Hot Topic:
Police Body Cameras

MML Convention

Presented by
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Law Enforcement Under Scrutiny

- Ferguson
- Baltimore
- New York
Cell Phone Use by Public

- Dramatic increase from 1991/Rodney King
- Depict only portion of incident
- Not officer’s perspective
Public Expectation

- Public expects that all interactions with police are recorded, and question police authenticity when they are not!
Reasons

- Chronically mentally ill
  - Estimated Michigan population = 25% + many substance abusers
- Controversial force
  - ECD
  - Neck restraints
  - Handcuffing and tightness
  - Officer-precipitated force
  - Tactical teams
  - Dogs
Research

- PERF
- IACP
- OJP, NIJ, COPS
- AELE
- ACLU
- Data & Society Research Institute
- Force Science Institute
Body Camera Limitations

- May show only part of story
- Doesn’t show entire totality of circumstances
- Only sees where pointed
- May see better than eye in low light
Potential Issues

- Written reports compared to video prompting questions of truthfulness

- Investigators, administration and trainers rely on video to make judgments without factoring in whether actions were objectively reasonable at moment force was used, based on officer’s reasonable perceptions and totality of circumstances
Implementing Body Cameras

- Define purpose
- Decide how they will be used
- Determine privacy issues
- Top management support
- Community partners
- Control test period
Implementing Body Cameras

- Develop policy
  - When to record
  - When not to record
  - Turning camera on and off
- Train, audit activity
- Supervisors accountable
- Invest in technology to audit, redact and copy data (more to come!)
Recording

- MML LEAF policy
  - Camera activated
    - Call for service
    - Citizen contact for law enforcement purpose
    - During self-initiated activity
  - Once camera is on, it stays on
    - Must record reason camera is shut off

Continued
Recording

- Identify locations where recording may be restricted by authority that regulates particular locations:
  - Detention facilities
  - Hospitals/mental health facilities
  - Schools
  - Courts
- Negotiate with authority to eliminate potential conflict
Data Storage

- Where and how long?
- Security
- Access by department members
  - Ability for computer to track who and what the person did
- Privacy issues for employees
- FOIA coordinator
- Statutory requirements
Records Handling

- Must have clear policy
  - What equipment can be used to record?
  - All recordings made in performance of duties are department records.
  - Duplicates can not be made unless authorized.
  - Release is only authorized by chief or designee.
  - Strong punishment for violation
Cost of Recording

- Cost of handling video and storing data is larger cost than buying cameras.
- Processing requests by public, attorneys and/or court officials for footage is labor intensive, frequently requiring processing of multiple officers’ videos.
Recording

- **Place**
  - *Katz v United States, 389 us 347(1967)*
      - Subjectively reasonable
      - Objectively reasonable
Entry

- **Common authority:** *Illinois v Rodriguez*, 497 U.S. 177 (1990)


- **Curtilage:** *Oliver v United States*, 466 U.S. 170, 180 (1984)
Statute of Limitations

- Tagged data should be held for minimum of 42 months.
- Evidence held as required by statute and prosecutor.
- Establish general retention period: Michigan law
Privacy

  
  “Expectation of privacy does not extend to [w]hat a person knowingly exposes to the public, even in his own home or office, is not subject to fourth amendment protection.”
Privacy

- Person who is in presence of police officers should have no reasonable expectation of privacy.
Privacy

- It is department’s responsibility to protect privacy of data they have recorded.
MACP- HB 4234

- With some exceptions, prohibit recording taken in private place from disclosure under FOIA.
- Specifies circumstances recordings would be subject to FOIA.
- Limits retention period
- If complaint against officer was made after retention period ... no presumption that recording would have provided corroboration of defendant’s or plaintiff’s version of events.
“Private place” is defined as place where individuals may reasonably expect to be safe from casual or hostile intrusion or surveillance but does not include places to which public or substantial groups of the public have access.

Recording retained by law enforcement in connection with ongoing criminal or ongoing internal investigations is not public record and would be exempt from disclosure.
FOIA

- Policy for releasing information is established at top management level of an entity, unless release is otherwise prohibited by law!
FOIA

- MCL 15.243 (13) (1) exemptions:
  - Most often used by police:
    - (A) Invasion of privacy
    - (B) Investigation records, Sections (iv) through (vi)
    - (D) Exempt by statute
    - (H) Privilege by statute
    - (M) Communication/notes advisory

Continued
FOIA

- MCL 15.243 (13) (1) exemptions:
  - (n) LE communications and codes
  - (s) LE records (I) to (X)
  - (u) Security measures
  - (v) Records civil suit requester a party
  - (W) Social Security numbers
  - (Y) Measures designed to protect the security or safety of persons or property
Questions?
Thank You!

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