NO POLICY	NONE
PACIFIC GROVE	NO	YES - NEED TO SECURE FINANCING	N/A	N/A	N/A	N/A
SALINAS	YES	N/A	AXON BY TASAR	YES	UNTIL "MATTER RESOLVED" OR REQUIRED BY LAW.	NONE
SAND CITY	NO	YES - NEED TO SECURE FINANCING	N/A	N/A	N/A	N/A
SEASIDE	NO	YES - NEED TO SECURE FINANCING	N/A	N/A	N/A	N/A
SOLEDAD	YES	N/A	"BODYCAM" BY PRO-VISION	YES	MINIMUM OF 180 DAYS	CAN REVIEW. CAN ALSO DELETE UNLESS CONFIGURED TO PREVENT

FIGURE 2

FIGURE 3

Department Written Policy Compliance With California Penal Code Section 832.18 "Best Practices" Policy Requirements

Item	Legal Requirements	Gonzales L450	Greenfield L450	King City L450	Monterey Airport L450	Salinas L447	Soledad L450
1	Designates a person For Downloading	No	No	No	No		
2	Supervisor to take immediate custody & downloads if serious incident recorded	No	No		No	No	No
3	Establishes When Data To Be Timely Downloaded to Ensure Cameras to be Properly Maintained, ready for next use, and for tagging and catagorizing data	No	No	No	No		
4	Establishes measures to prevent data tampering, deleting, copying, unauthorized use or distribution	Partially	Partially	Partially	Partially	Partially	Partially
5	Downloaded recordings to be catagorized, tagged and classified as to type at time of downloading	No	No	No	No	No	No
6	State specific times to store recordings. Store for a minimum of 60 days before delete, destroy or recycle.	Partially	Partially	Partially	Partially	Partially	Partially
7	Store for 2 years if incident involves use of force, police shooting, detention, arrest of individual, or relevant to citizen complaint plus any additional time required by law if relevant to a criminal proceeding.	No	No	No	No	Partially	No
8	Work with agency legal counsel to ensure storage times, policies and practices complies with all relevant laws and preserves evidence chain of custody.	Not regarding current law					
9	Permanently retain all logs or records of access to and deletion of data.	No	No	No	No	No	No
10	State specifically where data is to be stored, including, for example, if data to be stored on in house server managed locally or on-line data base managed by third party vendor.	No	No	No	No	Yes	No
11	If using a third party vendor, must consider listed factors to insure security and integrity of data	No Vendor	No Vendor	No Vendor	No Vendor	Yes	No Vendor
12	Include sanctions for unauthorized access or release of recorded data	No	No	No	No	Partially	No
13	Explicitly prohibits agency personnel from accessing recorded data for personal use, including uploading onto public or social web sites.	Yes	Yes	Yes	Yes	Yes	Yes

FINDINGS

- F1. The use of BWCs responds to public demands for greater law enforcement transparency.
- F2. BWCs, when recording lawful police conduct, provide positive risk management benefits.
- F3. BWC recordings can serve as a valuable officer training resource.
- F4. Law enforcement best practices now include law enforcement's use of BWCs when funds have been made available for their purchase and that of required data storage capacity.
- F5. At a minimum in California, written department policies must comply with the requirements of Penal Code Section 832.18. **(Appendix 3)**
- F6. In the absence of other sources of funding, each City Council must make sufficient funds available to its police department before the department can purchase BWCs for its officers and a secure storage system for resulting BWC recordings.
- F7. In the absence of other sources of funding, the county Board of Supervisors must make sufficient funds available to its Sheriff's department before the department can purchase BWCs for its deputies and a secure storage system for resulting BWC recordings
- F8. The BODYCAM[®] BWC described in this report stores recordings on a removable Micro-SD memory card.
- F9. The BODYCAM[®] BWC described in this report enables any user to delete one or all recorded videos unless those camera functions are disabled by an appropriately trained BODYCAM[®] administrator or a manufacturer's representative.
- F10. Because the BODYCAM[®] BWC allows the Micro-SD card to be removed from the camera, it is possible for an officer to remove and read the card on an unauthorized computer and to delete or modify recorded data, contrary to the specific prohibitions of Penal Code section 832.18.

- F11. The Carmel Police Department does not provide BWCs for its officers' use although the department favors their use.
- F12. The Del Rey Oaks Police Department is in the process of ordering BWCs for its officers' use
- F13. The Greenfield Police Department provides BWCs for its officers' use in accordance with a written department policy.
- F14. The Greenfield Police Department's written BWC policy does not meet all of the requirements of Penal Code Section 832.18.
- F15. The Gonzales Police Department provides BWCs for its officers' use in accordance with a written department policy regarding their use.
- F16. The Gonzales Police Department's written BWC policy does not meet all of the requirements of Penal Code Section 832.18.
- F17. The Gonzales Police Department uses the BODYCAM[®] BWC.
- F18. The King City Police Department provides BWCs for its officers' use in accordance with a written department policy regarding their use.
- F19. The King City Police Department's written BWC policy does not meet all of the requirements of Penal Code Section 832.18.
- F20. The King City Police Department uses the BODYCAM[®] BWC.
- F21. The Marina Police Department does not provide BWCs for its officers' use, but the department favors their use and plans to acquire them.
- F22. The City of Monterey Police Department is currently in the process of ordering BWCs for its officers' use.
- F23. The Monterey County Sheriff's Department does not provide BWCs for its deputies' use.
- F24. The Monterey Regional Airport Police Department provides BWCs for its officers' use in accordance with an official, but only oral, department policy regarding their use.
- F25. The Monterey Regional Airport Police Department's BWC policy does not meet all of the requirements of Penal Code Section 832.18.
- F26. The Pacific Grove Police Department does not provide BWCs for its officers' use.

- F27. The Salinas Police Department provides BWCs for its officers' use in accordance with a written department policy regarding their use.
- F28. The Salinas Police Department's written BWC policy does not meet all of the requirements of Penal Code Section 832.18.
- F29. The Sand City Police Department does not provide BWCs for its officers' use, although the department favors their use.
- F30. The Seaside Police Department does not provide BWCs for its officers' use, although the department favors their use.
- F31. The Soledad Police Department provides BWCs for its officers' use.
- F32. The Soledad Police Department's draft written BWC policy does not meet all of the requirements of Penal Code Section 832.18.
- F33. The Soledad Police Department uses the BODYCAM[®] BWC.

RECOMMENDATIONS

- R1. As part of the Carmel-by-the-Sea Police Department's next annual budget request (or before) the Department shall apply to the Carmel-by-the-Sea City Council for funds sufficient to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.
- R2. As part of the Carmel-by-the-Sea Police Department's next annual budget allocation (or before) the Carmel-By-The-Sea City Council shall provide funds sufficient to enable the Police Department to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.
- R3. The Carmel-by-the-Sea Police Department shall adopt a written body-worn camera policy, which at a minimum includes the "best practices" set forth in California Penal Code 832.18.
- R4. The chief of the Carmel-by-the-Sea Police Department shall meet with the department's legal counsel to review the legal sufficiency of the department's proposed body-worn camera policy before it is adopted by the department.

- R5. The chief of the Carmel-by-the-Sea Police Department shall meet with the department's legal counsel at least annually to review the then current state laws relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws
- R6. The Del Rey Oaks Police Department shall provide body-worn cameras for each of its officers promptly after they receive the cameras they have ordered.
- R7. The Del Rey Oaks Police Department shall adopt a written body-worn camera policy, which at a minimum includes the "best practices" set forth in California Penal Code 832.18.
- R8. The chief of the Del Rey Oaks Police Department shall meet with the department's legal counsel to review the legal sufficiency of the department's proposed body-worn camera policy before it is adopted by the department.
- R9. The chief of the Del Rey Oaks Police Department shall meet with the department's legal counsel at least annually to review the then current state laws relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws.
- R10. The chief of the Greenfield Police Department shall meet with the department's legal counsel as soon as the meeting can be arranged to review the legal sufficiency of the department's existing body-worn camera policy and to revise the policy to include, at a minimum, the "best practices" set forth in California Penal Code 832.18.
- R11. The chief of the Greenfield Police Department shall meet with the department's legal counsel at least annually to review the then-current state law relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws.
- R12. The chief of the Gonzales Police Department shall meet with the department's legal counsel as soon as the meeting can be arranged to review the legal sufficiency of the department's existing body-worn camera policy and to revise the policy to include, at a minimum, the "best practices" set forth in California Penal Code 832.18.

- R13. The chief of the Gonzales Police Department shall meet with the department's legal counsel at least annually to review the then-current state law relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws.
- R14. The chief of the Gonzales Police Department shall take all steps necessary to ensure that each BODYCAM camera's settings are adjusted by an appropriately trained senior officer to prevent all officers using the BODYCAM® cameras from deleting or in any way altering the BWC video recordings at any time before the recordings are downloaded to the system's secure server.
- R15. The chief of the Gonzales Police Department shall take all steps necessary to ensure that the Department's written body-worn camera policy specifically prohibits officers using the BODYCAM cameras from removing the flash memory card from the camera at any time before the recordings are downloaded to the system's secure server.
- R16. The chief of the King City Police Department shall meet with the department's legal counsel as soon as the meeting can be arranged to review the legal sufficiency of the department's existing body-worn camera policy and to revise the policy to include, at a minimum, the "best practices" set forth in California Penal Code 832.18.
- R17. The chief of the King City Police Department shall meet with the department's legal counsel at least annually to review the then-current state law relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws.
- R18. The chief of the King City Police Department shall take all steps necessary to ensure that each BODYCAM camera's settings are adjusted by an appropriately trained senior officer to prevent all officers using the BODYCAM cameras from deleting or in any way altering video recordings at any time before the recordings are downloaded to the system's secure server.
- R19. The chief of the King City Police Department shall take all steps necessary to ensure that the Department's written body-worn camera policy specifically prohibits officers using the BODYCAM cameras from removing the flash memory

card from the camera at any time before the recordings are downloaded to the system's secure server.

- R20. As part of the Marina Police Department's next annual budget request (or before) the Department shall apply to the Marina City Council for funds sufficient to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.
- R21. As part of the Marina Police Department's next annual budget allocation (or before) the Marina City Council shall provide funds sufficient to enable the Police Department to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.
- R22. The Marina Police Department shall adopt a written body-worn camera policy, which at a minimum includes the "best practices" set forth in California Penal Code 832.18.
- R23. The chief of the Marina Police Department shall meet with the department's legal counsel to review the legal sufficiency of the department's proposed body-worn camera policy before it is adopted by the department.
- R24. The chief of the Marina Police Department shall meet with the department's legal counsel at least annually to review the then-current state laws relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws
- R25. The City of Monterey Police Department shall adopt a written body-worn camera policy, which at a minimum includes the "best practices" set forth in California Penal Code 832.18.
- R26. The chief of the City of Monterey Police Department shall meet with the department's legal counsel to review the legal sufficiency of the department's proposed body-worn camera policy before it is adopted by the department.
- R27. The chief of the City of Monterey Police Department shall meet with the department's legal counsel at least annually to review the then-current state laws

relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws

- R28. As part of the Sheriff's Department's next annual budget request (or before) the Sheriff's Department shall apply to the County Board of Supervisors for funds sufficient to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.
- R29. As part of the Sheriff's next annual budget allocation (or before) the County Board of Supervisors shall provide funds sufficient to enable the Sheriff's Department to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.
- R30. The Sheriff's Department shall adopt a written body-worn camera policy, which at a minimum includes the "best practices" set forth in California Penal Code 832.18.
- R31. The Sheriff of Monterey County shall meet with the department's legal counsel to review the legal sufficiency of the department's proposed body-worn camera policy before it is adopted by the department.
- R32. The Sheriff shall meet with the department's legal counsel at least annually to review the then-current state laws relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws.
- R33. The chief of the Airport Police Department shall meet with the department's legal counsel as soon as the meeting can be arranged to review the legal sufficiency of the department's existing body-worn camera policy, to revise the policy to include, at a minimum, the "best practices" of set forth in California Penal Code 832.18, and to convert the policy to written form.
- R34. The chief of the Airport Police Department shall meet with the department's legal counsel at least annually to review the state law relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws.

- R35. As part of the Pacific Grove Police Department's next annual budget request (or before) the Department shall apply to the Pacific Grove City Council for funds sufficient to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.
- R36. As part of the Pacific Grove Police Department's next annual budget allocation (or before) the City Council shall provide funds sufficient to enable the Police Department to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.
- R37. The Pacific Grove Police Department shall adopt a written body-worn camera policy, which at a minimum includes the "best practices" set forth in California Penal Code 832.18.
- R38. The chief of the Pacific Grove Police Department shall meet with the department's legal counsel to review the legal sufficiency of the department's proposed body-worn camera policy before it is adopted by the department.
- R39. The chief of the Pacific Grove Police Department shall meet with the department's legal counsel at least annually to review the then-current state laws relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws.
- R40. The chief of the Salinas Police Department shall meet with the department's legal counsel as soon as the meeting can be arranged to review the legal sufficiency of the department's existing body-worn camera policy and to revise the policy to include, at a minimum, the "best practices" set forth in California Penal Code 832.18.
- R41. The chief of the Salinas Police Department shall meet with the department's legal counsel at least annually to review the then current state law relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws.
- R42. As part of the Sand City Police Department's next annual budget request (or before) the Department shall apply to the Sand City City Council for funds

sufficient to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.

- R43. As part of the Sand City Police Department's next annual budget allocation (or before) the Sand City City Council shall provide funds sufficient to enable the Police Department to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.
- R44. The Sand City Police Department shall adopt a written body-worn camera policy, which at a minimum includes the "best practices" set forth in California Penal Code 832.18.
- R45. The chief of the Sand City Police Department shall meet with the department's legal counsel to review the legal sufficiency of the department's proposed body-worn camera policy before it is adopted by the department.
- R46. The chief of the Sand City Police Department shall meet with the department's legal counsel at least annually to review the then current state laws relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws.
- R47. As part of the Seaside Police Department's next annual budget request (or before) the Department shall apply to the Seaside City Council for funds sufficient to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.
- R48. As part of the Seaside Police Department's next annual budget allocation (or before) the Seaside City Council shall provide funds sufficient to enable the Police Department to purchase body-worn cameras of the department's choosing for each officer and for a secure data storage system with adequate capacity to store the data recorded by those cameras.
- R49. The Seaside Police Department shall adopt a written body-worn camera policy, which at a minimum includes the "best practices" set forth in California Penal Code 832.18.

- R50. The chief of the Seaside Police Department shall meet with the department's legal counsel to review the legal sufficiency of the department's proposed body-worn camera policy before it is adopted by the department.
- R51. The chief of the Seaside Police Department shall meet with the department's legal counsel at least annually to review the then-current state laws relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws.
- R52. The chief of the Soledad Police Department shall meet with the department's legal counsel as soon as the meeting can be arranged to review the legal sufficiency of the department's existing body-worn camera policy and to revise the policy to include, at a minimum, the "best practices" of set forth in California Penal Code 832.18.
- R53. The chief of the Soledad Police Department shall meet with the department's legal counsel at least annually to review the then-current state law relating to the use of body-worn cameras and the storage of their recordings, and to revise department policy if necessary to comply with such laws.
- R54. The chief of the Soledad Police Department shall take all steps necessary to ensure that each BODYCAM camera's settings are adjusted by an appropriately trained senior officer to prevent all officers using the BODYCAM cameras from deleting or in any way altering video recordings at any time before the recordings are downloaded to the system's secure server.
- R55. The chief of the Soledad Police Department shall takes all steps necessary to ensure that the Department's written body-worn camera policy specifically prohibits officers using the BODYCAM cameras from removing the flash memory card from the camera at any time before the recordings are downloaded to the system's secure server.
- R56. The chief of the Soledad police department, the Soledad City Council and the Soledad City Manager shall designate as a priority matter the proper completion of the BWC video storage system so that the existing BWCs can be put into daily use by the Soledad police officers on or before August 15, 2016.

REQUIRED RESPONSES

Pursuant to Penal Code Section 933.05, the Civil Grand Jury requests a response as indicated below from the following law enforcement officials and governing bodies:

[Note: Where a hyphen appears between two Findings (F) or two Recommendations (R) you are to respond to the complete indicated range of Findings or Recommendations.]

1. Carmel-by-the-Sea Police Chief
Findings: F1- F6, F11
Recommendations: R1-R5

2. Carmel-by-the-Sea City Council
Findings: F1- F6, F11
Recommendations: R1-R5

3. Del Rey Oaks Police Chief
Findings: F1 - F6, F12
Recommendations: R6-R9

4. Del Rey Oaks City Council
Findings: F1- F6, F12
Recommendations: R6-R9

5. Greenfield Police Chief
Findings: F5, F13, F14
Recommendations: R10, R11

6. Greenfield City Council
Findings: F5, F13, F14
Recommendations: R10, R11

7. Gonzales Police Department
Findings: F5, F8-F10, F15- F17
Recommendations: R12-R15

8. Gonzales City Council
Findings: F5, F8-F10, F15-F17
Recommendations: R12-R15

9. King City Police Chief
Findings: F5, F8-F10, F18-F20
Recommendations: R16-R19

10. King City City Council
Findings: F5, F8-F10, F18-R20,
Recommendations: R16-R19

11. Marina Police Chief
Findings: F1 - F6, F21
Recommendations: R20-R24

12. Marina City Council
Findings: F1 - F6, F21
Recommendations: R20-R24

13. City of Monterey Police Chief
Findings: F5, F22
Recommendations: R25-R27

14. City of Monterey City Council
Findings: F5, F22
Recommendations: R25-R27

15. Sheriff of Monterey County
Findings: F1 - F5, F7, F23
Recommendations: R28–R32

16. Monterey County Board of Supervisors
Findings: F1 – F5, F7, F23
Recommendations: R28-R32

17. Monterey Regional Airport District Police Chief
Findings: F5, F24-F25
Recommendations: R33, R34

18. Monterey Regional Airport District
Findings: F1 - F5, F24-F25
Recommendations: R33, R34

19. Pacific Grove Police Chief
Findings: F1 - F6, F26
Recommendations: R35- R39

20. Pacific Grove City Council
Findings: F1 - F6, F26
Recommendations: R35-R39

21. Salinas Police Chief
Findings: F1 - F5, F27, F28
Recommendations: R40, R41

22. Salinas City Council
Findings: F5, F27, F28
Recommendations: R40, R41

23. Sand City Police Chief
Findings: F1 - F6, F29
Recommendations: R42-R46

24. Sand City City Council
Findings: F1 - F6, F29
Recommendations: R42-R46

25. Seaside Police Chief
Findings: F1 - F6, F30
Recommendations: R47-R51

26. Seaside City Council
Findings: F1 - F6, F30
Recommendations: R47-R51

27. Soledad Police Chief
Findings: F5, F8-F10, F31-F33
Recommendations: R52-R56

28. Soledad City Council
Findings: F5, F8-F10, F31-F33
Recommendations: R52-R56

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APPENDIX 1

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Portable Audio/Video Recorders

450.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment.

This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes or to mobile audio/video recordings (see the Investigation and Prosecution and Mobile Audio/Video policies).

450.2 POLICY

The Greenfield Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

450.3 MEMBER PRIVACY EXPECTATION

All recordings made by members acting in their official capacity shall remain the property of the Department regardless of whether those recordings were made with department-issued or personally owned recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

450.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever possible.

When using a portable recorder, the assigned member shall record his/her name, GPD identification number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.

Portable Audio/Video Recorders

Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members should include the reason for deactivation.

450.5 ACTIVATION OF THE PORTABLE RECORDER

This policy is not intended to describe every possible situation in which the portable recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The portable recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify Monterey County Department of Emergency Communications
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as practicable.

450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation (Penal Code § 633).

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

450.5.2 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Portable Audio/Video Recorders

450.5.3 EXPLOSIVE DEVICE

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

450.6 PROHIBITED USE OF PORTABLE RECORDERS

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

450.7 RETENTION OF RECORDINGS

Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and transfer the file in accordance with current procedure for storing digital files and document the existence of the recording in the related case report. Transfers should occur at the end of the member's shift, or any time the storage capacity is nearing its limit.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

450.7.1 RETENTION REQUIREMENTS

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days.

450.8 REVIEW OF RECORDINGS

When preparing written reports, members should review their recordings as a resource. However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Portable Audio/Video Recorders

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Release and Security Policy.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Release and Security Policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.



APPENDIX 3

Assembly Bill No. 69

CHAPTER 461

An act to add Section 832.18 to the Penal Code, relating to peace officers.

[Approved by Governor October 03, 2015. Filed with Secretary of State
October 03, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 69, Rodriguez. Peace officers: body-worn cameras.

Existing law makes it a crime to intentionally record a confidential communication without the consent of all parties to the communication. Existing law exempts specified peace officers from that provision if they are acting within the scope of their authority.

This bill would require law enforcement agencies to consider specified best practices when establishing policies and procedures for downloading and storing data from body-worn cameras, including, among other things, prohibiting the unauthorized use, duplication, or distribution of the data, and establishing storage periods for evidentiary and nonevidentiary data, as defined.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 832.18 is added to the Penal Code, to read:

832.18. (a) It is the intent of the Legislature to establish policies and procedures to address issues related to the downloading and storage data recorded by a body-worn camera worn by a peace officer. These policies and procedures shall be based on best practices.

(b) When establishing policies and procedures for the implementation and operation of a body-worn camera system, law enforcement agencies, departments, or entities shall consider the following best practices regarding the downloading and storage of body-worn camera data:

(1) Designate the person responsible for downloading the recorded data from the body-worn camera. If the storage system does not have automatic downloading capability, the officer's supervisor should take immediate physical custody of the camera and should be responsible for downloading the data in the case of an incident involving the use of force by an officer, an officer-involved shooting, or other serious incident.

(2) Establish when data should be downloaded to ensure the data is entered into the system in a timely manner, the cameras are properly maintained and ready for the next use, and for purposes of tagging and categorizing the data.

(3) Establish specific measures to prevent data tampering, deleting, and copying, including prohibiting the unauthorized use, duplication, or distribution of body-worn camera data.

(4) Categorize and tag body-worn camera video at the time the data is downloaded and classified according to the type of event or incident captured in the data.

(5) Specifically state the length of time that recorded data is to be stored.

(A) Unless subparagraph (B) or (C) applies, nonevidentiary data including video and audio recorded by a body-worn camera should be retained for a minimum of 60 days, after which it may be erased, destroyed, or recycled. An agency may keep data for more than 60 days to have it available in case of a citizen complaint and to preserve transparency.

(B) Evidentiary data including video and audio recorded by a body-worn camera under this section should be retained for a minimum of two years under any of the following circumstances:

(i) The recording is of an incident involving the use of force by a peace officer or an officer-involved shooting.

(ii) The recording is of an incident that leads to the detention or arrest of an individual.

(iii) The recording is relevant to a formal or informal complaint against a law enforcement officer or a law enforcement agency.

(C) If evidence that may be relevant to a criminal prosecution is obtained from a recording made by a body-worn camera under this section, the law enforcement agency should retain the recording for any time in addition to that specified in paragraphs (A) and (B), and in the same manner as is required by law for other evidence that may be relevant to a criminal prosecution.

(D) In determining a retention schedule, the agency should work with its legal counsel to determine a retention schedule to ensure that storage policies and practices are in compliance with all relevant laws and adequately preserve evidentiary chains of custody.

(E) Records or logs of access and deletion of data from body-worn cameras should be retained permanently.

(6) State where the body-worn camera data will be stored, including, for example, an in-house server which is managed internally, or an online cloud database which is managed by a third-party vendor.

(7) If using a third-party vendor to manage the data storage system, the following factors should be considered to protect the security and integrity of the data:

(A) Using an experienced and reputable third-party vendor.

(B) Entering into contracts that govern the vendor relationship and protect the agency's data.

(C) Using a system that has a built-in audit trail to prevent data tampering and unauthorized access.

(D) Using a system that has a reliable method for automatically backing up data for storage.

(E) Consulting with internal legal counsel to ensure the method of data storage meets legal requirements for chain-of-custody concerns.

(F) Using a system that includes technical assistance capabilities.

(8) Require that all recorded data from body-worn cameras are property of their respective law enforcement agency and shall not be accessed or released for any unauthorized purpose, explicitly prohibit agency personnel from accessing recorded data for personal use and from uploading recorded data onto public and social media Internet Web sites, and include sanctions for violations of this prohibition.

(c) (1) For purposes of this section, "evidentiary data" refers to data of an incident or encounter that could prove useful for investigative purposes, including, but not limited to, a crime, an arrest or citation, a search, a use of force incident, or a confrontational encounter with a member of the public. The retention period for evidentiary data are subject to state evidentiary laws.

(2) For purposes of this section, "nonevidentiary data" refers to data that does not necessarily have value to aid in an investigation or prosecution, such as data of an incident or encounter that does not lead to an arrest or citation, or data of general activities the officer might perform while on duty.

(d) Nothing in this section shall be interpreted to limit the public's right to access recorded data under the

California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

