



The

Risk Connection

Spring 2015

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The Risk Connection is a publication of Local Government Risk Management Services, Inc., a service organization of the Association County Commissioners of Georgia and the Georgia Municipal Association, whose purpose is to educate and inform cities and counties about loss control methods and risk management.

The opinions expressed in this publication are those of the authors and are not necessarily those of the ACCG or GMA, and further, are not intended to provide specific legal advice. Readers should seek legal advice on specific concerns from their own legal advisors. Any questions or comments should be directed to: *Dennis Watts, Editor, 3500 Parkway Lane, Suite 110, Norcross, Georgia 30092, 678.686.6284, dwatts@gmanet.com.*

Five Issues That Might Protect Your Agency from a “Ferguson”

By Lou Reiter, PATC, Legal & Liability Risk Management Institute

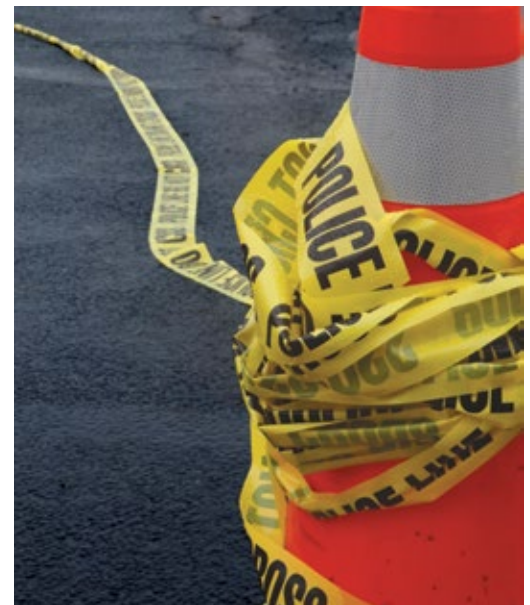
“Far too much criticism has been hurled at the police and far too little understanding of the difficulties of the police work prevails. This criticism and lack of understanding has resulted in alienating the police from the public, so that they go about their work with scant consideration of the public just as would any other group of people who were criticized unintelligently. At the present time when strenuous efforts are being made by many police departments to increase their efficiency, it is ungracious to dwell on the inefficiency of the police in general.” – Sutherland, *Criminology*, 1924

“In America, on the other hand, the student of police travels from one political squabble to another, too often from one scandal to another. He finds a shifting leadership of mediocre caliber – varied now and then by flashes of real ability which (sic) are snuffed out when the political wheel turns. There is little conception of policing as a profession or a science to be matured and developed. It is a job, held perhaps by the grace of some mysterious political influence, and conducted in an atmosphere sordid and unhealthy. It is a treadmill, worked without imagination or aim, and with little incentive except the desire to keep out of trouble . . . We have, indeed, little to be proud of. It cannot be denied that our achievement in respect to policing is sordid and unworthy. With all allowance for the peculiar conditions which make out task so difficult,

we have made a poor job of it.” – Fosdick, *American Police Systems*, 1915

And here we are now, nearly 100 years later, with Ferguson and similar accusations from a wide range of public and political fronts. It appears the outcry may have legs. Local and national study commissions are being proposed. What we do will be closely scrutinized.

Now is the time each law enforcement agency should take stock of critical areas and determine whether there is room for improvement, need for corrective actions, or a sense that you’re reasonably secure. There are five specific areas you need to assess to ensure your comfort:



A SERVICE ORGANIZATION OF THE GEORGIA MUNICIPAL ASSOCIATION AND THE ASSOCIATION COUNTY COMMISSIONERS OF GEORGIA



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- Protocol for handling force investigations, specifically officer-involved shootings
- IA/OPS quality control
- PIO capability
- Community policing and other outreach efforts
- Recruitment strategy

Is your agency prepared to handle a major force or shooting? It's too late to put together a protocol after the incident happens. You will fail and be made to look foolish! Consider the dichotomy that's occurred in the past few weeks. Some force incidents have occurred and there has been no turmoil in those communities. While other agencies have created their own problems with botched up investigations or prematurely ruled the incident as in policy without a good grasp of the facts. These latter ones are on the front page and on the local TV news. What has yet to be challenged, other than during civil lawsuits or a federal investigation, has been our administrative review of these types of controversial incidents. Can you reasonably support your analytical decisions? If you have no formal review process, stand by for deserved criticism. We all will have to become more transparent in this review.

Is your PIO (Public Information Officer) prepared for this type of critical incident? Most agencies are so small that this is left for the chief or sheriff or some other randomly selected person. It's too important a function not to have someone selected and trained to handle this task without embarrassing or creating mistakes that will come back and haunt your agency later. Avoid at all costs a premature pronouncement without supportive facts.

Positive community outreach, even if it's not officially referred to as "Community Policing," will garner your agency that valuable commodity often called "social capital." It's that bank account with your community that you can go to during troubled times. Too many agencies rely on special officers or programs. The best source of social capital, however, comes from your officers on the beat and

investigators who regularly contact your crime victims. Field officers need to get out of the cars and walk and talk and put away those cellphones. Investigators need to spend more time out in the community and less time on the telephone. Social capital is developed from a one-on-one relationship between community members and your employees.

And lastly, does your agency have a recruitment strategy? Matt Dolan of PATC emphasizes this need. Many people are pointing an accusatory finger at us and noticing that few police agencies are ethnically representative of the community being served and that most officers don't even live in the community being protected. Even those agencies that are aggressively pursuing minority recruits are having trouble achieving reasonable numbers. It is a difficult, daunting task. The only salvation your agency may have is to have a reasonable strategy that lays out your efforts, even though they may not be working.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal adviser regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

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Logo Changes for Local Government Risk Management Services

The logo for LGRMS is changing. This change positively reflects that we are the risk control for ACCG and GMA. Both ACCG and GMA are committed to the safety and good risk management programs of our member local governments. You will start seeing this logo transition to all LGRMS documents and programs starting in April.



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GEORGIA MUNICIPAL ASSOCIATION

Safety Bulletin

What's Your Capacity?



Do the Math!

Memorandum

To: Policy Staff/Clients

From: Jack

Re: Body-Worn Cameras

As all of you know, there has been a significant increase in interest in body-worn cameras since the Ferguson, Missouri shooting. In reading the literature and trying to fashion a model policy, there has been a degree of frustration largely based on the fact that so many groups are weighing in and offering opinions as to how law enforcement should utilize this equipment. While some of these groups are our own law enforcement folks, there has been a dramatic inconsistency of suggested practice. This one here is a moving target and I don't see the motion slowing down soon. As such I believe we will be making changes on this policy until there are some clear-cut legal decisions providing us with direction. As always, I believe that our stance should always be consistent with current legal standards as they exist and not as someone wishes them to be or has an opinion as to what they will be in the future.

Over the last few weeks, in conjunction with your work on developing a body-worn camera policy I have been considering some of the legal implications and reviewing some of the literature as well as the case law.

The following is a quote from the IACP concept paper on these policies:

In a residence, there is a heightened degree and expectation of privacy. Officers should normally inform the resident that he or she is being recorded. If the resident wishes not to be recorded, this request should be documented by recording the request before the device is turned off. However, if an officer may enter a dwelling without the consent of the resident, such as when serving a warrant, or when the officer is there based on an exception to the warrant requirement, recordings should be made of the incident until its conclusion. As a general rule, if the officer must legally ask permission to enter a premises, he or she should also ask if the resident will allow recording.

In reviewing cases the following quote is routinely made:

“What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.” *California v. Ciraolo*, 476 U.S. 207, 213, 90 L. Ed. 2d 210, 106 S. Ct. 1809 (1986) (quoting

Katz v. United States, 389 U.S. 347, 351, 19 L. Ed. 2d 576, 88 S. Ct. 507 (1967)); see *Florida v. Riley*, 488 U.S. 445, 449-450, 102 L. Ed. 2d 835, 109 S. Ct. 693 (1989); *California v. Greenwood*, 486 U.S. 35, 40-41, 100 L. Ed. 2d 30, 108 S. Ct. 1625 (1988); *Dow Chemical Co. v. United States*, 476 U.S. 227, 235-236, 90 L. Ed. 2d 226, 106 S. Ct. 1819 (1986); *Air Pollution Variance Bd. of Colo. v. Western Alfalfa Corp.*, 416 U.S. 861, 865, 40 L. Ed. 2d 607, 94 S. Ct. 2114 (1974).

Clearly a person who has opened their door to a law enforcement officer has exposed the interior of their home to the officer. The fact that a camera is recording the event should not impact the privacy interest. The issue is whether the officer is legally present. As long as the officer is present based upon consent, a warrant, or exigency, the officer is legally present.

The only other issue would be if you were in a two-party consent state—No two-party consent, no 4th issue—I do not believe there is any reason to seek permission. As long as the officer is legally present the person has exposed the inside of the home to the officer. Our staff had initially included this provision based upon recommendations from groups like the IACP. I have read the IACP Concept paper on point and note that they did not cite any legal source for their position. In contrast, I have looked at a number of cases including those from the U.S. Supreme Court, and though use of technology can violate Fourth Amendment interests, the cases are where officers are surreptitiously monitoring from a remote site and not where the officer is present in front of the person.

I would note that even where the recording is proper, the broadcast of the recording may violate privacy interests. For the same reasons we cannot take non-law enforcement persons onto private property, broadcast a person's health information, or maintain the confidentiality of some victims and witnesses, agencies must consider whether the release or broadcast of agency video would be contrary to privacy interests or confidentiality laws.

Another issue that is popping up is defense attorneys using the agency video policy to challenge the validity of an interaction between the officer and the defendant that was not recorded. Last week a defense attorney argued that since department policy required a recording of all law enforcement/citizen interactions; it was a violation of policy to have failed to record through use of a body-camera, an undercover drug purchase. The attorney went on to argue that such recording would have amounted to Brady material and thus the charges should be dismissed, I have recommended adding a provision to short-circuit this argument.

Body Worn Video Recording (BWV)

Related Policies: Evidence; Duty to Disclose; Training; Open Records Act; Records Retention

This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this Office for non-judicial administrative action in accordance with the laws governing employee discipline.

Applicable State Statutes: O.C.G.A. § 50-18-70, et seq.; § 50-18-90, et seq.

CALEA Standard:

Date Implemented:

Review Date:

Policy: This policy directs officers and supervisors in the proper use and maintenance of Body Worn Video (BWV) recorders, as well as in the proper use and maintenance of BWV recordings as evidence and for quality control purposes. Officers assigned the use of BWV recorders are required to adhere to the operational objectives and protocols outlined herein so as to maximize the effectiveness, utility, and integrity of BWV recordings.

Purpose: The purpose of this policy is to provide officers and supervisors with a means to collect potential evidence for use in criminal, civil, or administrative proceedings or investigations, for officer evaluation and training, for creating an accurate record of law enforcement events and citizen contacts for the protection of citizens, officers, and the [Department/Office], and for other lawful purposes.

Procedure: All officers assigned the use of BWV recorders shall receive training regarding the manner in which the BWV recorders are to be tested, maintained, and used, as well as the manner in which BWV recordings are to be documented and maintained.

It shall be the responsibility of each officer assigned the use of BWV recorders to test the recorders at the beginning of each tour of duty and to ensure that the recorder's batteries are fully charged prior to the beginning of his/her shift or

special event.

In the event that a BWV recorder is found to be non-functioning or functioning improperly, the officer shall notify his/her immediate supervisor as soon as practical so that the information can be properly documented and arrangements made for repair or replacement.

Except as otherwise provided in this policy, officers assigned BWV recorders shall wear them at all times while on duty and utilize them to record any and all law enforcement events and citizen contacts in which they are participating (which includes conversations occurring during such events or contacts to which the officers are parties or where their presence is otherwise apparent to the parties). For purposes of this policy, law enforcement events and citizen contacts include:

- All calls for service in which citizen contact is made;
- All traffic stops;
- All citizen transports (excluding ride-alongs);
- All investigatory stops;
- All foot pursuits;
- Arrests of any persons;
- Searches of any kind;
- Seizure of any evidence;
- Requests for consent to search;
- Miranda warnings and response from in custody suspect;
- When interviewing witnesses or taking statements from citizens and defendants;
- K-9 searches of vehicles;
- Issuance of written violations;
- When arriving at law enforcement events and/or citizen contacts initiated by other officers; and
- Other incidents the officer reasonably believes should be recorded for law enforcement purposes.

The recording shall continue until the law enforcement event or citizen contact is completed, the citizen involved departs, or the officer discontinues his/her participation in the law enforcement event or citizen contact.

If an officer deems it necessary to disengage his/her BWV recorder during a law enforcement event or citizen contact, he/she should first utilize the recorder to record a verbal statement citing his/her intention to stop the recording, the reason(s) for doing so, and any other pertinent information, and shall notify his/her immediate supervisor as soon as practical so that the circumstances can be properly documented.

If an officer participating in a law enforcement event or citizen contact becomes aware that the event or contact was not recorded by his/her assigned BWV recorder, the officer shall notify his/her immediate supervisor as soon as practical so that the information can be documented and the problem addressed.

Each officer assigned the use of a BWV recorder shall wear the recorder as directed by the manufacturer to optimize its video/audio perspectives, and shall make all reasonable efforts to ensure that the recorder is capturing events as accurately and completely as possible. Reasonable efforts include:

- Activating the BWV recorder as soon as the law enforcement event or citizen contact begins;
- Activating the BWV recorder when the officer arrives at a law enforcement event or citizen contact initiated by another officer; and
- Positioning and adjusting the BWV recorder to optimize the recording (both audio and video) of the law enforcement event or citizen contact, provided this can be accomplished without compromising officer safety.

Officers shall not erase, alter, modify, or in any way tamper with BWV recordings. Any officer causing or becoming aware of any such damage to a BWV recording shall notify his/her immediate supervisor as soon as practical.

Issues Related to Privacy, Confidentiality, Security, and the Open Records Act:

The BWV recorder should not be activated when the officer is on break or otherwise engaged in personal activities. In addition, unless the officer is participating in a law enforcement event or citizen contact, the recorder should not be activated when he/she is in a location where there is a reasonable

expectation of privacy (such as a private residence, public restroom, or locker room).

Encounters with undercover officers or confidential informants should not be recorded.

Officers working undercover or plainclothes assignments are exempt from this policy under circumstances where they reasonably determine that utilizing a BWV recorder may create a dangerous situation or otherwise compromise the assignment.

The use of a BWV recorder for any personal purpose or for any reason not specifically authorized by this policy is prohibited. The use of a BWV recorder to record personal conversations between officers and conversations of an administrative or supervisory nature (such as counseling or disciplinary sessions, performance evaluations, or interviews during internal affairs investigations) is prohibited unless all parties present for the conversation are aware of and expressly agree to the recording. Any officer who is aware or becomes aware that his/her BWV recorder recorded an event or conversation in violation of this paragraph shall immediately notify his/her supervisor and shall not make a copy of the recording.

Whenever a copy of a BWV recording is made and provided to another agency or office for use in connection with a criminal, civil, or administrative investigation or proceeding or other official matter, a duplicate copy shall be maintained and accompanied by a notation identifying the agency or office receiving the copy, the date the copy was provided, the name of the officer providing the copy, and the proceeding or matter for which the copy was provided.

In the absence of a valid Open Records Act request, dissemination of any BWV recording outside of this [Department / Office] is prohibited without prior authorization of the [Chief of Police / Sheriff] or his/her designee. Notwithstanding the foregoing, no BWV recording shall be released in response to an Open Records Act request until such time as authorized personnel have determined whether the recording is subject to an exemption and approved its release. No BWV recording determined to be subject to such an exemption shall be released in response to an Open Records Act request until such time as authorized personnel have determined that the exemption is no longer applicable or have otherwise approved its release.

All BWV recordings are the property of this [Department / Office] and are subject to review by authorized personnel at

any time. No officer should have any expectation of privacy with regard to any BWV recording.

Supervisors should review at least [INSERT NUMBER] BWV recording(s) made by each of their subordinate officers during the relevant time period prior to conducting that officer's performance evaluation. In addition, supervisors should review at least [INSERT NUMBER] BWV recording(s) every [INSERT NUMBER] days for each officer under his/her direct supervision for quality control and training purposes and to ensure policy and legal compliance. Following each such review, the supervisor should document the date of review, the specific recording(s) reviewed, and any supervisory actions taken as a direct result of such review.

Any proposed use of BWV recordings not specifically authorized by this policy must be approved in advance by the [Chief/Sheriff] or his/her designee.

Electronic Storage, Evidentiary Procedures, and Records Retention

Each officer assigned the use of a BWV recorder shall download its recordings before the end of each shift. All such recordings shall be stored on a designated network server or other designated electronic storage device.

Once downloaded and properly stored as provided above, all BWV recordings determined to be potential evidence in any criminal, civil, or administrative investigation or proceeding shall be handled in accordance with this [Department's/ Office's] standard practices and procedures applicable to such evidence. The chain of evidence log shall include, but need not be limited to:

- Case tracking number;
- Date recorded;
- Date submitted;
- Officer submitting the media; and
- Hold for evidence indication.

When an officer determines that a BWV recording may contain "Brady" material, he/she shall notify his/her supervisor as soon as practical so that the information can be properly documented. The supervisor shall thereafter take appropriate steps to ensure that a copy of the recording is provided to the prosecutor assigned

to the case in accordance with the "Duty to Disclose" policy of this [Department/Office].

The destruction or deletion of BWV recordings is prohibited, except by authorized personnel acting in accordance with applicable record retention schedules.

BWV recordings of arrests and other law enforcement events shall be retained for [INSERT NUMBER – AT LEAST FIVE] years. Except as provided below, other BWV recordings shall be retained until no longer useful.

Notwithstanding the foregoing, BWV recordings constituting evidence in any criminal, civil, or administrative investigation or proceeding shall be retained for so long as the investigation or proceeding remains active and for such additional time as required by law.

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Jeff Davis County Fire and Rescue Rehabilitation Stations

by Natalie Sellers, South Georgia Loss Control Representative

On June 9 at around 7:30 am, in the middle of the hot South Georgia summer, a fire broke out at the Thompson's Hardwood Lumber yard. "Crews tried a direct attack at first, but had to back out because there was just too much heat," said Hazlehurst-Jeff Davis County Fire and Rescue Chief Charles Wasdin. Metal buildings began to melt under the extreme temperatures.

It took 228 firefighters, 57 Fire Departments, 88 pieces of equipment, 57 hours and over 725,000 gallons of water to put out this massive fire. Over 5 million board feet of finished hardwood lumber was destroyed, along with buildings, and equipment valued at over 15 million dollars. With such massive fire and destruction, how many fire fighters were injured you ask? Four minor injuries to firefighters were incurred and no civilian casualties.

In speaking to Chief Wasdin about the Thompson Hardwood Fire, he informed me that he was introduced to the idea of a "Rehab Station" two years ago while attending training. The idea was not new, nor was it his. However, Chief Wasdin saw the need to implement this concept within his fire department.

What is a Firefighter Rehabilitation Station? According to NFPA 1584, it is:

An intervention designed to mitigate against the physical, physiological, and emotional stress of fire fighting in order to sustain a member's energy, improve performance, and decrease the likelihood of on-scene injury or death.

Studies show that most firefighter injuries and deaths occur during the active phase of fire suppression. The utilization of rehabilitation stations has been proven to reduce the injuries and deaths on the fire scene. According to NFPA 1584

standards, rehab stations should be utilized during fire ground as well as training exercises. Rehabilitation should commence any time emergency or training operations pose the risk of department members exceeding a safe level of mental or physical endurance.

For Chief Wasdin, his department consists of two paid departments and five volunteer stations in the county. The department took an old trailer that was previously used by the dive team and converted it into the Rehab Trailer. The trailer was already in their inventory; it was previously purchased with a grant and came at no additional cost to the department. They retrofitted the trailer with new signage and then began to outfit the trailer with the proper necessities.

Contained on the trailer is a cooling fan. This is no ordinary fan either. The container is filled with ice water and the fan then provides a cooling mist to those in front of the fan. This is critical in reducing body temperature from the outside. Heat stroke or heat exhaustion are caused when the body becomes dehydrated and can no longer produce sweat to cool itself. Both of these can result in serious injury and death to any firefighter.

Another injury reducing tool on the rehab trailer is a hose roller. This assists the firefighters in rolling the hose without incurring back injury. The long hoses can become very heavy and back injuries are a common occurrence when trying to roll hoses that are saturated with water after a fire. Not only does it help to roll the hose, but it can also help lift the hose into the back of a very high fire truck. Yet another great tool to help reduce any opportunities for injuries to his fire fighters.

The rehabilitation station is fully stocked with medical supplies and food and water. The food and water are purchased with a grant and rotated out periodically for freshness. The medical supplies came from their own supplies and local EMS department. The medical equipment is used to monitor the firefighters' time of arrival and vital signs. They



continue to monitor the firefighter and only allow them to return when vitals are stable and it is safe for them to return to the scene. Furthermore, Chief Wasdin has a policy that mandates that if a firefighter goes through two tanks of air at a scene, they must come out of the fire and go immediately to the rehab station for vitals to be checked before donning the third tank. This applies to depleting one tank if the temperature outside is over 95 degrees.



Also located in the trailer are folding tents for shade and folding chairs for the firefighters to take a break in while they are cooling off in front of the fan. The large cooler helps keep the bottled water cold. Snacks, paper towels, baby wipes, hand sanitizer, tables, chairs, tents; you name it and it is on the trailer. Did I mention it was all purchased by a grant? The local Walmart provided a safety grant and in turn, most of the money was spent at the Walmart purchasing supplies and equipment for the trailer.



Now, have you ever tried to keep a firefighter away from a fire? A crucial step in the rehabilitation process requires staff to know when it is safe for that firefighter to return to the fire. Chief Wasdin designated the responsibility of the trailer to specific personnel within the department. Those with EMS training and first responder training man the rehab station once on scene. There is one person designated to charge the trailer with ice and bring it to the scene when necessary. Not only does the Chief have a policy in place on when firefighters are mandated to go to the trailer, he has also has a policy on when the trailer is needed at the scene.



To assure safety, those EMS personnel monitor firefighter's vitals and only they can tell the firefighter when he can return to the scene. Chief Wasdin says that in the beginning, this was a big issue with his firefighters. However, he would rather hurt their feelings than lose them to an injury or death. Most of his firefighters are volunteers who have family that count on them. If injured on a fire scene when you're a volunteer, there is no insurance that will cover the loss of your full time job's paycheck. Not only is Chief Wasdin saving lives; he is saving livelihoods. A true sign of leadership is doing what's right for the right reason. Although this concept is not new or groundbreaking, it has helped to reduce injuries for firefighters.

For any department that is all volunteer, this type of system is crucial to saving lives and reducing injuries. A 57-hour fire scene in the middle of a South Georgia summer resulted in only one person going to the hospital for minor heat exhaustion after being examined at the rehab station. That firefighter was the first man to the scene of this fire and was exposed to some tremendous conditions before help arrived. Three firefighters were treated at the rehab station and later returning to the fire to assist their fellow firefighters.

For more information on policies and equipment and on starting up your own rehabilitation station:

http://www.iafc.org/files/ems_masimoEstablishingARehabPolicyPart2.pdf

http://www.iafc.org/files/1VCOS/Rehab-Guidelines_NFPA1584.pdf

http://www.iafc.org/files/1EMS/webinar_ffRehabMedMonitoringNFPA1584slides120321.pdf





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