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Work Session XII: Will Body Cameras Save the World as We Know It?

Truth, Lies & Body Cams: A Primer on the Substantial Impacts of Police Body-Worn Cameras on Community Policing, Prosecutions & Personal Privacy Rights

by

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I. INTRODUCTION

On December 1, 2014, in the wake of widespread protests and racial unrest following the deaths of Michael Brown in Ferguson, Missouri, Tamir Rice in Cleveland, Ohio, and Eric Garner in Staten Island, New York, President Obama announced a $263 million effort to quiet simmering tension between police departments and communities throughout the country.[1] A key component of the plan included $75 million for the purchase and deployment of 50,000 police body-worn cameras (BWCs).

The President followed this announcement by establishing the Task Force on 21st Century Policing ("Task Force"), which was given 90 days to "examine how to foster strong, collaborative relationships between local law enforcement and the communities they protect and to make recommendations to the President on how policing practices can promote effective crime reduction while building public trust."[2] Related to BWCs, the Task Force noted that this new technology had the capacity to "improve evidence collection . . . strengthen officer performance and accountability . . . enhance agency transparency . . . and resolve [officer] complaints." Citing the complexities of BWC deployment related to technology costs, policy implementation, data practices and personal privacy concerns, however, the Task Force cautioned that "[w]hile technology is crucial to law enforcement, it is never a panacea."

Current federal policy (and the dollars behind it), coupled with the potential for BWCs to improve community relations with police, signifies that body cameras are here to stay, notwithstanding the growing pains associated with deploying this new technology. Well before recent events, several Minnesota police departments were testing and deploying body cameras. Burnsville was the first city to deploy cameras in 2010. Duluth now has over 100 officers equipped with BWCs, making it the single largest user of body cameras in the state. Minneapolis – which employs the largest police force in Minnesota – has been field testing chest-worn and glasses-mounted cameras for months.

Officers around the country, including Duluth, report positive experiences using this new technology, including safer interactions with the public and faster resolution of police complaints. However, as more departments test and deploy

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[1] Trymaine Lee, Zachary Roth and Jane C. Timm, *Obama to announce $75 million for body cameras* (December 1, 2014, 8:06 AM, updated December 1, 2014, 8:13 PM), http://www.msnbc.com/msnbc/obama-announce-75-million-body-cameras.

[2] President's Task Force on 21st Century Policing. 2015. Interim Report of the President's Task Force on 21st Century Policing. Washington, DC: Office of Community Oriented Policing Services, http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.

BWCs, cities increasingly find themselves in uncharted territory with respect to rising technology and data retention costs, handling data practices requests, implementing new policies and procedures, respecting personal privacy concerns, and using BWC videos and audio at trial. Minneapolis, for example, initially hoped to equip all officers with BWCs by the end of 2015.[3] Recently, however, city officials expressed concerns about their ability to handle the large spike in anticipated public data requests if and when Minneapolis formally deploys BWCs, signaling that final deployment may well be delayed until Minnesota legislative and policy leaders find common ground with respect to body-cam-related amendments to the Minnesota Data Practices Act.[4]

The purpose of this presentation is to introduce this rapidly emerging technology and highlight the challenges and considerations law enforcement officers and attorneys face in gathering and presenting body-cam videos at trial. Although we've all been told "not to believe everything you see," the public is increasingly demanding early access to BWC footage – followed by quick judgments lacking the background information necessary to make fully informed decisions regarding the reasonableness of police conduct. Using Duluth's experience with BWCs in both the field and the courtroom, along with sample body-camera videos from around the country, this presentation seeks to (1) dispel the popular notion that body cameras tell the whole story regarding the incidents they depict; and (2) highlight the need for officers and attorneys to be ready to handle video gaps, deficiencies and distortions at trial.

II. THE CASE FOR BWCs – WHY POLICE DEPARTMENTS AROUND THE COUNTRY ARE INCREASINGLY TURNING TO BODY CAMERAS

"Whenever you do a thing, act as if all the world were watching."

–Thomas Jefferson

The import of Jefferson's famous advice is easily understood because it rests on a commonly noted attribute of human behavior – people act better on camera (in other words, they behave better when they think others are watching). Indeed, in one study, just sticking a picture of a pair of eyes on an "honesty box" in a university break room resulted in people unwittingly contributing nearly three

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[3] Trisha Volpe, *Minneapolis police see promise in pilot project to use body cameras* (December 10, 2014), http://www.mprnews.org/story/2014/12/10/mpls-police-body-camera-pilot.

[4] Erin Golden, *Minneapolis not prepared for sharing body camera footage, officials say* (July 30, 2015, 9:50 AM), http://www.startribune.com/minneapolis-not-prepared-for-sharing-body-camera-footage-officials-say/319638811/.

times as much for their coffee.[5] Lawyers are acutely aware of this phenomenon. What attorney has not seen another lawyer or witness transform from an ogre into the most charming person in the world following arrival of the judge or jury?

It is perhaps this trait more than any other that is leading police departments across the country to test and equip officers with body cameras. The oft-cited 2012 study of the Rialto (California) Police Department found a 60 percent reduction in use-of-force incidents and an 88 percent reduction in citizen complaints following camera deployment.[6] A 2012 pilot program in Mesa, Arizona, reported similar results. Over the course of one year, 50 officers were assigned cameras, and another 50 in a control group were not. The two groups were similar in age and race. During the first eight months of deployment, officers without cameras generated almost three times as many citizen complaints. By contrast, officers wearing cameras generated 40 percent fewer total complaints – and 75 percent less use-of-force complaints.[7]

Police chiefs overseeing BWC deployments across the country consistently report that citizen complaints drop significantly following body-cam deployment. These chiefs encourage officers to notify citizens immediately that their interactions with the public are being recorded. As one chief put it, "everyone is on their best behavior when the cameras are running. The officers, the public – everyone."[8]

Not everyone is convinced of the efficacy of body cameras. One author concluded that "[t]here is little evidence regarding most of the perceived benefits and drawbacks of the technology . . . little is known about . . . whether the technology increases trust, legitimacy, and transparency of the police."[9] The

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[5] Bateson et al., Cues of being watched enhance cooperation in real-world setting, *Biol. Lett.* (2006) 2, 412-414, http://rsbl.royalsocietypublishing.org/content/roybiolett/2/3/412.full.pdf.

[6] Miller, Lindsay, Jessica Tolicver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* at pp. 5-6, Washington, DC: Office of Community Oriented Policing Services (available online at: http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf).

[7] *Id.* at p. 6.

[8] *Id.* at p. 5.

[9] White, Michael D. 2014. *Police Officer Body-Worn Cameras: Assessing the Evidence* at p. 35, Washington, D.C.: Office of Community Oriented Policing Services (available online at:

author concluded that "the privacy implications of body-worn cameras, for both citizens and police officers, are not clearly understood[; d]epartments considering [BWCs] should proceed cautiously."

Nevertheless, the bulk of the research and anecdotal experience suggests that body cameras hold great potential for improving community policing and public trust. However, Duluth and other departments around the country are quickly finding that video footage captured by BWCs can be as flawed and incomplete as it is visceral and striking. In the absence of proper context or explanation at trial, body cams can leave jurors with a very incomplete – if not outright false or inaccurate – understanding of the events they seek to depict.

II. FROM THE STREETS TO THE STAND - BODY CAMS TAKE CENTER STAGE

Perhaps more dramatic than the impact of body cameras on community policing is the potential for body cameras to radically change courtroom dynamics, case presentation, and bottom-line liability for cities.

A. The Times They Are a Changin'

In recent years, use of technology in the courtroom has grown at a rapid pace. This has been fueled by state and federal judicial efforts to implement full electronic case filing and management. Accompanying this push, courtrooms are adding the tools necessary to facilitate electronic case presentation. These are not just "feel good" or environmentally friendly changes. Tech evolution in the courtroom is necessary simply to keep pace with the manner in which most Americans obtain – and expect to receive – their news and information every day.

Fill a jury box in 2015, and it is a safe bet that most of the jurors – of all ages and from the lowest wage earner to the top – are very familiar with using iPhones, iPads or other electronic devices to communicate with friends and family, watch their favorite legal dramas, upload pictures and videos of grandkids, and so on. When these jurors arrive at the courthouse to satisfy their civic duty, woe to the lawyer who fails to understand or satisfy this expectation for technically seamless presentation of evidence and exhibits. Jurors are now groomed to anticipate electronic case presentation. They are likely to have little patience for attorneys that do not satisfy this expectation, and they will almost certainly trust video they see with their own eyes more than any witness who takes the stand.

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https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf.

B. Whether We Like it or Not, It is Now "All About the Video:" Preparing to Handle Video Deficiencies and Distortions at Trial

Enter body cams. Most prosecutors – and civil attorneys defending Section 1983 or excessive-use-of-force claims – will tell you that jurors have historically given officers the benefit of the doubt except in the most serious cases of police misconduct. Now – it's all about the video. Everyone wants to see the video up front and decide for themselves whether a defendant is guilty or an officer crossed the line. The danger with this new evidence is that it is as persuasive and striking as it is incomplete. A video can never capture the totality of the circumstances leading up to or surrounding an event, much less an officer's emotions, instincts or perceptions during tense or critical moments.

More to the point of this presentation, current video technology contains distance and dimensional distortions and inaccuracies that can be confusing to a jury. This presentation uses sample videos from around the country to illustrate the often incomplete story relayed by body-camera footage, including a cautionary tale from a St. Louis County prosecution in which a video distortion (the "fisheye" or barrel distortion effect caused by wide-angle lenses) resulted in an acquittal – notwithstanding video from two different camera angles less than 10 feet away and eyewitness testimony from several officers.

C. We Get Paid Overtime, Right?: BWC Pre-Trial Challenges and Considerations

This presentation further highlights novel challenges law enforcement, prosecutors, defense counsel, city and judicial support staff around the country are facing with respect to (a) video categorization, retention and retrieval; (b) drafting of police reports, and (c) editing of video exhibits for trial.

For example, with respect to classification and retention of electronic video data, in one Duluth domestic assault case, footage of a direct admission of guilt was lost due to incorrect cataloguing and classification of the video at the time of upload, resulting in deletion – before trial – of the video from EVIDENCE.com (the cloud-based data storage and retrieval website used in conjunction with the Taser AXON body camera). Related to the same prosecution, separate BWC footage captured from the vantage point of a key eyewitness was excluded before trial as unnecessarily "cumulative."

With respect to police reports, law enforcement and prosecutors are currently reviewing best practices with respect to the *timing* for the drafting of police reports in the wake of body-cam deployment. In other words, should officers go back and review their body-cam videos before writing their reports, during the drafting process, or after? If officers write their reports first and then look back at the video, should supplemental reports be drafted to explain any

differences between officers' initial recollections and the story subsequently told by unflinching body-cam footage?

Regarding traditional chain-of-custody considerations, as trials approach, officers, prosecutors, defense counsel and support staff frequently need to access and review body-cam footage to prepare for trial testimony and the creation of exhibits. EVIDENCE.com creates an electronic log for every action.

However, while EVIDENCE.com provides an effective cloud-based system for storage of video data, the website does not yet allow for efficient exhibit preparation in anticipation of trial. For example, currently, if attorneys wish to cut a portion of a video depicting a defendant discussing a prejudicial (and inadmissible) prior stint in jail, EVIDENCE.com would allow for blackout or blurring of the video and audio, but not splicing of frames (meaning the judge and jury would be left to stare and wonder at a blank and silent screen until conclusion of the inadmissible portion of the video). Other applications, such as Microsoft Movie Maker, iMovie or even Garage Band can be used to accomplish more targeted editing of videos before trial. However, attorneys must then spend more time (an extraordinarily precious commodity given the current volume of criminal cases pending before our courts) reviewing and editing exhibits, prepping added explanatory testimony regarding chain of custody and, if necessary, obtaining stipulations from opposing counsel or rulings on admissibility before trial.

IV. DATA PRACTICES – THE PRIVACY FIRESTORM IS HERE

Perhaps the most serious and pressing obstacle to wider BWC-deployment in Minnesota and around the country is the question of whether and to what extent – if any – state legislatures will craft protections limiting public access to body cam footage.

In Minnesota, for example, a sharp battle continues between advocates on both sides of this issue: (1) those who say that the Minnesota Government Data Practices Act ("MGDPA") already properly classifies body-cam footage as public data with certain exceptions (undercover officers, confidential informants, etc.); versus (2) those who argue that BWC footage should be generally withheld except for courtroom use or direct requests from subjects of the data in order to (a) protect personal privacy rights and (b) limit public costs associated with responding to voluminous data practices requests.

It is unclear when – or if – this data practices battle will resolve. Thus far, in Minnesota, the legislature has declined to pass further guidance. No doubt in response to that reticence, Minneapolis has signaled that, under current law, it does not presently have the capacity to handle the volume of anticipated data practices requests if or when it fully deploys BWCs.

As just one example of Duluth's experience, a requestor named "Jah Love," writing from the address of "jahlove@riseup.net," requested "[a]ny and all Duluth Police Department body cam videos." Duluth has had roughly 100 cameras running since June of 2014. The financial and staff costs and burdens of satisfying such broad-reaching requests threaten to sink or discourage the commencement of BWC programs before they start. If legislatures do not provide some reasonable limitations on the classification of body-cam data, the debate over the potential for BWCs to improve community policing, transparency and public trust will be a moot discussion. Few if any departments will have the resources necessary to satisfy data practices requests, and other departments around the country have already terminated their programs as a result.[10]

V. BWC POLICIES & PROCEDURES

Implementation of appropriate policies and procedures in support of emerging BWC programs will be covered by this author's co-presenter at the conference. With reference to Duluth's experience, however, a copy of Duluth's Mobile Video Recorder (MVR) Policy is attached to illustrate the difficult balancing act between police operations, prosecution needs, defendants' rights to potentially exculpatory evidence, personal privacy rights and the rights of the public in general to access public data.

As just one example of the challenges of crafting an effective policy, many proponents of BWCs urge departments to keep cameras on at all times to maximize transparency and build trust in community policing. Public attorneys are also inclined to advise officers to err on the side of keeping cameras rolling to avoid later claims of spoliation or loss of *Brady* material.

As a practical matter, however, officers need to retain discretion to start and stop cameras for a variety of reasons. Most understand that personnel privacy, department security, and general professional police needs require that cameras stay off inside headquarters, during meetings, bathroom breaks, etc. There are other times when officers, in their discretion or as a mandatory matter of State law, need to turn off cameras, such as when they meet with undercover officers or interview child victims of assault. Accordingly, Duluth's policy goes to great lengths to provide guidance regarding instances in which cameras should be turned on or off while retaining an important degree of individual officer discretion. *See, e.g.*, attached DPD Mobile Video Recorder Policy at 418.5.1 - .3 (listing circumstances requiring activation of body cams, cessation of recording, and prohibited recording).

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[10] *Washington State police overwhelmed by public requests for dash- and body-cam footage*, Homeland Security News Wire (November 27, 2014), http://www.homelandsecuritynewswire.com/dr20141127-washington-state-police-overwhelmed-by-public-requests-for-dash-and-bodycam-footage.

Given the relative infancy of BWC use in the field, there is little statutory or common law guidance regarding "best practices" for body cam policies. Fortunately, the Department of Justice, the Bureau of Justice Assistance (BJA), police advocacy groups, and an increasing number of police departments around the country have generated policies or toolkits to help guide cities as BWC use grows. Links to several of these resources are provided below.

VI. CONCLUSION

Body cameras allow law enforcement, prosecutors, defense attorneys, and the public at large to wield an enormously powerful tool: the ability for every viewer, judge or juror to see with their own eyes what really happened (or what appears to have happened) during important past events. Jurors are heavily predisposed to trust and believe what they can see and hear for themselves – far more than testimony or evidence originating from adversarial corners. As BWC-deployment grows and evolves in the coming years, it will be crucial for members of the bar to familiarize themselves with this new technology in order to comfortably manage video evidence at trial – including the ability to explain to a jury not only what they *think* they see, but what they do *not* see as a result of the inherent limitations of this emerging technology.

VII. ADDITIONAL LINKS & RESOURCES

Reports and Research

- President's Task Force on 21st Century Policing. 2015. *Interim Report of the President's Task Force on 21st Century Policing*. Washington, DC: Office of Community Oriented Policing Services, http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.

- *A Primer on Body-Worn Cameras for Law Enforcement*, U.S. Dept. of Justice, Office of Justice Programs National Institute of Justice (Sept. 2012), https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf.

- *Body Worn Camera Toolkit*, Bureau of Justice Assistance (BJA), https://www.bja.gov/bwc/.

- White, Michael D. 2014. *Police Officer Body-Worn Cameras: Assessing the Evidence* at p. 35, Washington, D.C.: Office of Community Oriented Policing Services, https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf.

- Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* at pp. 5-6, Washington, DC: Office of Community Oriented Policing Services, http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf.

Sample Policies

- Duluth Police Department Mobile Video Recorder Policy 418 (attached).

Mobile Video Recorder Policy

418.1 PURPOSE AND SCOPE

The Duluth Police Department has equipped marked patrol cars and law enforcement operators with Mobile Video Recording (MVR) systems. The purpose of this policy is to provide law enforcement operators with guidelines for the use, management, access, storage, retrieval and retention of audio-visual media recorded by MVR systems.

418.1.1 DEFINITIONS

Definitions related to this policy include:

Activate - Any process that causes the MVR system to transmit or store audio-visual signals

Audio Recording - any media that captures and records audio signals

Mobile Video Recorder (MVR) - Any system that captures audio-visual signals that is capable of installation in a vehicle or worn by an LEO and that includes at minimum, a camera, microphone and recorder.

Law Enforcement Operator (LEO) - Primarily a licensed peace officer but on occasion may be a non-licensed representative of the Duluth Police Department who is authorized and assigned to operate MVR equipment.

MGDPA - The Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.

PODPA – The Peace Officer Discipline Procedures Act, Minnesota Statutes Section 626.89.

Property and Evidence Technician - Personnel certified or trained in receiving and storing evidence and property, maintaining property inventory reports with proper "chain of custody" notations and any and all actions associated with the property or evidence.

MVR Administrator – Typically a Sergeant or a designee, who assigns, tracks and maintains MVR equipment, oversees needed repairs or replacement equipment through the vendor, controls user rights and access, and acts as a liaison with the vendor.

MVR Technician - Personnel certified or trained in the operational use and repair of MVRs, duplicating methods, storage and retrieval methods and procedures, and who possess a working knowledge of video forensics and evidentiary procedures.

Recorded media – Audio-visual signals that are recorded or stored.

Smart Device - A smart device is a device that is digital, active, computer networked, is user reconfigurable and that can operate to some extent autonomously. Devices that fall into this category are smartphones, and tablets.

418.2 POLICY

It is the goal of the Duluth Police Department to use mobile video recording (MVR) technology to more effectively fulfill the department's mission and to ensure these systems are used securely,

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efficiently and in compliance with the law. The MVR is not intended to be used for the purpose of surveillance of officers or initiating disciplinary action against an officer.

418.3 MVR OPERATIONAL OBJECTIVES

The Duluth Police Department has adopted the use of Mobile Video Recorders to accomplish the following objectives:

A. To enhance LEO safety.

B. To document statements and events during the course of an incident.

C. To enhance the LEO's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/presentation.

D. To preserve visual and audio information for use in current and future investigations.

E. To provide a tool for self-critique and field evaluation during LEO training.

F. To enhance the public trust by preserving factual representations of LEO-citizen interactions in the form of recorded media.

G. To assist with the defense of civil actions against LEO's and the City of Duluth.

H. To assist with the training and evaluation fo officers.

418.4 LEO RESPONSIBILITIES

LEO safety shall be the primary consideration for the use and activation of the MVR system. LEOs that are issued a body-worn MVR will wear the MVR as part of their uniform. Inspection and general maintenance of MVR equipment shall be the responsibility of the LEO to whom the MVR is assigned. LEOs should periodically test the MVR system operation in accordance with manufacturer specifications and department operating procedures and training, as determined at the discretion of the Duluth Police Department. If a vehicle mounted MVR system is malfunctioning, the LEO shall as soon as reasonably possible, notify a supervisor who will determine whether the vehicle will remain in service. If the body worn MVR is malfunctioning the LEO shall as soon as reasonably possible notify a supervisor. If any MVR system is damaged or stolen, the LEO shall, as soon as reasonably possible, notify a supervisor.

At the end of each shift, the LEO will follow the established policies and procedures for documenting and retaining any recorded media.

The use of body-worn MVRs is optional while engaged in extra-duty employment. A LEO who chooses to wear an MVR while engaged in extra-duty employment is not required to activate the MVR for every contact made. However, such officer shall be expected to activate the MVR if a situation or incident occurs which would otherwise require activation, when safe to do so.

The body-worn MVR shall not be worn while LEOs are engaged in outside agency employment or non-duty employment.

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418.5 MVR OPERATING PROCEDURES

The MVR may be activated either automatically in the case of vehicle mounted MVR's or manually by the LEO.

418.5.1 REQUIRED ACTIVATION OF THE MVR

This policy is not intended to describe every possible situation in which the MVR system may be used, although there are many situations where its use is appropriate. A LEO may activate the system at any dispatched call, on view or contact in which its use is appropriate.

In some circumstances it is not possible to capture images of the incident due to conditions or the location of the camera. However, even when the incident may be outside of the video range, the LEO is encouraged to activate the MVR to capture the audio portion of the incident.

An officer shall activate the MVR system, if practical and without compromising the safety of the officer or the public, in the following circumstances:

- traffic stops (to include, but not limited to traffic violations, stranded motorist assistance and all crime interdiction stops);
- priority responses;
- vehicle pursuits;
- arrests;
- vehicle searches;
- physical or verbal confrontations;
- use of force;
- prisoner transports;
- crimes in progress;
- taking a statement or information from a suspect or witness;
- when ordered by a supervisor for proper purposes; or
- any situation or incident that the officer, through training and experience, believes should be audibly and/or visually preserved.

Portable MVR equipment shall be activated in these circumstances even if the in-squad system is activated, prc

418.5.2 CESSATION OF RECORDING

Once activated, the MVR system should remain on until the incident has concluded unless:

(a) the incident or event is of such duration that the MVR is deactivated to conserve power or storage capacity;

(b) the officer does not reasonably believe that deactivation will result in the loss of critical evidence;

(c) deactivation is reasonable and necessary to protect the safety of the officer or others; or

(d) deactivation is approved or ordered by a supervisor.

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(e) deactivation is necessary to protect the identity of persons or other data entitled to protection under the M

(f) upon request by the victim of a crime, provided that it does not conflict with (b) or (c) above.

For purposes of this section, conclusion of an incident has occurred when all arrests have been made, arrestees have been transported and witnesses and victims have been interviewed. Recording may be temporarily paused to exchange information with other LEOs. The intention to pause and resume the recording will be noted by the LEO either verbally on the MVR or in a written notation. Recording may cease during non-enforcement activities such as waiting for a tow truck or a family member to arrive, protecting accident scenes or in other non-enforcement situations.

418.5.3 PROHIBITED RECORDING

An MVR shall not be activated with regard to interactions solely among other employees.

The MVR shall not be used to record non-work related activity.

The LEO shall not use any external device to record media that has been cpatured by the MVR, nor shall they a

The LEO will cease recording once they have entered the sally port at the St. Louis County Jail.

418.5.4 SUPERVISOR RESPONSIBILITIES

Supervisors should determine if vehicles with non-functioning MVR systems should be placed into service. If these vehicles are placed into service, the appropriate documentation should be made. The MVR administrator is to be notified in writing of the suspected cause of equipment failure or recommendations for corrective action.

At reasonable intervals, supervisors should validate that:

(a) MVR policies and procedures are followed.

(b) Logs reflect the proper chain of custody, including:

1. The tracking number of the MVR system media.
2. The date it was issued.
3. The LEOor the vehicle to which it was issued.
4. The date it was submitted.
5. LEO submitting the media.
6. Holds for evidence indication and tagging as required.

(c) It is recommended that the operation of MVR systems by new employees is assessed and reviewed no less than biweekly or until the new employee demonstrates a working knowledge of the MVR system and the applicable policies and procedures.

When an incident arises that requires the immediate retrieval of the recorded media (e.g., serious crime scenes, peace LEO-involved shootings, department-involved collisions), a supervisor should respond to the scene and ensure recorded media is secured in accordance with department

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policy. The media shall be processed and retained in accordance with current procedures for recorded media.

418.6 REVIEW OF RECORDED MEDIA

All recorded media, recorded images and audio recordings are the property of the agency and is government data subject to the provisions of the MGDPA. Dissemination outside of the agency is strictly prohibited except to the extent permitted or required under the MGDPA, PODPA or other applicable law.

Access to MVR data will be determined in a manner consistent with the MGDPA, PODPA or other applicable law. When access to MVR data is authorized by applicable law, the Duluth Police Department will also provide to the person accessing the data a copy of the Department's Video and Audio Advisory (Appendix A). The Department's Video and Audio Advisory is not required to be given to partner agencies.

To prevent damage to, or alteration of, the original recorded media; it shall not be copied, viewed or otherwise inserted into any device not approved by the department MVR technician or forensic media staff. When reasonably possible a copy of the original media shall be used for viewing (unless otherwise directed by the courts) to preserve the original media.

Recorded media may be reviewed in any of the following situations.

(a) For use when preparing reports or statements;

(b) By a supervisor investigating an official complaint;

(c) By a supervisor to assess LEO performance;

(d) To assess proper functioning of MVR systems;

(e) By department investigators assigned to a related criminal investigation, or after approval of a supervisor, for official investigations;

(f) By an LEO who is captured on or referenced in the video or audio data and reviews and uses the data for any purpose relating to his/her employment;

(g) By court personnel through proper process;

(h) Recorded mediamay be shown for staff or public safety training purposes. If an involved LEO objects to showing a recording, his/her objection will be submitted to the staff to determine if the training value outweighs the LEO's objection.

(i) An officer is entitled to access audio and video data: derived from MVR equipment issued to him/her; in which his/her voice or image appears; when reasonable and necessary for the officer to perform the essential functions of his/her job; or to defend against allegations of substandard performance or misconduct.

(j) An officer shall not make a copy of any audio or video data without the prior approval of a supervisor.

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(k) Supervisors shall not access or review audio or video data involving an employee under their supervision for the purpose of surveillance of the employee or initiating disciplinary action against the employee. However, data collected by the MVR may be used as evidence relating to a complaint of misconduct made against an officer.

(l) The Department shall restrict by password protection access to all audio and video data and shall maintain an electronic record of the date, time and person with regard to each access to data.

Employees desiring to view any previously uploaded or archived MVR data should submit a request in writing to the Watch Commander. Approved requests should be forwarded to the MVR technician for processing.

In no event shall any MVR data be used or shown for the purpose of ridiculing or embarrassing any employee.

See Attachment: Attachment A.pdf

418.7 DOCUMENTING MVR USE

If any incident is captured with the video or audio system, the existence of that recorded media shall be documented in the LEO's report. If a citation is issued, the LEO shall make a notation on the records copy of the citation indicating that the incident was recorded.

418.8 RECORDED MEDIA STORAGE AND RETENTION

Once submitted for storage all recorded media will be labeled and stored in a designated secure area. All recorded media that is not booked in as evidence will be retained in compliance with our evidence and property retention policies 801 and 802. Recorded media that is not evidence will be retained for 60 days.

The LEO, MVR Technician or MVR Administrator may prevent automated deletion by changing the category of the media at any time prior to deletion or within one week after the deletion date. Any media related to an internal investigation of a LEO or from an incident in which a signed complaint is made regarding a LEO, shall be retained for a minimum of six years. Destruction of data in accordance with this policy does not alter the duty to defend and indemnify set forth in Minnesota Statutes Section 466.07.

418.9 SYSTEM OPERATIONAL STANDARDS

(a) MVR system vehicle installations should be based on LEO safety requirements, Duluth Police Department discretion and vehicle and device manufacturer recommendations.

(b) The MVR system should be configured to minimally record no more than 30 seconds prior to an activation.

(c) The MVR system should not be configured to record audio data occurring prior to activation.

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(d) LEOs using digital transmitters that are individually synchronized to their individual MVR should activate both audio and video recordings when responding in a support capacity in order to obtain additional perspectives of the incident scene.

(e) With the exception of law enforcement radios or other emergency equipment other electronic devices should not be used within the law enforcement vehicle in order to intentionally interfere with the capability of the MVR system to record audio data.

(f) LEOs shall not intentionally erase, alter, reuse, modify or tamper with MVR data. Only a supervisor, MVR administrator, MVR technician or other approved designee may erase and reissue previously recorded media in accordance with this policy.

418.10 PROPERTY AND EVIDENCE TECHNICIAN RESPONSIBILITIES

The Property and Evidence Technician is responsible for:

(a) Retrieving, storing, erasing and duplicating of all recorded media.

(b) Collecting all completed media for oversight. Once collected the Property and Evidence Technician:

1. Ensures it is stored in a secured location with authorized controlled access.
2. Makes appropriate entries in the chain of custody log.

(c) Erasing of media:

1. Pursuant to a court order.
2. In accordance with established records retention policies.

(d) Ensuring that an adequate supply of recording media is available.

(e) Managing the long-term storage of media that has been deemed to be of evidentiary value in accordance with the department evidence storage protocols and the records retention schedule.

418.11 TRAINING

Users of the MVR systems and supervisors shall successfully complete an approved course of instruction prior to being deployed with MVR systems in operational settings.

418.12 CLASSIFICATION OF MVR DATA

Nothing in this policy shall be interpreted as changing the underlying classification of data collected by the MVR systems. The classification of data collected by the MVR systems will need to be determined on a case by case basis. The factors that will determine the classification include the specific facts and circumstances surrounding the data, the application of the relevant policies and procedures as well as application and interpretation of the MGDPA and other laws.

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418.13 USE OF PERSONAL DIGITAL RECORDING DEVICES

The Duluth Police Department prefers that employees exclusively use their department-issued digital recording devices to record or collect evidence. However, the Department recognizes that, in rare or unforseen situations, it may be necessary to use your personal digital recording equipment to record orcollect evidence. If you use a personal digital recording device, you must upload that media into SHIELD or save to a DVD and place into evidence.

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