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EXECUTIVE SUMMARY:
Body worn cameras (BWCs) and critical incidents such as officer-involved shootings or use of force events have gained increased national attention in recent years. The demand for the release of BWC footage has grown, pressuring law enforcement agencies to find a balance between maintaining transparency with the public and protecting involved individuals alongside preserving the judicial integrity of an ongoing investigation or pending case. According to the Texas Attorney General Records, from 2019 to 2020, the Bexar County Sheriff’s Office (BCSO) experienced an increase in officer-involved shootings that led to civilian injury or death. More specifically, in 2019, BCSO reported two officer-involved shootings, whereas in 2020 BCSO reported five. The increase in BCSO officer-involved shootings in 2020 is concerning and has led to an increased demand from the community for the release of BWC critical incident footage.

The Texas Occupations Code and the Texas Public Information Act set statewide standards for releasing public records including BWC footage. The Texas Occupations Code requires the public to submit a written request to the law enforcement agency noting details of footage of interest. This paper evaluated seven Texas agencies with respect to protocols for releasing BWC critical incident footage and provided recommendations on timely release of critical incident footage. These agencies include Bexar County Sheriff’s Office, Harris County Sheriff’s Office, El Paso County Sheriff’s Office, San Antonio Police Department, Houston Police Department, Austin Police Department, and Dallas Police Department.

The evaluation found that the Sheriffs’ Offices do not proactively release BWC footage. Instead, Bexar, Harris, and El Paso County Sheriffs’ Offices require the public to submit a formal records request per state regulatory requirements. Moreover, requests for BWC footage can be denied to protect involved individuals or to protect the integrity of an active investigation or pending case. In turn, these agencies do not have a specified timeframe for releasing BCW critical incident footage. When footage is withheld indefinitely, this can cause friction between the community and law enforcement agency.

In contrast, the Police Departments that were evaluated exhibit a more proactive approach towards releasing critical incident footage. In fact, San Antonio, Houston, Austin, and Dallas all have defined timeframes for releasing critical incident footage. More specifically, all but San Antonio Police Department (SAPD) release critical incident footage within 30 days of the incident. SAPD policy dictates the Police Chief to approve the release of the video 60 days after the date of the incident. Of those evaluated, the most progressive Texas agency was Dallas Police Department, which recently amended its policy to release critical incident footage within 72 hours of the event. Notable observation across all agencies was that discretion still rests upon the heads of the agencies on determining if and when critical incident footage will be released.

The evaluation also reviewed timeframes for releasing critical incident footage among seven police departments outside of Texas: Washington DC, Baltimore, New Orleans, Phoenix, New York City, Los Angeles, and Chicago. With the exception of Chicago, these agencies have defined timeframes for releasing critical incident footage within 45 days. Chicago Police Department releases footage within 60 to 90 days of the incident. Furthermore, two of the largest cities in the US, New York and Los Angeles, have the most progressive policies for releasing critical incident footage within 30 and 45 days of the incident respectively. These agencies prove that law enforcement can balance transparency with the community.
On March 19, 2018, Attorney General (AG) Ken Paxton issued Opinion No. KP-0186 in response to Senator Lucio’s inquiry. The Senator questioned whether upon request law enforcement agencies are required to allow an individual from the public to view BWC footage if the recording could be used in a criminal prosecution and the viewing could “interfere with the detection, investigation, or prosecution of a crime.” AG Paxton clarified that in reviewing the Texas Occupations Code 1701.66 and sections of the Texas Public Information Act (Chapters 552.108 and 552.302), local law enforcement agencies may redact confidential footage from recordings and can determine afterwards whether or not the requested BWC footage may be released. The AG opinion deemed that the current Texas codes do not require law enforcement to indefinitely withhold BWC footage until an investigation is complete or judicial matters are adjudicated. Instead, law enforcement agencies may release footage after redacting legally protected information.

The BCSO BWC policy does not directly address the release of BWC footage for critical incidents. Instead, the agency heavily leans on state regulatory requirements for public information requests. In doing so, the public must submit written request for BWC footage to BSCO with details of the footage of interest. The policy specifies that any footage documenting use of deadly force or associated with an active investigation of a Deputy may not be released until the investigation is complete and the matter is adjudicated. The policy also indicates, “Unless prohibited by law, a recording may be released to the public by the Sheriff or Sheriff’s designee for law enforcement purposes, or as required by any applicable law.” These clauses provide the Sheriff discretion on the release of BWC critical incident footage. BCSO is recommended to revise existing BWC policy to align closely with AG Opinion KP-0186 with respect to footage that is part of an investigation or criminal proceeding to allow release of requested footage after proper redactions. This measure would allow more timely release of requested BWC critical incident footage.

The Houston Mayor’s Task Force on Policing Reform and the American Civil Liberties Union (ACLU) both published recommendations to improve existing processes and policies with respect to release of critical incident footage. While both organizations advise defining a timeframe on when to release footage, there are unique differences. The ACLU model policy requires disclosure of footage within less than a week of the request. In contrast, the Houston Task Force recommended release of footage within 30 calendar days of the incident. Due to the differences between the ACLU and Houston Task Force recommendations, BCSO is recommended to define a timeframe (i.e. five days vs thirty days) for releasing critical incident footage and determine if the timeframe will begin from the records request date or from the date of the incident.

Both the Houston Mayor’s Task Force and the ACLU recommended for law enforcement agencies to have a transparent website. BCSO is recommended to develop a webpage specific to BWC program where the official BWC policy and released footages are readily accessible. The Houston Task Force also recommended law enforcement to post public notice when there is an expected delay in releasing critical incident footage. This recommendation requires the law enforcement agency to provide an explanation to the public specifying why there is a delay in releasing critical incident footage. An expansion of this recommendation is for the Sheriff to post notifications for delay on the BCSO website and offer a timeframe on when the reasons for withholding the footage may be resolved. Furthermore, similar to Houston’s efforts, the webpage should display a regularly updated BWC dashboard where the public may view statistics on BCSO specific critical incidents. These efforts will facilitate greater transparency with the public.
The Mayor’s Task Force and the ACLU also made exclusively unique recommendations. For example, the Mayor’s Task Force recommended offering additional information to critical incident footage and providing “representative samples of the BWC video(s) depicting the critical incident.”20 This provides the public important context before, during, and after the critical incident, thereby minimizing speculation of events that unfolded during the incident.

The Task Force also suggested sharing un-redacted critical incident footage with stakeholders such as media, family of involved individuals, prosecution, attorneys, etc.21 BCSO is advised to further specify within the policy which stakeholders may view un-redacted critical incident footage. If BCSO implements posting videos on departmental website, BCSO is recommended to imbed protections to prevent juveniles from accessing the videos, and issue warnings for graphic content.22 The Mayor’s Task Force also recommended adoption of redaction standards for critical incident footage.23 Such standards include but are not limited to, “protect confidential sources and witnesses; protect the identity of victims of sex crimes, domestic violence, and juveniles; protect the privacy, life, or safety of any person.”24 BCSO is recommended to also adopt specified redaction standards.

The ACLU model policy does not withhold footage from public release if the footage is part of an investigation.25 (In contrast, the BCSO policy dictates that any footage documenting use of deadly force or associated with an active investigation of a Deputy may not be released until the investigation is complete and the matter is adjudicated.26) BCSO is recommended to revise BWC policy to align with both ACLU’s recommendation and the abovementioned AG Opinion KP-0186 for release of critical incident footage that is part of an investigation or criminal proceeding. The ACLU also recommended a more comprehensive definition for use of force. Presently, BCSO’s BWC policy does not define use of force. BCSO is recommended to adopt ACLU’s full or partial definition for use of force where applicable:

- “any action by a law enforcement officer that
  - (A) results in death, injury, complaint of injury, or complaint of pain that persists beyond the use of a physical control hold, or
  - (B) involves the use of a weapon, including a personal body weapon, chemical agent, impact weapon, extended range impact weapon, sonic weapon, sensory weapon, conducted energy device, or firearm, against a member of the public, or
  - (C) involves any intentional pointing of a firearm at a member of the public.”27

BCSO’s existing BWC policy lacks transparency with releasing critical incident footage. The recommendations noted in this paper highlight that with sound public policy, BCSO can achieve greater transparency within the community without compromising the integrity of active investigations or pending cases. BCSO is advised to implement the recommendations and work alongside the District Attorney’s Office, Office of Criminal Justice, and community stakeholders to revise existing BWC policy that is not only legally compliant but also representative of community requirements. BCSO is also recommended to work with the County’s Governmental Affair’s Office to spearhead draft statewide legislation on releasing critical incident footage within specified timeframes.
**INTRODUCTION:**

Bexar County faced unprecedented challenges in 2020. From navigating the pandemic and subsequent economic downfall to civil unrest in response to officer-involved shootings. In 2019, Bexar County Sheriff’s Office (BCSO) reported two officer-involved shootings, whereas in 2020 BCSO reported five. Some of the BCSO officer-involved shootings led to civilian deaths. The increase in BCSO officer-involved shootings in 2020 is concerning and officials observed an increased demand from the community for the release of body worn camera (BWC) footage when such critical incidents occur.

A BWC is a recording device that captures video and/or audio recordings. BWCs are oftentimes attached to clothing or worn as glasses. During the 84th Texas legislative session, Senate Bill 158 (SB158) proposed statewide BWC policies, as there was widespread interest and increasing usage locally. The bill passed and was effective on September 1 2015. SB158 outlined how to administer BWC programs including but not limited to defining BWC training requirements for officers and amending portions of the Texas Open Records Act.

To measure administration of BWC programs, in Fall 2020, the Law Enforcement Management Institute of Texas and Sam Houston State University collaborated on a research study to survey police chiefs across Texas. Of the 1,191 police chiefs contacted, 749 or 62.9% responded. Respondents included police chiefs from municipalities, ISDs, universities, and special districts.

Approximately 85.3% of respondents indicated that their agency administers a BWC program. While the number of BWCs that agencies deploy varies, only 7.4% have at least 101 BWCs deployed in daily operations. Moreover, 95.4% of respondents indicated that BWCs are used in their patrol units. The survey also highlighted that 40.4% implemented the BWC program prior to the passage of SB158, while 46.6% of respondents indicated that their BWC program was adopted in 2016 or onward. These statistics show the statewide increase in implementation and growth of BWC programs since the passage of SB158.

Nevertheless, the increase in the use of BWCs and the increase in officer-involved shootings has led to questions and concerns on the release of BWC video footage with respect to critical incidents. State legislation guides localities in defining retention periods and protocol for releasing videos with both evidentiary and non-evidentiary value. Evidentiary video is footage that is (or can be) used as evidence during an investigation or leads to a search, arrest, or citation. In contrast, non-evidentiary video is a record of general officer activities and includes footage that is not (or will not be) used during an investigation nor leads to an arrest or citation. BWC footage of critical incidents can be of evidentiary value and can influence the timely release of the recording to the public. This paper evaluates Texas law enforcement agencies and their existing BWC policies concerning the release of critical incident footage. The paper also offers recommendations on timely release of critical incident footage to expand transparency within the law enforcement community and the public.
REVIEW OF BWC POLICIES IN TEXAS:
The Bureau of Justice Assistance developed a BWC scorecard to assist law enforcement agencies to evaluate their own BWC programs.45 The scorecard has eleven categories.46 This paper focuses on the Public Release category and evaluates seven Texas agencies with respect to public release of BWC footage for critical incidents. These agencies include Bexar County Sheriff’s Office, Harris County Sheriff’s Office, El Paso County Sheriff’s Office, San Antonio Police Department, Houston Police Department, Austin Police Department, and Dallas Police Department. This section summarizes each law enforcement agency’s BWC policies with respect to releasing critical incident footage and evaluates each agency against the BJA Public Release category.

Public Release Metrics: This category is measured by the following metrics-

a) Does the policy demonstrate an understanding of the state’s public disclosure laws?
b) Does the policy specify whether certain categories of BWC are exempt/prohibited from public disclosure?
c) Does the policy specify a process to receive and process public records requests for BWC footage?
d) Does the policy specify who is authorized to approve release of BWC footage?
e) Does the policy specify a process for BWC review and redaction prior to release?
f) Is the BWC policy publicly available? (If yes, how?)

1. Bexar County Sheriff’s Office (BCSO)

General Observations:
The policy defines critical incident as, “A high-risk emergency that poses imminent and/or continuing threat of death or serious bodily injury to any person by any other person, to include but not limited to hostage situations, barricaded subjects, terrorist, sniper incidents, bomb threats, and threatened suicides.”47 While the policy does not specifically define officer-involved shooting nor use of force incidents, it does define deadly force and force as follows:

- Deadly Force: “Force that is intended or known to cause, or that, by the manner of its use or intended use is capable of causing death or serious bodily injury.”48
- Force: “Any physical contact with a person by a Deputy using the body or any object, device, or weapon, not including un-resisted escorting or handcuffing a subject.”49

The BCSO BWC policy fails to offer details on agency protocol specific to releasing BWC footage of critical incidents. The policy dictates that any footage documenting use of deadly force or associated with an active investigation of a Deputy may not be released until the investigation is complete and the matter is adjudicated.50 The policy also has a blanket statement as follows, “Unless prohibited by law, a recording may be released to the public by the Sheriff or Sheriff’s designee for law enforcement purposes, or as required by any applicable law.”51 This indicates that the Sheriff has discretion on the release of BWC footage. The policy also fails to explain protocol for editing or redacting sections of videos to protect individuals involved.

The public can make an open records request for BWC footage in accordance with state regulation.52 Individuals may request BWC footage from BCSO in person or via email or mail detailing the following: date and time of the recording, location where recording occurred, and name of individuals who are subjects of the recording.53 The Video Evidence Custodian will produce the footage for all requestors.54 Attorneys requesting footage must coordinate efforts through the DA’s office to seek a copy of the BWC recording.55 The policy also requires other law enforcement agencies to submit written requests for BWC footage to the Video Evidence Custodian directly.56
a. Does the policy demonstrate an understanding of the state’s public disclosure laws?
Yes, the policy expresses that it will follow state regulatory requirements for open records requests of BWC footage and references Chapter 552 Texas Government Code and Chapter 1701 Texas Occupations Code.57

b. Does the policy specify whether certain categories of BWC are exempt/prohibited from public disclosure?
The policy dictates that any footage documenting use of deadly force or associated with an active investigation of a Deputy may not be released until the investigation is complete and the matter is adjudicated.58 The policy does not further articulate any additional exemptions or prohibitions from public disclosure.

c. Does the policy specify a process to receive and process public records requests for BWC footage?
The policy does not specify the process to receive and process public records requests for BWC footage. However, the BCSO website briefly highlights the process by requiring individuals to either submit request to BCSO in person or via email or mail with the following details: date and time of the recording, location where recording occurred, and name of individuals who are subjects of the recording.59 The policy indicates that the Video Evidence Custodian will produce the footage for all requestors.60 It also expresses that attorneys requesting footage must coordinate efforts through the DA’s office to seek a copy of the BWC recording.61 The policy also requires other law enforcement agencies to submit written requests for BWC footage to the Video Evidence Custodian directly.62

d. Does the policy specify who is authorized to approve release of BWC footage?
The policy does not articulate specific protocol for release of critical incident footage. The Video Evidence Custodian produces the footage for all requests.63 However, it is unclear to what extent the chain of command above the Video Evidence Custodian is involved in the review and approval for the release of footage. It is also unclear if release of footage efforts are coordinated with the Public Information Officer and the District Attorney’s Office and if there are any notifications of release sent to associated parties including the County judge. The policy indicates that the Sheriff or Sheriff’s designee may release any footage for law enforcement purposes.64 It appears that the ultimate discretion on releasing footage rests upon the Sheriff.

e. Does the policy specify a process for BWC review and redaction prior to release?
This policy does not specify process for BWC review and redaction prior to release.

f. Is the BWC policy publicly available? (If yes, how?)
No, this policy is not publicly available.

2. Harris County Sheriff’s Office (HCSO)
General Observations:
The policy defines critical incident as, “An incident that is typically of such magnitude that it necessitates a heightened emergency response, requires additional resources, extended on-scene command, recall and augmentation of personnel, or multi-agency response and support in order to protect life and property, prevent escalation, and restore order. Response to a critical incident will be determined by the type of incident, magnitude, and necessary personnel needed.”65 This definition is located in the policy regarding emergency management.
While the HCSO policy does not specifically define officer-involved shooting nor use of force incidents, the “De-escalation & Response to Resistance” Policy #501 offers the following definitions:
- Bodily Injury- “Physical pain, illness, or any impairment of physical condition.”
- Deadly Force- “Force intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.”
- Force- “Application of physical techniques or tactics, or use of an object, device, or weapon against another person. It is not force when a subject allows him or herself to be searched, escorted, handcuffed, or restrained.”
- Serious Bodily Injury- “Bodily injury that creates a substantial risk of death or causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.”

The policy does not outline procedures for releasing BWC footage involving critical incidents. Instead, it requires individuals to submit a public information records request or submit a formal request to the DA’s Office to receive a copy of the video. It further specifies that videos documenting use of deadly force or videos used as evidence in a criminal or administrative matter cannot be released to the public until the investigation is complete and the matter is adjudicated.

Upon review of the HCSO Media Relations policy, the policy requires withholding of information if the information, “would be injurious to a victim (e.g. sexual assault), a witness, or the successful investigation of a case...” The policy specifies that the Public Information Officer is responsible for releasing information involving “a shooting, discharge of a firearm, injury, or any other significant incident” involving an officer. It appears that these policies defer to the PIO and the protocol under the Public Information Act to release any video footage. There is no publically available policy regarding agency release of BWC critical incident footage.

a. **Does the policy demonstrate an understanding of the state’s public disclosure laws?**
The policy does not discuss in detail the state’s public disclosure laws but references the Public Information Act.

b. **Does the policy specify whether certain categories of BWC are exempt/prohibited from public disclosure?**
The policy specifies that videos documenting use of deadly force or videos used as evidence in a criminal or administrative matter cannot be released to the public until the investigation is complete and the matter is adjudicated. The policy also directs withholding of information if the information that is requested, “would be injurious to a victim (e.g. sexual assault), a witness, or the successful investigation of a case...” Beyond this, the policy does not specify certain categories of BWC footage that are exempt or prohibited from public disclosure.

c. **Does the policy specify a process to receive and process public records requests for BWC footage?**
The policy is vague and requires individuals to submit a public information records request or submit a formal request to the DA’s Office to receive a copy of the video footage.

d. **Does the policy specify who is authorized to approve release of BWC footage?**
Policy defers records requests to Public Information Officer’s office. However, the Sheriff has discretion on release of information as well. Policy is unclear on the level of involvement and collaboration between both departments in responding to requests for BWC critical incident footage.
e. Does the policy specify a process for BWC review and redaction prior to release?
No, the policy does not offer details on review and redaction protocol prior to release.

f. Is the BWC policy publicly available? (If yes, how?)
Yes, this policy is publicly available online.

3. El Paso County Sheriff’s Office
General Observations:
Policy 8.15 regarding Body Worn Cameras does not specifically define critical incident. The policy articulates that footage depicting use of deadly force or footage that is part of an investigation cannot be released, destroyed, or deleted until matters are adjudicated, investigation(s) are complete, or retention period for that record has expired. The policy further specifies that for criminal investigations, the BWC footage cannot be destroyed, deleted, or released until the following occurs:
- “The investigation has concluded;
- The prosecution is final or the statute of limitations has run;
- The offender is no longer on probation or in the custody of any criminal justice agency;
- The records retention period has been met.”

The agency requires all individuals to submit a formal request to the El Paso County Sheriff’s Office for a copy of the BWC footage. The request must specify, “the date and approximate time of the recording; the specific location where the recording occurred; and the name of one or more individuals known to be a subject of the recording.” The Sheriff’s Legal Advisor will determine if the requested footage may be released.

The El Paso County Sheriff’s Office BWC Policy is not publically available. The policy was provided by the Sheriff’s Office personnel upon request. It is possible that details of footage that is exempt or prohibited from disclosure along with details of the review and redaction process prior to releasing footage is located in a separate policy that is unavailable to the public.

a. Does the policy demonstrate an understanding of the state’s public disclosure laws?
The policy briefly references the Texas Public Information Act and the Texas Occupations Code with respect to BWC footage requests.

b. Does the policy specify whether certain categories of BWC are exempt/prohibited from public disclosure?
No, the BWC policy does not specify whether certain categories of BWC are exempt or prohibited from public disclosure. The policy does indicate that the subject (or the authorized representative) must provide written consent to the release of footage that was taken in a private space or if the recording is involved in “an investigation into a Class C misdemeanor offense which does not result in an arrest.”

c. Does the policy specify a process to receive and process public records requests for BWC footage?
Yes, the policy requires individuals to submit written requests to the Sheriff’s Office detailing “the date and approximate time of the recording; the specific location where the recording occurred; and the name of one or more individuals known to be a subject of the recording.” The Sheriff’s Legal Advisor will review and determine if the footage may be released.

d. Does the policy specify who is authorized to approve release of BWC footage?
Yes, the Sheriff’s Legal Advisor reviews all requests and determines if the footage may be released.
e. Does the policy specify a process for BWC review and redaction prior to release?
No, the policy does not specify a process to review and redact footage prior to release.

f. Is the BWC policy publicly available? (If yes, how?)
No, this policy is not publicly available.

4. San Antonio Police Department (SAPD)

General Observations:
The policy defines critical incident and further outlines the timeframe to release footage. The policy defines critical incident as-
- "Officer-Involved-Shootings: Use of a firearm by a police officer that causes serious bodily injury or death
- Use-of-Force: Use of force by a police officer that results in death or serious bodily injury
- A critical incident does not apply to officer-involved shootings of an animal, an unintentional discharge during pre-shift equipment checks, or during training qualifications on the firing range.
- Any other police encounter where the Chief of Police determines that releasing of a video recording serves a law enforcement purpose."86

Policy dictates the Police Chief to approve the release of the video 60 days after the date of the incident.87 Released videos (full or partial) are posted on the SAPD website for a year.88 Any delays in releasing videos are noted on the website as well.89

There are exceptions to the release of footage. For example, videos with potential domestic violence footage are withheld unless the Police Chief orders for their release.90 Videos with juvenile suspects are also withheld due to state law.91 The policy allows videos to be withheld for more than 60 days for multiple reasons including but not limited to an ongoing investigation or protecting the physical safety and/or constitutional rights of individuals involved in the incident.92 The policy indicates the Police Media Services Unit will prepare the recording for release.93 The City Attorney’s Office will review the footage and provide feedback on if the footage meets regulatory requirements.94 Afterwards, the Police Chief can weigh in on if the video can be released.95

When the Police Chief approves the release of footage, the Media Services Unit will notify all associated parties 24 to 72 hours prior to releasing the footage. This includes the officers that were engaged in the critical incident and are in the video as well as the individual that encountered the use of force from the officers. If the individual has counsel, then the counsel representative is notified instead. If the individual is deceased then the next of kin is notified. The DA’s office, City Manager, and the City Attorney are notified as well. The City Manager will notify the Mayor and City Council.96

The policy does not offer details on how the BWC footage is edited nor offers additional insight on when the Police Chief may withhold video footage. The policy only indicates that the Police Chief has discretion on releasing videos.

a. Does the policy demonstrate an understanding of the state’s public disclosure laws?
Yes, the policy indicates that the release of BWC Digital Media Evidence (DME) will be in compliance with the state regulations. Specifically, the Texas Occupation Code, Title 10. Occupations Related to Law Enforcement and Security, Chapter 1701. Law Enforcement Officers.97
b. Does the policy specify whether certain categories of BWC are exempt/prohibited from public disclosure?

In the critical incident section, the policy briefly explains exemptions or prohibitions for releasing footage to the public. Videos with potential domestic violence footage are withheld unless the Police Chief orders for their release. Videos with juvenile suspects are also withheld due to state law. The policy allows videos to be retained for more than 60 days for multiple reasons including but not limited to an ongoing investigation or protecting the physical safety and/or constitutional rights of individuals involved in the incident. The policy makes a blanket statement for releasing video footage, “except where release is prohibited by law…”

c. Does the policy specify a process to receive and process public records requests for BWC footage?

Yes, the policy outlines procedures for responding to records requests from criminal justice agencies and non-criminal justice stakeholders. For records requested by non-criminal justice stakeholders, the policy references protocol outlined in the GM Procedure 323, Release of Police Records to address the requests. For records requested by criminal justice agencies, the policy requires the agencies to submit written request on agency letterhead. Prosecutors may submit request directly to Video Evidence Custodian or designee. However, the defense attorney for county, district, or federal courts must submit requests through associated prosecutor. The Video Evidence Custodian or designee is responsible for producing the BWC DME while the Records Unit quantifies the cost of producing the DME.

d. Does the policy specify who is authorized to approve release of BWC footage?

The policy highlights three pathways for releasing BWC footage. The first pathway involves records requests from non-criminal justice stakeholders. In this case, the policy requires following protocols in GM Procedure 323, Release of Police Records. The second pathway involves records requests from criminal justice stakeholders including the prosecutor and defense attorneys in which the Video Evidence Custodian works alongside the prosecutor to respond to the request and coordinate release of the BWC footage. The third pathway encompasses all other requests including critical incident events that require oversight and approval of the Police Chief for releasing BWC footage.

e. Does the policy specify a process for BWC review and redaction prior to release?

The Police Chief has discretion on whether BWC footage for critical incidents are released and whether the entire or partial video will be released to the public. With respect to critical incident videos, the policy highlights that the Police Media Services Unit will prepare the recording for release. The City Attorney’s Office will review the footage and provide feedback on if the footage meets regulatory requirements before the Police Chief can weigh in on if the video can be released. The policy does not express in detail what type of footage will be redacted or blurred out nor provides a detailed overview of the chain of command that is responsible for producing and approving the edited footage.

f. Is the BWC policy publicly available? (If yes, how?)

Yes, this policy is online.

5. Houston Police Department (HPD)

General Observations:
The policy defines critical incident as an officer-involved shooting or an incident where individual experiences serious bodily injury or death. The policy offers formal definitions for the following terms:
- Bodily Injury: “An injury causing physical pain, illness, or any impairment of the function of any bodily member or organ.”¹¹³
- Force: “Any physical contact with a person by an employee using the body or any object, device, or weapon, not including unresisted escorting or handcuffing.”¹¹⁴
- Serious bodily injury: “An injury that creates a substantial risk of death or that causes death, serious permanent disfiguration, or protracted loss or impairment of the function of any bodily member or organ.”¹¹⁵

The Homicide Division and Internal Affairs Division direct the handling of BWC for critical incidents involving deadly force, serious bodily injury, or serious misconduct.¹¹⁶ More specifically, they can label the footage as confidential, affecting the release of the footage upon request.¹¹⁷ The public may request copies of BWC footage from Houston PD’s Office of Planning & Data Governance.¹¹⁸ This Office reviews requests and determines if the information is releasable via the Texas Public Information Act.¹¹⁹ All law enforcement agencies except the following stakeholders must request BWC footage from the Police Chief- US Attorney’s Office, Harris County DA’s Office, Montgomery County, Fort Bend County, and City of Houston Municipal Prosecutors. Instead, these requesters can contact the Office of Technology Services directly for the specific BWC footage. The policy prohibits the destruction of government record that is part of an open record request or associated with ongoing litigation until both are completed or resolved respectively.¹²⁰ Also noteworthy, the departmental public information officer handles media release of critical incidents.¹²¹

**Recent Changes:** On April 29 2021, Houston’s Mayor Turner announced several changes to police policies including the release of critical incident footage for BWCs.¹²² The Mayor based these changes on a September 2020 report published by the Mayor’s Task Force on Policing Reform.¹²³ With respect to releasing critical incident footage, the Mayor adopted the Task Force’s recommendation to release footage within 30 calendar days of the incident.¹²⁴ The prosecuting authority is given a seven day notice prior to releasing the footage.¹²⁵ In circumstances where the footage is released in less than 30 days and a seven-day notice is not feasible, then a 24-hour notice is required.¹²⁶

**a. Does the policy demonstrate an understanding of the state’s public disclosure laws?**
The policy expresses a thoughtful process in responding to open records requests in accordance with the Texas Public Information Act.¹²⁷ The policy also references the Texas Occupations Code Chapter 1701.¹²⁸

**b. Does the policy specify whether certain categories of BWC are exempt/prohibited from public disclosure?**
No, the policy does not specify whether certain categories of BWC are exempt/prohibited from public disclosure. Instead, the policy specifies the Homicide Division and Internal Affairs Division direct the handling of BWC for critical incidents involving deadly force, serious bodily injury, or serious misconduct.¹²⁹ These divisions can label the footage as confidential.¹³⁰

**c. Does the policy specify a process to receive and process public records requests for BWC footage?**
Yes, the policy highlights a thoughtful process for responding to open records request through the Office of Planning & Data Governance. However, the policy is not specifically written for BWC footage and remains generalized for all requests for government records.¹³¹

**d. Does the policy specify who is authorized to approve release of BWC footage?**
The policy dictates that the Office of Planning & Data Governance is responsible for handling open records request, implying that this Office will approve or deny the release of BWC footage.

e. *Does the policy specify a process for BWC review and redaction prior to release?*
No, the policy does not specify a process for BWC review and redaction prior to release.

f. *Is the BWC policy publicly available? (If yes, how?)*
Yes, this policy is available online.

6. **Austin Police Department (APD)**

   **General Observations:**

   Critical incident is defined in two APD General Orders as follows:

   - **Critical Incident as defined in APD General Order 902 Administrative Investigations- 902.1.2**
     *Definitions:*
     - “Any force resulting in death.
     - Any force that resulted in a substantial risk of death.
     - Any intentional firearm discharge at a person, vehicle, or structure regardless of injury.
     - Any unintentional firearm discharge resulting in another person’s injury or death.
     - Any force that resulted in serious bodily injury requiring admittance to the hospital, beyond emergency room treatment and release (e.g. serious disfigurement, disability, or protracted loss or impairment of the functioning of any body part or organ).
     - Use of an impact weapon, including kinetic energy projectiles, and improvised weapons that strikes the head of a subject resulting in serious bodily injury or death.
     - In custody deaths: For inquiry, reporting, and review purposes, all in-custody deaths occurring prior to or within 24 hours after booking shall be treated as critical incidents and require concurrent inquiries conducted by SIU and IA, regardless of weather force was used on the subject.
     - The utilization of the Precision Immobilization Technique when serious bodily injury or death occurs.
     - Note: The definition of “serious bodily injury” found in the Texas Penal Code, Section 1.07(a)(46) will apply.¹³³

   - **Critical Incident as defined in APD General Order 117 Critical Incident- Public Release – 117.2.1**
     *Critical Incidents:*
     - “Officer-involved shootings, including unintentional discharge while in the course of duty or in response to a call, regardless of whether a person was hit by gunfire and even if no allegation of misconduct is made;
     - A use of force resulting in death or serious bodily injury as defined by Section 1.07, Texas Penal Code;
     - Any other police encounter where the Chief of Police determines release of video furthers a law enforcement purpose.
     - This General Order does not include or apply to officer-involved shootings of an animal an unintentional discharge during pre-shift equipment checks, or during training/qualifications on the firing range.”¹³⁴
The policy defines relevant video imagery as, “video and accompanying audio footage, which may include relevant portions of 911 calls, Combined Transportation, Emergency & Communication Center (CTECC) dispatch recordings, and the Department’s radio calls, that are typically considered by the Chief of Police and criminal prosecutors to determine the propriety of an officer’s conduct during a critical incident.”\(^{135}\) The policy also explains that relevant video imagery “depicts the actions and events leading up to and including the critical incident.”\(^{136}\)

The policy requires videos to post on the APD website within 60 days of the incident and requires the videos to be available for two years.\(^{137}\) When necessary, APD may provide additional context for any video that is posted.\(^{138}\) If the Police Chief decides to withhold or delay releasing the video, then APD must issue a statement within 45 days of the incident explaining why the video will not be released timely and indicate if the video will be released eventually.\(^{139}\) The reason for the delay must be specific to the incident and not generalized.\(^{140}\) Videos delayed for timely release are revisited every 30 days.\(^{141}\) If the videos continue to be withheld, then APD must provide reason(s) for delaying release until the video release is approved by the Police Chief.\(^{142}\)

The policy allows release of BWC critical incident footage prior to the conclusion of an open investigation or adjudication of criminal proceeding.\(^{143}\) However, the policy gives the Police Chief discretion to delay release of BWC footage to maintain privacy of involved individuals and integrity of an investigation and support criminal proceedings.\(^{144}\) The policy allows delaying release of videos for reasons including but not limited to an ongoing investigation or protecting the physical safety and/or constitutional rights of individuals involved in the incident.\(^{145}\) Furthermore, the policy requires redaction or editing of videos with juveniles and certain crime victims or otherwise withholding of footage.\(^{146}\) In a separate policy specific to releasing records and information, the policy notes that unless authorized by the Police Chief, any BWC footage that captures critical incident or is part of an investigation cannot be released, deleted, or destroyed until the incident is adjudicated.\(^{147}\) While phrased differently, both policies still give the Police Chief discretion on when to release footage.

Individuals may request copies of BWC footage through the open records request process wherein they reference the following details: date and time of the recording, location where recording occurred, and name of individuals who are subjects of the recording.\(^{148}\) Upon approval for release, at least 48 hours before releasing a video, all associated parties are notified about the upcoming video release. This includes officers in the video and the individual that experienced the use of force. If the individual has counsel, then the counsel representative is notified. If the individual is deceased then the next of kin is notified. In addition, if the individual is a juvenile then the parent or legal guardian is notified. The DA’s office, City Attorney, and Office of Police Oversight are notified as well. The policy requires APD to work with the Office of Police Oversight on developing the video prior to its release.\(^{149}\)

Recent Changes: On July 23 2021, City of Austin posted a press release announcing revisions to APD’s Critical Incident Public Release policy. This policy expanded its definition of critical incident to include, “All deaths while an arrestee/detainee is in the custodial care of the Department.”\(^{150}\) Presently, the policy requires APD to release BWC critical incident footage within 60 days of the incident.\(^{151}\) However, the recent press release announced that the agency shortened the timeframe for releasing footage (from BWC and dashboard cameras) to 10 business days.\(^{152}\)
The press release also noted APD to host a live news conference on the agency’s social media websites to share details of the critical incident and participate in the initial public viewing of the footage. The revised process entails collaboration between City and County stakeholders (Police Chief, DA’s Office, and the Office of Police Oversight) to determine if the critical incident footage and relevant information may be released. Note, the ultimate authority for approving or denying release of the footage continues to rest upon the Police Chief.

a. Does the policy demonstrate an understanding of the state’s public disclosure laws?
Yes, the policy references both the Texas Public Information Act and the Texas Occupations Code pertinent to the body worn camera video request regulations.

b. Does the policy specify whether certain categories of BWC are exempt/prohibited from public disclosure?
The policy allows delaying release of videos for reasons including but not limited to an ongoing investigation or protecting the physical safety and/or constitutional rights of individuals involved in the incident. Strict prohibition from disclosure includes footage depicting juveniles or certain crime victims and requires redaction, editing, or withholding footage. The policy provides examples of redaction as, “removing sound or blurring of faces and other images that would specifically identify involved individuals, sensitive locations, or reveal legally protected information.”

c. Does the policy specify a process to receive and process public records requests for BWC footage?
Yes, the policy specifies that requesters can submit a formal open records request either in person at APD Headquarters or Austin City Hall, by email (public.information@austintexas.gov), USPS, or through the city’s open record request website. Requests cannot be submitted via fax. (This process is for all records requests including requests for BWC footage.) External agencies must submit request on letterhead in person at APD Headquarters, email (send request from official agency email address to agency.requests@austintexas.gov), fax, USPS, or contact the Austin Regional Intelligence Center (ARIC).

The policy also highlights in detail how APD will process the records requests. The Public Information Office handles all requests from media and students. All other requests are handled by Central Records. The Open Records Supervisor determines if the records are releasable or if an exemption will be claimed for the request. The Supervisor will follow-up with the requester when the request has been denied. Some requests may warrant an Attorney General ruling by coordinating efforts with the Legal Advisor for the department.

d. Does the policy specify who is authorized to approve release of BWC footage?
The policy specifies that the internal review process for open records requests involves the Open Records Supervisor and in some cases the Legal Advisor for the department. However, the authority to approve the release the footage rests upon the Police Chief.

e. Does the policy specify a process for BWC review and redaction prior to release?
The policy highlights that the Open Records Supervisor determines if the records are releasable or if an exemption will be claimed for the request. The Supervisor will follow-up with the requester when the request has been denied. Some requests may warrant an Attorney General ruling by coordinating efforts with the Legal Advisor for the department. If the video is releasable, then redaction or editing of videos may be required (in lieu of withholding the footage) if the footage includes with juveniles and certain crime victims. The policy provides examples of redaction as, “removing sound or blurring of faces and other images that would specifically identify involved individuals, sensitive locations, or reveal legally protected information.” Please note, the authority to approve the release the footage rests upon the Police Chief.

f. Is the BWC policy publicly available? (If yes, how?)
Yes, the policy is online.

7. Dallas Police Department (DPD)
General Observations:
The policy defines the following terms:
- Serious Injury: “Bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss of impairment of the function of any bodily member or organ.”
- DPD Critical Incident: “A shooting or use of force incident involving a sworn member of the Dallas Police Department that results in serious bodily injury (as defined in Chapter 37 of the Dallas City Code), or death.”

Recent Changes: The policy was revised on June 30 2020 and relates to all BWC footages with respect to DPD Critical Incident, custodial deaths, or any police encounters “where the Chief of Police determines that the release of the video recording is in the public’s interest.” The policy requires releasing BWC footage within 72 hours of a DPD Critical Incident including officer-involved shooting or use of force event. Use of force includes instances that lead to serious bodily injury, death, or custodial death. For officer-involved shootings, the Firearms Discharge Review Team may brief the Police Chief and Director of the Office of Community Police Oversight (OCPO) prior to any decisions to release the critical incident footage. The policy indicated the agency may provide additional context to the footage when released. Also noted, the agency has discretion to redact or edit footage or delay release of footage.

The policy details protocol for releasing BWC critical incident footage. The investigative unit works with the Media Relations Unit (MRU) to prepare the video. Once prepared, the MRU provides a copy to the Open Records Unit and maintains a copy within the MRU for three years from the incident date. The investigative unit will provide an opportunity to injured subject (or designated representative), DA’s Office, and Director of OCPO to view the footage prior to its public release. The MRU provides opportunity for involved officer to view footage prior to its public release. The Police Chief has final authority to approve or deny releasing the entire or partial BWC footage and will notify the Director of the OCPO if BWC footage will not be released. In regards to public information requests, the policy requires individuals to submit a formal request for a copy of the footage.

a. Does the policy demonstrate an understanding of the state’s public disclosure laws?
The policy references the Public Information Act.

b. Does the policy specify whether certain categories of BWC are exempt/prohibited from public disclosure?
The policy does not specify if certain categories of BWC are exempt/prohibited from public disclosure.

c. *Does the policy specify a process to receive and process public records requests for BWC footage?*
   The policy requires individuals to submit a public information request for a copy of the footage.\(^{191}\) However, the policy does not specify details on how to receive and process public records requests for BWC footage. The Dallas PD website notes how to submit public records requests.

d. *Does the policy specify who is authorized to approve release of BWC footage?*
   The Police Chief has final authority to approve or deny the release of the entire or partial BWC footage.\(^{192}\) The Police Chief will notify Director of OCPO when BWC footage will not be released.\(^{193}\)

e. *Does the policy specify a process for BWC review and redaction prior to release?*
   The policy does not specify a process for BWC review and redaction prior to release.

f. *Is the BWC policy publicly available? (If yes, how?)*
   Yes, the policy is available [online].
TIMEFRAMES FOR CRITICAL INCIDENT FOOTAGE RELEASE OUTSIDE OF TEXAS:
The following is a summary of several law enforcement agencies outside of Texas and their designated timeframes to release BWC critical incident footage.

Washington DC: Five Business Days
The Metropolitan Police Department policy requires the Mayor to release within five (5) business days the names and BWC footage of involved officers in an officer-involved death or serious use of force.\textsuperscript{194}

Baltimore, MD: One Week
The Baltimore Police Department policy requires that within five days of a critical incident, the Deputy Commissioner of the Public Integrity Bureau must recommend to the Police Commissioner whether to release the BWC critical incident footage.\textsuperscript{195} The Police Commissioner has 48 hours to either approve or deny the release of the BWC footage.\textsuperscript{196} If approved for release, the footage may have portions redacted or edited to protect involved individuals.\textsuperscript{197} Ultimately, the agency has one week from the incident to either release or withhold footage.\textsuperscript{198}

New Orleans, LA: Nine Days
Within seven (7) days of a critical incident, the Deputy Chief of New Orleans Police Department’s (NOPD) Public Integrity Bureau recommends to the NOPD Superintendent on whether the BWC critical incident footage may be released to the public.\textsuperscript{199} The Superintendent has 48 hours to decide if the BWC footage will be released.\textsuperscript{200} The cumulative process takes up to nine (9) days from the critical incident to release or withhold footage.\textsuperscript{201}

Phoenix, AZ: Fourteen Days
The Phoenix Police Department policy requires BWC critical incident footage released within 14 calendar days of the incident.\textsuperscript{202} The policy articulates that footage may be redacted to protect involved individuals prior to releasing footage.\textsuperscript{203}

New York City, NY: Thirty Days
The NYPD policy requires BWC critical incident footage released within 30 calendar days of the incident.\textsuperscript{204} The policy articulates that footage may be redacted to protect involved individuals prior to releasing footage.\textsuperscript{205} Release of footage can be delayed or withheld if there is a, “court order or restraining order preventing release of such footage” or to comply with Departmental, local, state, or federal disclosure rules and regulations.\textsuperscript{206}

Los Angeles, CA: Forty-five Days
LAPD policy dictates releasing critical incident footage within 45 days of the incident.\textsuperscript{207} The policy requires appropriate redactions or edits to protect involved individuals.\textsuperscript{208} The policy also articulates circumstances where the footage may not be released timely.\textsuperscript{209} To delay releasing the footage, the Police Chief and two designees from the LA Board of Police Commissioners must unanimously vote for delayed release, otherwise the footage must be released.\textsuperscript{210} Footage that is delayed for release is revisited every 14 days.\textsuperscript{211} If the delay is more than 28 days, then the Commission will decide whether to release the footage at next scheduled meeting.\textsuperscript{212} Once approved for release, LAPD posts footage on their website and the footage is available for 12 months.\textsuperscript{213}
Chicago, IL: Sixty to Ninety Days
The City of Chicago posted its Video Release Policy online wherein it states that all BWC critical incident footage must be released within 60 calendar days of the incident. A government entity may request the City to delay releasing the footage for up to 30 days. The request must include details on why the footage should not be released within the original 60 day timeframe. In lieu of releasing the footage, the City will post the request to delay footage release on a portal or website for public access. The City will not allow or process any additional requests to further delay release of the footage beyond 30 days. Ultimately, the City of Chicago releases BWC critical incident footage between 60 and 90 days of the incident. The policy also offers flexibility to release footage in less than 60 days when the release of footage will not have negative implications on an active investigation.
**BEXAR COUNTY COMPARED TO OTHER LAW ENFORCEMENT AGENCIES:**

The BCSO BWC policy does not directly address the release of BWC footage for critical incidents. Instead, the agency heavily leans on state regulatory requirements for public information requests.\(^{221}\) In doing so, the public must submit request for BWC footage to BSCO in person or via email or mail with details of the footage of interest.\(^{222}\) The policy specifies that any footage documenting use of deadly force or associated with an active investigation of a Deputy may not be released until the investigation is complete and the matter is adjudicated.\(^{223}\) The policy also indicates, “Unless prohibited by law, a recording may be released to the public by the Sheriff or Sheriff’s designee for law enforcement purposes, or as required by any applicable law.”\(^{224}\) These clauses provide the Sheriff discretion on the release of BWC critical incident footage.

Table 1 lists the timeframes for critical incident footage release amongst the seven Texas law enforcement agencies that were evaluated. Bexar, Harris, and El Paso County Sheriff Offices all have an unspecified timeframe for releasing critical incident BWC footage as they all lean on the state regulatory requirements for public information requests. In contrast, the police departments have more progressive policies with respect to releasing critical incident footage as they require the departments to decide within set timeframes if footage will be released or withheld. The ultimate discretion however still rests upon the heads of the agencies.

### Table 1: Timeframe for Critical Incident Footage Release for Texas Law Enforcement Agencies

<table>
<thead>
<tr>
<th>Texas Law Enforcement Agencies</th>
<th>Timeframe for Critical Incident Footage Release</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bexar County Sheriff’s Office</td>
<td>Unspecified</td>
</tr>
<tr>
<td>Harris County Sheriff’s Office</td>
<td>Unspecified</td>
</tr>
<tr>
<td>El Paso County Sheriff’s Office</td>
<td>Unspecified</td>
</tr>
<tr>
<td>San Antonio Police Department</td>
<td>60 Calendar Days</td>
</tr>
<tr>
<td>Houston Police Department</td>
<td>30 Calendar Days</td>
</tr>
<tr>
<td>Austin Police Department</td>
<td>10 Business Days</td>
</tr>
<tr>
<td>Dallas Police Department</td>
<td>72 Hours</td>
</tr>
</tbody>
</table>

Table 2 lists the timeframes for critical incident footage release amongst seven non-Texas law enforcement agencies that were reviewed. With the exception of Chicago, all of the non-Texas law enforcement agencies make a determination to release critical incident BWC footage within 45 days. In fact, two of the largest cities in the US, NYC and LA have the most progressive policies for releasing critical incident footage within 30 and 45 days respectively. This proves that with sound public policy, law enforcement can balance transparency and maintain judicial integrity within the community.

### Table 2: Timeframe for Critical Incident Footage Release for Non-Texas Law Enforcement Agencies

<table>
<thead>
<tr>
<th>Non-Texas Law Enforcement Agencies</th>
<th>Timeframe for Critical Incident Footage Release</th>
</tr>
</thead>
<tbody>
<tr>
<td>Washington DC</td>
<td>5 Business Days</td>
</tr>
<tr>
<td>Baltimore, MD</td>
<td>7 Days</td>
</tr>
<tr>
<td>New Orleans, LA</td>
<td>9 Days</td>
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<tr>
<td>Phoenix, AZ</td>
<td>14 Days</td>
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<tr>
<td>New York City, NY</td>
<td>30 Days</td>
</tr>
<tr>
<td>Los Angeles, CA</td>
<td>45 Days</td>
</tr>
<tr>
<td>Chicago, IL</td>
<td>60 to 90 Days</td>
</tr>
</tbody>
</table>
Bexar County Sheriff’s Office is encouraged to follow the lead of the police departments within Texas as well as non-Texas law enforcement agencies by setting a strict timeframe to decide if critical incident BWC footage will be released, delayed, or withheld from the public. If the footage is determined to be delayed or withheld, the Sheriff is recommended to provide specific reasons why the footage will not be available within specified timeframe and offer an estimated timeframe for when the issues preventing timely release will be resolved. In addition, the Sheriff is recommended to post on the BCSO website the BWC policy, released BWC recordings, and an explanation for withholding or delaying release of certain recording. These efforts will maintain transparency between the agency and the local community.
RECOMMENDATIONS:
The following are recommendations on ways to improve the BCSO BWC policy with respect to release of BWC critical incident footage.

Houston Mayor’s Task Force on Policing Reform & Prospective Reforms in Bexar County:
Houston Mayor Turner’s Task Force on Policing Reform published a report in September 2020 outlining recommendations for improving the BWC policies locally. Several of the recommendations may be considered for potential adoption in Bexar County:

- **Release critical incident footage within 30 Calendar Days.** The Task Force recommended releasing critical incident footage within 30 calendar days of the incident. While the Task Force recommended 30 calendar days, BCSO may consider a shorter timeframe for releasing footage. Nonetheless, this recommendation defines a set timeframe for when critical incident footage may be available for viewing.

- **Provide public notice when expect delay in releasing critical incident footage.** This recommendation requires the law enforcement agency to provide an explanation to the public specifying why there will be a delay in releasing critical incident footage. An expansion of this recommendation is for the Sheriff to post notifications for delay on the BCSO website and offer a timeframe on when the reasons for withholding the footage may be resolved. This will maintain transparency and keep the public well informed.

- **Expand release criteria for critical incident footage.** Presently BCSO policy does not articulate if additional information is provided to any released footage for context. In turn, BCSO should expand BWC policy to offer additional information to the requested critical incident footage. BCSO policy should also require providing “representative samples of the BWC video(s) depicting the critical incident.” Thus, the audience will have context before, during, and after the critical incident, thereby minimizing speculation of events that unfolded during the incident.

- **Share un-redacted critical incident BWC footage with stakeholders (media, family, prosecution, attorneys, etc.).** BCSO policy is advised to further specify which stakeholders may view un-redacted critical incident footage. BCSO is recommended to post videos on the departmental website, imbed protections to prevent juveniles from accessing the videos, and issue warnings for graphic content.

- **Adopt Redaction Standards for Critical Incident Footage.** BCSO policy is recommended to require redactions for the following circumstances prior to releasing the footage:
  - “Comply with federal, state, or local laws governing disclosure of records.
  - Protect confidential sources and witnesses.
  - Protect the identity of victims of sex crimes, domestic violence, and juveniles.
  - Protect the privacy, life, or safety of any person.
  - Avoid undue trauma due to explicit or graphic content by accompanying videos with appropriate caveats and warning labels.”

- **Redesign the departmental website to include BWC policy, critical incident footage, and critical incident dashboard.** BCSO is recommended to develop a webpage specific to BWC program. The webpage must have the official BWC policy along with released BWC recordings and notifications of delayed or withheld footages. BCSO should develop a regularly updated BWC dashboard where the public may view statistics on BCSO specific critical incidents, similar to Houston’s efforts. Presently, the public has to reference the State Attorney General’s website to review all reports associated with BCSO specific critical incidents documenting if the incident led to an injury or death. While the Texas Justice Initiative has developed a dashboard summarizing details noted in such documents, it is uncertain how often the data is updated. A BCSO BWC dashboard would ensure greater transparency on critical incidents as they occur.
Policy Structure: Texas Commission on Law Enforcement vs American Civil Liberties Union

The Texas Commission on Law Enforcement (TCOLE) and the American Civil Liberties Union (ACLU) both have sample policies that each encourage law enforcement agencies to consider. The following offers notable observations within each sample policy and provides recommendations for BCSO to consider.

**Texas Commission on Law Enforcement:** TCOLE provides two sample policies for law enforcement agencies to consider when administering a BWC program. TCOLE’s sample policies highlight the State’s position for local law enforcement agencies to adhere to the Texas Public Information Act when handling public requests for BWC footage, including critical incident footage. The samples note that all videos must be retained for at least 90 days in accordance with the Texas Occupations Code 1701.661. This is the State’s standard retention schedule for all recorded BWC footage.

There are minor differences between the two sample policies. One sample indicates, “Any video that becomes part of an internal investigation will be placed on hold for indefinite retention until it is no longer needed” while another sample policy allows media to view the recording if the Police Chief approves. Both sample policies illustrate that the State provides local law enforcement agencies discretion on if BWC is released upon request. The State also does not instill any requirements on releasing critical incident footage. In turn, it is up to the local law enforcement agencies to enforce more progressive protocols for releasing critical incident footage and administering a more transparent BWC program.

**American Civil Liberties Union:** The ACLU provides a model policy for law enforcement agencies to consider when administering a BWC program. Notable observations for potential adoption by BCSO:

- **Comprehensive Definition for Use of Force:** The ACLU policy defines use of force, whereas the BCSO policy does not. BCSO is recommended to adopt ACLU’s full or partial definition for use of force where applicable:
  
  o “any action by a law enforcement officer that
    
    ▪ (A) results in death, injury, complaint of injury, or complaint of pain that persists beyond the use of a physical control hold, or
    
    ▪ (B) involves the use of a weapon, including a personal body weapon, chemical agent, impact weapon, extended range impact weapon, sonic weapon, sensory weapon, conducted energy device, or firearm, against a member of the public, or
    
    ▪ (C) involves any intentional pointing of a firearm at a member of the public.”

- **Six Month Baseline Retention Schedule:** Unlike Texas regulatory requirements of retaining BWC footage for at least 90 days, ACLU’s model policy requires retaining BWC footage for at least six (6) months. While BCSO policy notes they follow state records retention requirements, upon closer review of the footage retention schedule, it appears footage is retained for at least six months. BCSO is recommended to clarify policy on retention schedule for the following as the policy currently indicates footage is manually deleted: footages pending review, restricted footage, and training demo.

- **Five-Day Release of Critical Incident Footage upon Request:** The ACLU policy has provision for law enforcement to follow public information request policies and procedures per the state regulatory requirements. However, the ACLU policy requires that requests for footage documenting subject, “being killed, shot by firearm, or grievously injured” be fulfilled within five (5) days of receiving the request.
The ACLU policy requires disclosure of footage within less than a week of the request. In contrast, the Houston Task Force recommended release of footage within 30 calendar days of the incident. Due to notable differences between the ACLU and Houston Task Force recommendations, BCSO is recommended to define timeframe (i.e. five days vs thirty days) for releasing critical incident footage and determine if the timeframe will begin from the records request date or from the date of the incident.

- **Investigative Footage, No Problem:** The ACLU policy does not withhold footage from public release if the footage is part of an investigation. In contrast, the BCSO policy dictates that any footage documenting use of deadly force or associated with an active investigation of a Deputy may not be released until the investigation is complete and the matter is adjudicated. BCSO is recommended to revise their policy to release critical incident footage that is part of investigation in a manner that does not compromise the integrity of the investigation nor compromise the depiction of the event through redactions and edits, to maintain transparency in the community.

- **Transparent Website:** ACLU policy requires law enforcement agencies to have a transparent platform on their website where the community may reference the agency’s policies, BWC footages, etc. BCSO is recommended to expand its website to post BWC policies and footages for the community to review and nurture a healthy space to discuss questions and concerns with local policing efforts.

**Texas Attorney General Opinion No. KP-0186:**

On March 19 2018, Attorney General Ken Paxton issued Opinion No. KP-0186 in response to Senator Lucio’s following inquiry regarding release of BWC footage:

> “Is a municipal law enforcement agency prohibited from complying, authorized to comply, or required to comply with a request by a member of the public to view a recording from a body worn camera if the head of the law enforcement agency determines that the recording could be used as evidence in a criminal prosecution and that allowing the person to view the recording would interfere with the detection, investigation, or prosecution of a crime?”

Attorney General Ken Paxton clarified that in reviewing the Texas Occupations Code 1701.661 and sections of the Texas Public Information Act (Chapters 552.108 and 552.302), local law enforcement agencies may redact confidential footage from recordings and can determine afterwards whether or not the requested BWC footage may be released. The Opinion notes:

> “Pursuant to section 552.108(a)(l) of the Government Code, upon receiving authorization from the Attorney General, a law enforcement agency may withhold the recording of a body worn camera if releasing it to a member of the public would interfere with the detection, investigation, or prosecution of a crime. The exception to disclosure under section 552.108 is discretionary, and a law enforcement agency may release information recorded by a body worn camera to a member of the public after the agency redacts any information made confidential by law.”

The current Texas code does not require law enforcement to indefinitely withhold BWC footage until an investigation is complete or judicial matters are adjudicated. Instead, law enforcement agencies may release footage after redacting legally protected information. BCSO is recommended to revise existing BWC policy to align closely with AG Opinion KP-0186 with respect to footage that is part of an investigation or criminal proceeding to allow release of requested footage after proper redactions. This measure would allow more timely release of requested critical incident BWC footage.
**American Bar Association:**
While local law enforcement agencies are faced with revising existing BWC policies to expand on transparency efforts with the community, the American Bar Association highlighted the impact of expanded state BWC regulatory requirements.\(^{263}\) Several states have taken the leap to enhance transparency.\(^{264}\) While Texas has been slow to change, perhaps in the next legislative session, Texas may consider revising its BWC policies and follow the lead of the following states:
- Since July 1 2019, California law mandated BWC program which requires local law enforcement agencies to release to public BWC footage for critical incident within 45 days of incident.\(^{265}\)
- On June 15 2020, Connecticut Governor issued Executive Order requiring state troopers to wear BWCs.\(^{266}\) The Governor announced that state BWC footage shall now be released within four days of incident.\(^{267}\)
- On June 19 2020, Colorado passed a law that will be effective in 2023 wherein unedited BWC footage will be released within 21 days of receiving complaint on officer misconduct.\(^{268}\)
- On September 20 2020, New York State Attorney General said the office will release footage that was used by the office to conduct investigation for police misconduct.\(^{269}\)

The examples above demonstrate that the state also has a responsibility to maintain transparency within the community. States that mandate release of footage within specified timeframes allow consistency across local law enforcement agencies and expand transparency efforts. If states as large as California and New York can expand their BWC policies to facilitate transparency and allow timely release of BWC footages, then Texas should strive to be a similar example in the South. BCSO is recommended to work with the County’s Governmental Affair’s Office to spearhead draft statewide legislation on releasing critical incident footage within specified timeframes.

**CONCLUSION:**
BCSO’s BWC policy lacks transparency with releasing critical incident footage. The recommendations noted in this paper highlight that with sound public policy, BCSO can achieve greater transparency within the community without compromising the integrity of active investigations or pending cases. BCSO is advised to implement recommendations from the Houston Mayor’s Task Force and ACLU and align its policy with AG Opinion KP-0186 to initiate progressive steps towards releasing critical incident footage. BCSO is also advised to work alongside the District Attorney’s Office, Office of Criminal Justice, and community stakeholders to revise existing BWC policy that is not only legally compliant but also representative of community requirements. Lastly, the American Bar Association highlighted several examples of states that implemented statewide BWC policies to release critical incident footage more timely.\(^{270}\) Analogously, BCSO is recommended to work with the County’s Governmental Affair’s Office to spearhead draft statewide legislation on releasing critical incident footage within specified timeframes.


Bexar County Sheriff’s Office. Central Records-Bexar County Sheriff’s Office. Bexar County. https://www.bexar.org/724/Central-Records-Bexar-County-Sheriffs-Of


Bexar County Sheriff’s Office. Central Records-Bexar County Sheriff’s Office. Bexar County. https://www.bexar.org/724/Central-Records-Bexar-County-Sheriffs-Of


Chapter 332 Body Worn Cameras, Dallas Police Department General Order. Section 332.06 D. (2020, July 29). https://dallaspolice.net/resources/Shared%20Documents/General-Orders.pdf#search=general%20order

Chapter 317 Officer Involved Shootings or Other Critical Incidents Resulting in Serious Injury or Death; Public Release of Video Recording, Dallas Police Department General Order. Section 317.08 E. (2020, June 30). https://dallaspolice.net/resources/Shared%20Documents/General-Orders.pdf#search=general%20order

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