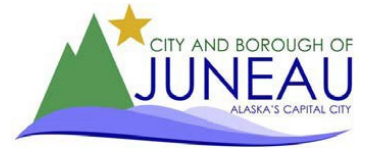


MEMORANDUM



DATE: 3/17/2025
TO: Assembly
FROM: Emily Wright, City Attorney
SUBJECT: Ordinance 2025-05, Body Worn Cameras



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Juneau, AK 99801
Phone: (907) 586-5242

In the fall of 2024, the Assembly and Juneau Police Department Chief Bos requested that the Law Department draft an ordinance to provide clarity on the process for the release of body worn camera footage in the case of officer involved shootings. The ordinance before you has been reviewed by the City Manager's Office, Chief Bos, and Assemblymembers Hughes-Skandijs, Kelly, and Adkison.

The Juneau Police Department has been using body worn cameras (BWCs) since December 2017. Policies and Procedures are in place for their use.¹ However, additional guidance from the Assembly is necessary to address the timing of the release of BWCs in officer-involved post-shooting/traumatic incidents.²

Fundamentally, as the law-making body of government, your primary decision points will be a balance between the need for government accountability and transparency versus the impact the release of BWC footage may have on the ability of prosecutors to pursue a criminal prosecution.

The State Office of Special Prosecutions (OSP) is tasked with the review of officer-involved shootings in Alaska and have done so since 2009.³ OSP has requested that BWC footage not be released prior to the completion of their investigation, or at the earliest 60 days after the incident. Their primary concern is that early release of footage may impact the ability of a defendant, should charges be brought, to have fair trial (a right protected by the Alaska and US Constitutions).

The following is a sample of policies throughout the country which may be useful in your discussion:

1. The Anchorage Police Department (APD) recently implemented Operational Procedure 3.10.110, a BWC policy which OSP has approved:⁴
 - F. Releasing Body-Worn Camera Recordings
 1. **Critical Incident Body-Worn Camera Video Release**
 - a. BWC video of "Critical Incidents" involving APD officers shall be released to the public within 45 days of the incident.
 - b. The release shall consist of relevant video imagery (including accompanying audio footage) that accurately depicts the actions and events leading up to and including the "Critical Incident."
 - c. All video of the "Critical Incident" itself may not be released. For example, all the shots fired or moments immediately following shots fired may not be released.
 - d. Video shall not be released when prohibited by law; however, where redactions can cure the legal issue, video shall be redacted and released. For example, in situations where unredacted release would violate personal privacy rights, but redactions (such as blurring faces) could avoid such violation, the video shall be redacted accordingly.
 - e. The release of the video will be accompanied by (1) additional information to provide context based on the evidence available at the time of release and (2) a brief summary of the redactions.

¹ See Chapter 4.028, <https://public.powerdms.com/JUNEAUAK/tree/documents/149330>.

² See Chapter 2.001, <https://public.powerdms.com/JUNEAUAK/tree/documents/46377>.

³ <https://law.alaska.gov/pdf/press/240717-Handout.pdf>

⁴ See PI 3.10.110(F), <https://public.powerdms.com/ANCHOR/tree/documents/3186656>. See also, Video Release Pages, <https://www.anchoragepolice.com/video-releases>.

2. **Delayed Release.**
 - a. The Chief of Police retains the discretion to identify additional circumstances under which the release of the video must be delayed to protect one or more of the following:
 - 1) The safety of involved individuals, including officers, witnesses, bystanders, or other third parties;
 - 2) Integrity of an active investigation (including criminal or administrative);
 - 3) Confidential sources or investigative techniques; or,
 - 4) Constitutional rights of an accused.
 - b. Any delay in release must have a factual basis, be specific to the individual case, and be explained in a detailed public statement by the Chief of Police or designee. The video imagery in question shall be released as soon as the reason for delay has been resolved.
3. **Notifications:** Absent exigent circumstances, reasonable attempts shall be made to notify the following individuals or entities at least 48-hours prior to the release of video imagery:
 - a. Officer depicted in the video and/or significantly involved in the use of force;
 - b. The subject upon whom force was used.
 - 1) If the subject is deceased, the next of kin or personal representative, if known, will be notified.
 - 2) If the subject is a juvenile, the subject's parents or legal guardian will be notified.
 - 3) If the subject is known by APD to be represented by legal counsel, that representative will be notified.
 - c. The State of Alaska Office of Special Prosecution and the Municipal Attorney's Office.
 - d. The Anchorage Police Department Employees Association.
4. **Streamlined Process for Private Family Viewing Requests.**
 In situations where the subject upon whom force was used is deceased, the subject's next-of-kin or personal representative may make a streamlined request for a private viewing of the video to the Chief of Police.
 - a. Beginning no sooner than fourteen (14) days after the Critical Incident, the streamlined request may be e-mailed to the Chief of Police at apdchief@anchorageak.gov. It must contain the following information:
 - the name of the requester;
 - the relationship of the requester to the subject;
 - the names of up to five (5) additional individuals requested to attend the viewing; and
 - the relationship of those additional persons to the subject and/or requester.
 - b. The video shown at the private viewing shall follow the requirements of Section I.F.1(b)-(d) above and be shown at no cost.
 - c. All attendees of the private viewing must agree not to record or disclose the content of the video (including audio) for the pendency of any administrative investigation, criminal investigation, or criminal case, or until public release of the video, whichever occurs first.
 - d. The Chief of Police shall have discretion to grant the request, deny the request, or grant the request on a modified basis.
5. **Release – Limited Waiver**
 The release of any specific video imagery does not waive APD's right to withhold other video imagery or investigative materials in the same case or any other case, as permitted by law. This policy is not intended to displace or supersede any legal right or remedy available to any person or entity, and it is also not intended to prevent or hinder compliance by the Department with respect to any legal disclosure requirements, including but not limited to, any court order or disclosure provisions of Anchorage Municipal Code 3.90 (Access to Public Records).

2. The Alaska State Troopers policy 24.330, *Public Dissemination*, reads:⁵

C. Release of critical incident MAVR [mobile audio and video recording] recordings. In consultation with the Commissioner's Office and applicable Division Directors the Public Information

⁵ <https://dps.alaska.gov/getmedia/74138e18-b406-45c8-8409-54d66e17294f/241-Mobile-Audio-and-Video-Recording-05012023.pdf>

Office (PIO) may proactively release MAVR recordings associated with officer involved shootings or other critical incidents before an investigation or criminal court proceedings are complete. PIO will notify the member and applicable Associations prior to public release. Criminal investigator interviews with the involved officers, witnesses, and victims should be completed prior to the public release.

3. *Model Body Worn Camera Policy for Police: An Aid for Prosecutors*, created by the Prosecutor Center for Excellence provides the following note:⁶

The dissemination to the media of recordings from BWC can play a vital role in reassuring the public after a controversial enforcement action. Great care must be taken to ensure that recordings are not released pre-maturely in a manner that could jeopardize on-going investigations and prosecutions. However, agencies must have a consistent policy so that they are not accused of only releasing the recordings that they deem helpful.

4. The United States Department of the Interior requires:⁷

6. **Timing**

Bureaus/Offices must expedite the public release of BWC and VMC recordings following incidents listed in this LEB no later than 30 days after an incident. Bureaus may establish a stricter timetable and are encouraged to release their recordings as soon as practical after the incident. The Department recognizes that certain incidents present unique challenges and obstacles to public releases. In exceptional cases, upon request from the Bureau/Office, the Director OLES may grant an extension to the 30-day requirement.

5. The International Association of Chiefs of Police *Model BWC Policy* suggests:⁸

8. If an officer is suspected of wrongdoing or involved in an officer-involved shooting or other serious use of force, the department reserves the right to limit or restrict an officer from viewing the video file.

6. Austin Police Department, *117 Critical Incident – Public Release*, reads:⁹

- 117.2 **POLICY**

It is the policy of the Austin Police Department that video evidence in the Department's possession of critical incidents involving APD be released to the public within 60 days of the incident. Such video evidence will be made available to the public prior to the final adjudication of all criminal matters and prior to the conclusion of all related administrative investigations. For the purpose of this policy, a law enforcement purpose may include solving a crime, locating a suspect or a witness, or enhancing police-community relations. This release shall consist of relevant video imagery that depicts the actions and events leading up to and including the critical incident. Relevant video imagery is 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. The release of video shall be accompanied by additional information to provide context based on the evidence available at the time of release.

7. Baltimore County Police Department *Field Manual*:¹⁰

At the discretion of the Chief of Police, after consultation with the prosecuting authority, the Department may publicly release BWC footage within 30 business days of the incident, provided that any initial use of force investigation is completed, and the required notifications have been made. **EXCEPTION:** When a non-disclosure period has been granted pursuant to an agreement with the prosecuting authority. The prosecuting authority may request, in writing, a 30-day extension to the Department's release of critical incident BWC footage to the public. In its request, the prosecuting authority should explain, with specificity, how deviating from the standard timeframe for disclosure set forth by the Department is necessary to further the administration of justice. The prosecuting authority's request for an

⁶ Page 6, <https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/20150714-best-practices-bwc-model-policy-pceandcdaafoundation.pdf>

⁷ <https://www.doi.gov/sites/doi.gov/files/oles-lespb-23-01-expedited-public-release-of-bwc-and-vmc-footage.pdf>

⁸ <https://www.theiacp.org/sites/default/files/all/b/BodyWornCamerasPolicy.pdf>

⁹ [https://www.austintexas.gov/sites/default/files/files/117%20Critical%20Incident%20-%20Public%20Release\(2\).pdf](https://www.austintexas.gov/sites/default/files/files/117%20Critical%20Incident%20-%20Public%20Release(2).pdf)

¹⁰ Page 53, <https://bcg-prod.baltimorecountymd.gov/files/departments/police/documents/fieldmanual202301.pdf>

extension will be carefully considered by the Department and the final decision to release BWC footage ultimately rests with the Chief of Police. If the prosecuting authority seeks an additional extension(s), such request(s) should be made in the same manner for each 30-day period, or until the scheduled trial date. If additional trial dates arise, an additional request for extension will be made.

8. Colorado State Law (Senate Bill 20-217):¹¹

(2) (a) For all incidents in which there is a complaint of peace officer misconduct by another peace officer, a civilian, or nonprofit organization, through notice to the law enforcement agency involved in the alleged misconduct, the local law enforcement agency or the Colorado State Patrol shall release all unedited video and audio recordings of the incident, including those from body-worn-cameras, dash cameras, or otherwise collected through investigation, to the public within twenty-one days after the local law enforcement agency or the Colorado State patrol received the complaint of misconduct.

...

(III) Any video that would substantially interfere with or jeopardize an active or ongoing investigation may be withheld from the public; except that the video shall be released no later than forty-five days from the date of the allegation of misconduct. In all cases when release of a video is delayed in reliance on this subsection (2)(b)(III), the prosecuting attorney shall prepare a written explanation of the interference or jeopardy that justifies the delayed release, contemporaneous with the refusal to release the video. Upon release of the video, the prosecuting attorney shall release the written explanation to the public.

9. California State Law (Assembly Bill No. 748):¹²

(A) (i) During an active criminal or administrative investigation, disclosure of a recording related to a critical incident may be delayed for no longer than 45 calendar days after the date the agency knew or reasonably should have known about the incident, if, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. If an agency delays disclosure pursuant to this paragraph, the agency shall provide in writing to the requester the specific basis for the agency's determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure.

(ii) After 45 days from the date the agency knew or reasonably should have known about the incident, and up to one year from that date, the agency may continue to delay disclosure of a recording if the agency demonstrates that disclosure would substantially interfere with the investigation. After one year from the date the agency knew or reasonably should have known about the incident, the agency may continue to delay disclosure of a recording only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation. If an agency delays disclosure pursuant to this clause, the agency shall promptly provide in writing to the requester the specific basis for the agency's determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding and notify the requester every 30 days. A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved.

10. Portland, Oregon Police Department (0620.00 *Body-Worn Camera Use and Management*):¹³

14. Affirmative Release of Recordings.

14.1. As a general rule, the Bureau shall release BWC recordings of Category I force incidents upon conclusion of the Grand Jury or, if no Grand Jury is convened, once a disposition is determined by the DA. As an exception to the general rule and when in the public interest, the Commissioner in Charge or Chief of Police may release BWC recordings sooner.

¹¹ https://leg.colorado.gov/sites/default/files/2020a_217_signed.pdf

¹² https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB748

¹³ <https://www.portland.gov/policies/police-directives/field-operations-0600/062000-body-worn-camera-use-and-management>

11. Minnesota State Law (13.825 *Portable Recording Systems*):¹⁴

Subd. 2. Data classification; court-authorized disclosure.

(b) Notwithstanding section [13.82, subdivision 7](#), when an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency must allow the following individuals, upon their request, to inspect all portable recording system data, redacted no more than what is required by law, documenting the incident within five days of the request, subject to paragraphs (c) and (d):

- (1) the deceased individual's next of kin;
- (2) the legal representative of the deceased individual's next of kin; and
- (3) the other parent of the deceased individual's child.

(c) A law enforcement agency may deny a request to inspect portable recording system data under paragraph (b) if the agency determines that there is a compelling reason that inspection would interfere with an active investigation. If the agency denies access under this paragraph, the chief law enforcement officer must provide a prompt, written denial to the individual in paragraph (b) who requested the data with a short description of the compelling reason access was denied and must provide notice that relief may be sought from the district court pursuant to section 13.82, subdivision 7.

(d) When an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency shall release all portable recording system data, redacted no more than what is required by law, documenting the incident no later than 14 days after the incident, unless the chief law enforcement officer asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data remain classified by section 13.82, subdivision 7.

12. Michigan State Law (*Law Enforcement Body-Worn Camera Privacy Act*, Act 85 of 2017):¹⁵

780.315 Audio or video recording from body-worn camera; retention by law enforcement agency; disclosure as public record; limitation.

Sec. 5. (1) An audio or video recording from a body-worn camera that is retained by a law enforcement agency in connection with an ongoing criminal investigation or an ongoing internal investigation is not a public record and is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, but only to the extent that disclosure as a public record would do any of the following:

- (a) Interfere with law enforcement proceedings.
- (b) Deprive a person of the right to a fair trial or impartial adjudication.
- (c) Constitute an unwarranted invasion of personal privacy.
- (d) Disclose the identity of a confidential source or, if the record is compiled by a law enforcement agency in the course of a criminal investigation, disclose confidential information furnished only by a confidential source.
- (e) Disclose law enforcement investigative techniques or procedures.
- (f) Endanger the life or physical safety of law enforcement personnel.
- (g) Disclose information regarding a crime victim in violation of sections 8, 19, 19a, 21, 34, 38, 48, 62, 68, and 80 of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.758, 780.769, 780.769a, 780.771, 780.784, 780.788, 780.798, 780.812, 780.818, and 780.830.

(2) An audio or video recording from a body-worn camera that is retained by a law enforcement agency relating to a civil action in which the requesting party and the public body are parties is not a public record and is exempt from disclosure under section 13(1)(v) of the freedom of information act, 1976 PA 442, MCL 15.243.

¹⁴ <https://www.revisor.mn.gov/statutes/cite/13.825>

¹⁵ <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act-85-of-2017.pdf>