

Data Collection and Transparency Statute

Below is a draft of our police transparency statute. Some of the obligations outlined here fall primarily on law enforcement agencies, others, such as settlement and judgment data, on the political subdivision that oversees the agency.

A couple of points about the statute:

First, we are aware that smaller agencies in particular face a variety of resource constraints, which we have tried to address in several ways. For all of the data-heavy components of the statute, we have required agencies to report data to the State AG’s office or some analogous entity—and have put the burden on the State AG to make the data public in a useful and analyzable manner. For written documents, such as policies and collective bargaining agreements, we have provided agencies with fewer than 10 employees with some flexibility around making the information available to the public.

Second, because this is a recordkeeping and transparency statute, we have largely avoided including provisions that substantively regulate the various practices addressed here. For example, the section on body-worn camera video provides for release of existing footage—but does not mandate agencies to adopt a BWC program.

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I. Definitions

For the purposes of this statute:

1. “Law enforcement agency” means any police department, sheriff’s department, transit agency police department, school district police department, the police department of any campus of [list public college systems], and [list state law enforcement agencies, such as the state highway patrol].

2. “Political subdivision” means any county, municipality, department, commission, district, board, or other public body, whether corporate or otherwise, created by or under state law, that has a law enforcement agency or [commissions / employs] officers with law enforcement authority.
3. Information required under this statute is “publicly available” if:
 - a. it is posted conspicuously on the reporting entity’s website in a text-searchable format and is accessible at no cost, or
 - b. if the entity does not maintain a website, and employs fewer than [10] full-time sworn officers, if the document is made available upon request, within 5 days of when a request is made, and at no cost to the requesting party.

II. Department Policies and Directives

Note: Subsections 2, 3, and 4 are designed to work together. Subsection 2 adopts a broad definition of the categories of agency policies and guidance that must be made public, and piggybacks off the state’s public records law in drawing the line between information that must be made public and that which may be withheld to protect various interests. Subsections 3 and 4, however, makes clear that even in states that have construed their public records provisions quite narrowly in the law enforcement context, certain categories of policies must be made public largely without redaction.

1. For purposes of this section, “policies” means all current standards, policies, procedures, general orders, special orders, regulations, and guidance.
2. Each law enforcement agency also shall, no later than [X date], make publicly available all of its policies that would be available to the public if a request were made pursuant to the [State Public Records Law].
3. Notwithstanding any exceptions to disclosure permitted under the [State Public Records Law], each law enforcement agency shall, at a minimum, [no later than X date] make publicly available its policies related to:
 - a. use of force, including the agency’s policies for investigating and reviewing use of force incidents;
 - b. stops, searches, and arrests, including policies regarding mandatory arrest, non-custodial arrest, and the issuance of a summons or citation in lieu of arrest;
 - c. response to persons who appear to be experiencing a mental health or other behavioral crisis;
 - d. vehicle and foot pursuits;
 - e. use of any policing technology, as defined in subsection 7;
 - f. social media investigations;
 - g. response to protests and demonstrations;

- h. questioning of suspects and witnesses;
 - i. evidence retention;
 - j. forensic testing;
 - k. eyewitness identifications, including lineups, show-ups, and photo arrays;
 - l. accepting and resolving complaints of officer misconduct;
 - m. officer disciplinary procedures;
 - n. certification requirements for usage of firearms, deployment of canines, or any other weapon, including electronic control devices; and
 - o. officer hiring, promotion, and performance evaluation.
4. The policies required under Subsection 3 are presumed to be public record and must be made public without redaction. Redaction shall be permitted only if:
 - a. it would be permitted under the [State Public Records Law], and
 - b. the redacted material, if made public, would substantially and materially undermine ongoing investigations or endanger the life or safety of officers or members of the public.
 5. Each individual policy shall include the month and year it last was updated.
 6. If an agency adopts a new policy, it must be made publicly available within 30 days of the change or adoption.
 7. For the purposes of this Section, “policing technology” means any law enforcement agency system, including software or electronic devices, that is capable of collecting, retaining, or analyzing information associated with or capable of being associated with any specific individual or group, irrespective of whether such information constitutes personally identifiable information, including audio, video, images, text, meta-data, location, spectral imaging, or biometric information.
 - p. “Policing technology” includes: cell site simulators; automated license plate readers (ALPRs); gunshot detectors; facial recognition software; drones; thermal imaging systems; predictive policing software; body-worn cameras; social media analytics software; GPS monitors, and audio or video recorders that are capable of transmitting or can be accessed remotely.
 - q. “Policing technology” does not include: routine office technology, such as televisions, computers, email systems and printers, that is in widespread public use; or internal police department computer-aided dispatch or record management systems, unless the systems are equipped with predictive analytics capabilities.

III. Collective Bargaining Agreements

1. For the purposes of this Section, a “law enforcement collective bargaining agreement” means any agreement between a political subdivision and a labor organization that is

designated as an exclusive bargaining representative, concerning the wages, hours, and terms and conditions of employment of law enforcement officers.

2. No later than [x date], each political subdivision shall make publicly available any law enforcement collective bargaining agreement, including any agreement negotiated before the adoption of this statute that is currently in effect.
3. After [x date], each political subdivision shall, before entering into a collective bargaining agreement, make a draft of the proposed agreement (including any addenda or side agreements) publicly available for at least [30 days], and give notice to the public in a manner prescribed by the [State Open Meetings Act] indicating the manner in which members of the public can provide comment.

IV. Settlements and Judgments

1. For the purposes of this Section, “law enforcement misconduct” means any unlawful, unauthorized, tortious, or otherwise inappropriate conduct on the part of an on-duty or off-duty law enforcement officer against another officer or a member of the public.
2. On or before [x date] of each year, each political subdivision shall make publicly available in a machine-readable format:
 - a. the total amount spent in the prior year, either by the political subdivision or by any entity on behalf of the political subdivision, on settlements and judgments involving an allegation of law enforcement misconduct, including settlements reached before any lawsuit has been filed. The report shall be broken down by individual settlement or judgment, should specify whether a settlement or judgment is being described, and shall include at a minimum:
 - i. a brief description of the allegation or claim;
 - ii. the portion of the settlement or judgment paid directly by the political subdivision;
 - iii. the portion, if any, paid by insurance, or by a central risk management fund or pool; and
 - iv. if any portion of the settlement or judgment is paid with bonds, the amount of the bond, as well as the total future cost of the bond, including any interest and fees.
 - b. the total amount, if any, spent on any insurance premiums paid by the political subdivision for insurance against law enforcement misconduct.

- c. the total amount, if any, that the political subdivision contributed to any central risk management fund or risk pool toward the settlement of law enforcement misconduct claims.
 - d. any injunctive or declaratory relief awarded, or any comparable terms in any settlement agreement.
3. On or before [x date] of each year, the [State Reporting Agency] shall make publicly available in machine-readable format the total amount spent in the prior year, either by the state or by any entity on behalf of the state, on settlements and judgments involving alleged law enforcement misconduct, including any settlements reached before any lawsuit has been filed, broken down by individual settlement or judgment and by law enforcement agency.

[Note: Depending on the funding mechanisms available to state government agencies, portions of Subsection 2 may need to be included here as well.]

4. *Optional: On or before [x date] of each year, each municipality shall transmit all of the information required under Subsection 2 to the [State Reporting Agency], which shall make this information public on the agency website, classified by municipality, in a manner that is machine-readable, clear, understandable, analyzable, and accessible to the public.*
[Note: We marked this provision as “optional” because this is the only category of information that would be submitted by the political subdivision, as opposed to the law enforcement agency, and would therefore create an entirely new batch of reporting entities with which the AG’s office must deal.]
5. A settlement agreement by a political subdivision or state law enforcement agency to settle a complaint of law enforcement officer misconduct shall not include a non-disclosure, non-disparagement or other similar clause unless (a) the complainant requests such a provision in writing and (b) such clause is otherwise permissible under law. Any such agreement shall not be construed to prohibit the political subdivision or state law enforcement agency from complying with the reporting requirements in this Section. *[Note: If the state already prohibits these sorts of agreements, this subsection is not necessary.]*

V. Officer Encounter Data

This section is intended to capture data on all stops and arrests. A number of states have stop data statutes that capture most but not all arrests (California’s statute, for example, excludes arrests conducted pursuant to a warrant, except if the warrant was discovered in the course of a stop). We believe it is essential for the public to have a complete picture of an agency’s stop and arrest practices.

1. For the purposes of this Section:

- a. “Reportable encounter” includes any encounter, whether on foot or in a vehicle, between a law enforcement officer and a member of the public whether initiated by the officer or conducted in response to a call for service, that:
 - i. constitutes a non-consensual stop, i.e., a stop that based on a totality of circumstances, would make a reasonable person feel that they are not free to leave or otherwise terminate the encounter; or
 - ii. culminates in a consensual or non-consensual frisk, search, seizure of property, or arrest of a person, including an arrest pursuant to an outstanding warrant.

[Note: The goal of this statute is to build a comprehensive record of all stops and arrests—not just those arrests that follow from a traffic or pedestrian stop.]

- b. A detention or search of a vehicle or pedestrian at a roadblock or checkpoint, which is conducted based on a neutral formula that does not include any personal characteristics or attributes, does not constitute a reportable encounter. *[Optional: If a vehicle or pedestrian at a roadblock or checkpoint is singled out for more thorough screening or inspection based on individualized suspicion or personal characteristics, then that additional screening or inspection would constitute a reportable encounter for the purposes of this statute.]*

2. No later than [x date], each law enforcement agency shall collect incident-level data on all reportable encounters conducted by officers employed by the agency.

[Notes: States may wish to stagger the rollout, requiring larger agencies to report first, in order to work out potential wrinkles before expanding to smaller agencies.]

3. No later than [x date], each law enforcement agency shall furnish annually to the [State Reporting Agency], in a manner defined and prescribed by the [State Reporting Agency], a report of all reportable encounters conducted in the prior year by officers employed by the agency.

4. Each report required under subsection 3 shall include, at a minimum, the following information for each reportable encounter:

- a. Whether the individual was in a motor vehicle at the time of the encounter;
- b. The time, date, duration, and location of the encounter, provided that if the encounter occurs at or near a specific residential address, officers include either the nearest cross street or block number in order to avoid revealing the identity of the person stopped;
- c. The reason for the encounter, e.g. whether driver was stopped for a suspected moving or equipment violation, or was stopped based on suspicion of some other

offense. [Note: States may wish to consider more granular categories, such as the specific offense suspected.]

- d. The result of the encounter, such as no action, warning, citation, or arrest;
- e. The perceived race or ethnicity, gender, and age of the person stopped. In the case of a vehicle stop, this information need only be provided for the driver, unless a passenger is searched, cited, arrested, or has physical force used against them, in which case the information should be provided for the passenger as well;
- f. Whether the person stopped appeared to be experiencing a mental or other behavioral crisis;
- g. *Optional: Whether the officer perceived the person stopped to be experiencing homelessness;*
- h. Actions taken by the officer during the encounter, including the following:
 - i. Whether the officer searched the person or any property, and, if so, the type of search (e.g., pat-down, vehicle search), the basis for the search, and the type of contraband or evidence discovered, if any;
 - ii. Whether the officer asked for consent to search the person or any property, and, if so, whether consent was provided;
 - iii. Whether the officer seized any property and, if so, the type and amount of property that was seized and the basis for the seizure;
 - iv. Whether the officer used physical force against any person, and if so, the type of force used;
 - v. Whether the officer pointed a firearm or a conducted energy device at any person;
 - vi. Whether a police dog performed a sniff; and if so, whether or not the dog alerted to the presence of contraband.
 - vii. For vehicle stops, whether the officer ordered any person to exit the vehicle;
 - viii. Whether the officer handcuffed or otherwise physically restrained any person during the stop, such as by placing a person in a police vehicle;
 - ix. *Optional: Whether the officer checked, or asked dispatch to check, for any outstanding warrants for the person.*
- i. If a citation was issued, the violation(s) cited;
- j. If an arrest was made, the offense(s) charged.
- k. The following information about the officer initiating the reportable encounter:
 - i. Officer's unique identification number;
 - ii. Type of assignment;
 - iii. *Optional: Officer's rank;*

- iv. *Optional: Officer's command, precinct, or sector;*
 - v. *Optional: Years of experience*
 - vi. *Optional: Officer's race*
5. *Optional: No later than [x date], each law enforcement agency shall furnish annually to the [State Reporting Agency], in a manner defined and prescribed by the [State Reporting Agency], a report on all roadblocks or checkpoints conducted by officers employed by the agency in the prior year. Information on mandatory airport checkpoints or screenings in order to enter public events need not be included in the report.*
6. *Optional: Each report required under subsection 5 shall include, at minimum, the following information for each roadblock or checkpoint:*
- a. *The time, date, duration, and location of the roadblock or checkpoint;*
 - b. *The purpose of the roadblock or checkpoint (e.g., a sobriety checkpoint);*
 - c. *Whether every vehicle or pedestrian who passed the roadblock or checkpoint was stopped, and if not, the criteria that were used to determine which vehicles or persons to stop;*
 - d. *How many persons were cited or charged with offenses at the roadblock or checkpoint.*
7. The [State Reporting Agency] shall make all the information obtained from law enforcement agencies publicly available on the State Reporting Agency website, classified by law enforcement agency, in a manner that is clear, understandable, and machine-readable.
8. State and local agencies subject to this section shall not report or make publicly available the name, address, social security number, or other unique personal identifying information of the persons stopped, searched, or subjected to a property seizure. Law enforcement agencies are solely responsible for ensuring that personally identifying information of the individual stopped is not transmitted to the [state agency] or otherwise released to the public.
9. Each agency covered by this section shall develop and make publicly available a policy governing review and auditing of reportable encounter data collected to ensure officer compliance with the requirements of this statute.

VI. Use of Force Data and Records

The reporting requirements included here mirror those that we have previously circulated as part of our draft use of force statute. We are in the process of refining the language in response to the various comments received, so this section may evolve slightly.

1. For the purposes of this Section and the next Section:
 - a. “Physical force” means the use of physical effort or the application of a tool, technique, or weapon intended to induce a person’s compliance or overcome a person’s resistance. “Physical force” does not include physical contact used solely for facilitating custody of a fully compliant person, such as the application of handcuffs on a cooperative arrestee.
 - b. “Deadly force” means physical force that, under the circumstances as they reasonably appear, is substantially likely to result in serious bodily harm or death to the person against whom it is used.
 - c. “Serious bodily injury” means bodily injury that results in a permanent disfigurement, extreme physical pain, loss or impairment of a bodily function, limb or organ, or a substantial risk of death.

Use of Force Data

2. Each law enforcement agency shall annually furnish to the [State Reporting Agency], in a manner defined and prescribed by the [State Reporting Agency], a report of all instances when a law enforcement officer employed by that agency:
 - a. Uses physical force against a person that results in death, serious bodily injury, or any other injury requiring medical treatment or evaluation; *[Alternative: Uses physical force against a person that results in bodily injury.]*
 - b. Discharges a firearm at or in the direction of another person, whether or not injury occurs;
 - c. Uses a weapon (i.e., any apprehension or restraint tool, including electronic control weapons, tear gas, chemical spray, and batons) against a person;
 - d. Deploys a canine against a person; or
 - e. Is injured as a result of an incident involving the use of force against the officer.

[Note: States may wish to broaden these categories further by including either all use of force incidents, or any incidents involving any bodily injury (as opposed to serious bodily injury).]

3. For each incident described in Subsection 2, the agency shall provide:
 - a. The date, time, and location of the incident;
 - b. The number of law enforcement officers involved in the incident;

- c. The number of non-law enforcement persons involved in the incident;
 - d. The type and severity of the injuries sustained, if any;
 - e. The perceived gender, race or ethnicity, and age of each person at whom force was directed;
 - f. Whether the officer perceived the person against whom force was directed to be armed, and if so, the type of weapon, as well as whether the person was in fact armed, and if so, the type of weapon; and
 - g. *Optional: Whether the officer perceived the person against whom force was directed to be experiencing homelessness.*
4. The [State Reporting Agency] shall make this information public on the agency website, in machine-readable format, classified by law enforcement agency.

Public Access to Use of Force Records

5. For any incident in which a law enforcement officer uses force against a person that results in death or serious bodily injury, the following records shall be made available for public inspection under [State Public Records Law] upon the conclusion or termination of any internal investigation, including the appeals process, examining the law enforcement officer's conduct, or [2 years] after the incident, whichever is sooner:
 - a. Records created or obtained related to the incident, including the name of the officer(s) who used force, and all the items listed in Section VII(d)(ii-xi) below [*“related investigatory materials” for complaint records*].
6. Before disclosing any records identified in subsection 5, the agency that holds the records must follow the redaction procedures set forth in subsections VII(7), (8), (9), and (10) [*complaint section redaction procedures*].
7. The records identified subsection 5 shall be retained so long as the officer who used force is employed by the agency, or for a period of 20 years, whichever is longer.

VII. Complaint Data and Records

1. For the purposes of this Section:
 - a. “Complaint” means any allegation of unlawful, unauthorized, or otherwise inappropriate conduct by a law enforcement officer against a member of the public.

- b. “Police oversight agency” means any agency, board, or commission created by a political subdivision to accept and review complaints against law enforcement officers employed by the political subdivision.
- c. A complaint is “received” by a law enforcement agency or police oversight agency if it is submitted to the agency in accordance with the agency’s publicly-available procedures for filing a complaint. A complaint that otherwise complies with the agency’s procedures but is submitted anonymously, is not signed by the complainant, or is submitted by a third party is considered “received” for the purposes of this statute, and is subject to the reporting requirements outlined in this Section.
- d. “Related investigatory materials” means records and information obtained, created, or tracked pursuant to an investigation related to the law enforcement officer misconduct alleged in the complaint, consisting of:
 - i. the name of the officer or employee complained of;
 - ii. relevant medical and scientific evidence, including autopsies, lab evidence, and medical reports;
 - iii. witness statements or summaries of witness statements;
 - iv. sworn testimony;
 - v. photographs, and audio or video recordings;
 - vi. reports drafted or prepared by an officer accused of misconduct or present at the scene where the alleged officer misconduct occurred (e.g, stop and arrest reports, use of force reports);
 - vii. reports drafted or prepared by investigators or personnel who were not present at the scene where the alleged misconduct occurred;
 - viii. search warrants or court records;
 - ix. the transcript of any disciplinary trial or hearing, including any exhibits introduced at such trial or hearing;
 - x. the disposition of any disciplinary proceeding;
 - xi. the final written opinion or memorandum supporting the disposition and discipline imposed including the agency’s complete factual findings and its analysis of the conduct and appropriate discipline of the covered employee; and
 - xii. all relevant agency standards, policies, procedures, general orders, special orders, regulations, or guidance.

Complaint Data

- 2. Each law enforcement agency and police oversight agency shall annually furnish to the [State Reporting Agency], in a manner defined and prescribed by the [State Reporting Agency], a report of all complaints received by that agency. Complaints reported by a police oversight agency shall be classified by law enforcement agency. For each complaint, the agency shall provide:

- a. The date on which the complaint was received, as well as the alleged date, time, and location of the incident;
 - b. The race, age, and gender of the complainant, if known;
 - c. The nature of the alleged misconduct, with categories of misconduct defined and prescribed by the [State Reporting Agency];
 - d. Whether the complaint was or is being investigated, and if so, the status or conclusion of the investigation (e.g., pending, unfounded, sustained);
 - e. The name or unique identification number of each officer alleged to have engaged in misconduct, if known;
 - f. The beat or type of assignment (for example, traffic or sex crimes); and
 - g. The disciplinary action taken by the police oversight or law enforcement agency, if any, and whether such disciplinary action is final or pending subject to the resolution of an appeal or challenge.
3. The [State Reporting Agency] shall make the information provided in subsection 2 public on the agency website, in machine-readable format, classified by law enforcement agency.

Public Access to Complaints and Related Investigatory Materials

4. Any complaint received by a law enforcement agency or police oversight agency, the status of the complaint (including any findings or dispositions), related investigatory materials, and the name of the lead investigator shall be made available for public inspection under [State Public Records Law]:
 - a. upon the conclusion or termination of any internal investigation, including the appeals process, examining the law enforcement officer conduct alleged in the complaint; or
 - b. 2 years after the agency receives the complaint, whichever is sooner.
5. If, however, an officer accused of misconduct is subject to an ongoing criminal investigation or proceeding, or it is reasonably foreseeable criminal charges may be brought against the officer because of the alleged misconduct, and the officer has made a compelled statement under *Garrity v. New Jersey*, 385 U.S. 493 (1967) and its progeny, all related investigatory materials generated or created after the compelled statement was made shall not be made available for public inspection until:
 - a. the conclusion or termination of the criminal investigation or proceeding, or when the grand jury or other charging entity decides not to charge the officer with a crime; or

- b. 2 years after the agency receives the complaint, unless a law enforcement agency or police oversight agency petitions the [*identify trial court*] and the [*trial court*] grants a reasonable extension of time for withholding the records because of an ongoing criminal investigation or proceeding, whichever is sooner.
6. Any person requesting records under [*state public records law*] that are withheld or redacted pursuant to subsection 5 may petition the [*trial court*] to order the production of those records—or portions of those records—on the ground that redactions were made or records withheld beyond what is authorized by subsection 5.
7. Notwithstanding subsections 4 and 5, any complaint received by a law enforcement agency or police oversight agency, the status of the complaint (including any findings or dispositions), and the name of the lead investigator shall be made available for public inspection no later than [6 months / 1 year] after the complaint is received by the agency.

Before making a complaint and associated investigative materials available for public inspection, the releasing agency shall permit a law enforcement officer to add to the investigative file a concise statement or response to any items that may be open for inspection identified by the officer as derogatory.

8. Subsections 4 and 5 apply to all complaint records created before the effective date of this statute and are in the relevant agency's possession at the date of enactment of this statute.
9. Before disclosing a complaint and related investigatory materials under this Section, the law enforcement agency or police oversight agency shall redact only the following information or content:
 - a. information revealing the identity of the complainant, or from which the complainant's identity could reasonably be derived, or other persons who are witnesses to or victims of alleged law enforcement officer misconduct;
 - b. information revealing the identity of or contact information for a confidential informant or source;
 - c. medical or mental health information regarding the complainant, a law enforcement officer, or other persons who are witnesses or victims of alleged law enforcement officer misconduct;
 - d. the home address, date of birth, personal telephone number, or personal email addresses of the complainant or any person employed by a law enforcement agency, including the complained-of officer;
 - e. in any video or audio recording or photograph, the face and other personally identifying information of third parties who are not law enforcement officers captured in the recording, provided that the redaction does not interfere with a

viewer's ability to fully, completely, and accurately comprehend the events captured on the recording; and

- f. specific confidential intelligence information, which, if disclosed, would compromise the safety of a law enforcement officer, witness, or informant.
10. Whenever doing so is necessary to protect personal privacy, the right to a fair trial, or the life or physical safety of any person appearing in the recording, a complaint or relevant investigatory materials may be redacted to protect those interests.
 - a. Except for the rules for redaction set forth in this subsection and in subsection 9(e), no other editing or alteration of video footage, including a reduction of the video's resolution, shall be permitted.
 - b. If the right to a fair trial or physical safety of any person, or personal privacy of any person other than a law enforcement officer or employee, cannot be protected adequately through redaction, and the interests at stake outweigh the public interest in release, such records may be withheld.
 11. The holder of the privacy interest in information or content described in subsections 9(a)-(f) and 10 may waive in writing his or her privacy interest. Upon receipt of the written waiver of the applicable privacy interest, the agency may not redact to protect that privacy interest.
 12. If a record contains information redacted pursuant to subsections 9 or 10, the requestor may request a written explanation of the reasons for redaction, which the agency must provide to the requestor within [10 / 20] business days of the disclosure.
 13. Complaints and related investigatory materials shall be retained so long as an officer is employed by the agency, or for a period of 20 years, whichever is longer.

VIII. Public Access to Audio and Video Recordings

1. For purposes of this section:
 - a. "Critical incident" means:
 - i. any incident involving the discharge of a firearm in the direction of a person;
 - ii. any incident involving the use of force by a law enforcement officer that results in death or serious bodily injury; or
 - iii. any in-custody death.
 - b. "Body-worn camera" means a recording device worn by an officer or attached to an officer's clothing that is capable of recording audio or video.

- c. “Audio or video recording” means any recording created by equipment that is owned or operated by the law enforcement agency, including a body-worn camera, a dashboard camera, an in-vehicle video recording system, a closed-circuit television camera, or a smartphone.
 - d. A person is the “subject” of a recording if the recording depicts:
 - i. A stop, arrest, frisk, or search of the person by a law enforcement officer;
 - ii. A search of the person’s residence, vehicle, or other personal effects by a law enforcement officer;
 - iii. An incident involving the use of physical force against the person by a law enforcement officer;
 - iv. *Optional: Any interaction between the person and a law enforcement officer that depicts an incident that could form the basis for a complaint with the law enforcement agency or police oversight agency.*
 - e. A recording is “released publicly” if it is made available on the agency website, or is provided upon request and at no cost to any requesting party.
 - f. A recording is “made available for review” if the person making the request is provided, at no cost, with a reasonable opportunity to review the recording in person, or, if the person consents, is provided with an opportunity to access the recording via the internet.
2. Each law enforcement agency shall release publicly any audio or video recording related to a critical incident no later than [21 / 30 / 45] days after the agency knew or reasonably should have known about the incident.

[Optional: A law enforcement agency may delay disclosure for up to an additional [21 / 30 / 45] days if the agency reasonably concludes that disclosure would interfere with an ongoing criminal or administrative investigation. The agency must make publicly available a written explanation of the specific basis for its conclusion, along with an estimate of when the recording will be released.]

Note: States vary in terms of the time limits they set for public release of footage. California, for example, requires that footage be released within 45 days. In Pennsylvania it is 30 days, and in Colorado it is 21. Some states, however, permit an agency to delay release if it would interfere with an ongoing investigation.

We would recommend either setting a shorter time frame for release, but permitting delay, or setting a somewhat longer timeframe but without a tolling provision. The latter approach reduces uncertainty over when a recording will be made public—

but may mean that overall videos are released somewhat later than they otherwise would be.

3. At least 48 hours before releasing publicly an audio or video recording related to a critical incident, the law enforcement agency shall permit the subject of the recording—or if the person is deceased or incapacitated, the subject’s spouse, parent, legal guardian, child, or other lawful representative—to view the recording, unless the subject or representative waives in writing his or her right to view the recording 48 hours before public release.

Optional: Notwithstanding subsection 2, the law enforcement agency shall not release publicly the audio and/or video recording(s) related to a critical incident if the subject of the recording or their representative requests in writing that the recording(s) not be publicly released, unless either the chief of the relevant law enforcement agency or the [State] Attorney General determines that it serves the public interest to publicly release the recording(s).

4. For any recording other than an audio or video recording that depicts a critical incident, each law enforcement agency shall make the recording available for review to the following persons upon request, no later than [30 / 45] days after a request to inspect is received:
 - a. The subject of the recording or the subject’s legal counsel;
 - b. A parent or legal guardian of a minor subject, or the parent’s legal counsel;
 - c. If the subject is incapacitated, the subject’s spouse, parent, legal guardian, child, or other lawful representative.
5. To protect personal privacy, redaction technology shall be used to obscure the face and other personally identifying information of third parties captured in the recording who are not law enforcement officers, provided that the redaction does not interfere with a viewer’s ability to fully, completely, and accurately comprehend the events captured on the recording. And whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in the recording, redaction technology may be used to protect those interests.
 - a. The holder of the privacy interest may waive in writing his or her privacy interest. Upon receipt of the written waiver of the applicable privacy interest, the law enforcement agency may not redact to protect that privacy interest.
 - b. Except for the rules for redaction set forth above, no other editing or alteration of video footage, including a reduction of the video’s resolution, shall be permitted.

- c. If the right to a fair trial or physical safety of any person, or personal privacy of any person other than a law enforcement officer or employee, cannot be protected adequately through redaction, and the interests at stake outweigh the public interest in release, such records may be withheld.
6. Subsections 4 and 5 apply to all recordings created before the effective date of this statute and are in the relevant agency's possession at the date of enactment of this statute.
7. Nothing in this Section shall be construed to prohibit or limit disclosure of any audio or video recording beyond what is required under this Section.

IX. Implementing Regulations

1. No later than [x date], the [State Reporting Agency] shall adopt regulations for the collection and reporting of data required under this statute, in a manner prescribed under [rulemaking provisions of the State APA].
2. The regulations shall specify all data to be reported, and provide standards, definitions, and technical specifications not inconsistent with the requirements of this statute to ensure uniform reporting practices across all reporting agencies.
3. To the extent possible, and consistent with the requirements of this statute, such regulations should be compatible with any similar federal data collection or reporting programs.

X. Enforcement Mechanisms

1. In order for a law enforcement agency to be eligible to receive any state law enforcement funding or any state-administered federal grant, the chief law enforcement officer of that agency must certify annually in writing to the Board that the agency complied with all of the requirements set forth in this statute in the previous calendar year. If the chief law enforcement officer submits a written certification while knowing that the agency has not complied with all of the requirements set forth under this section, he or she shall be fined no more than [*one-quarter or one-half*] of his or her annual salary.
2. The [State Attorney General] may investigate, and if warranted, bring a civil action against any agency or political subdivision to obtain equitable or declaratory relief to enforce the provisions of this statute.
3. Any person who resides within the jurisdiction of a political subdivision or law enforcement agency that is subject to the requirements of this statute may bring a civil action against the political subdivision or its law enforcement agency to obtain equitable or declaratory relief to enforce the provisions of this statute pertaining to disclosures to which they are entitled herein. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs.

4. No action may be commenced against a law enforcement agency or political subdivision under this Section unless the plaintiff has provided written notice of the alleged violation to the agency or political subdivision at least 60 days prior to filing suit, in a manner that is reasonably calculated to enable the entity to cure the alleged violation.