Legislation Panel
The federal government and individual states are all taking a look at how to create and implement body camera legislation. This panel takes an in-depth look at the body cam discussion and offers opinions on how lawmakers are approaching these issues, such as determining how much to legislate, and how much to leave to the discretion of individual jurisdictions.

The transcript of the panel discussion follows below.

MARK ZAHNER (CDAAA): I'm going to introduce the moderator for this event, Sean Hoffman, who is an employee of CDAAA. He's our legislative director. Sean has been bumping around the capital for a number of years. He's worked in both the Assembly and in the Senate. He has been everything from a legislative director to chief of staff there. He's worked with CDAAA for several years. And for those of you from California who were aware of our efforts, you'll know that Sean has been very successful in getting bills passed in an environment that is not necessarily welcoming when it comes to law enforcement trying to introduce new bills. So please welcome Sean Hoffman to our panel.

SEAN HOFFMAN: Thank you. Good morning and welcome to the National Legislative Update on body cams. As Mark said, I'm Sean Hoffman, the Director of Legislation for CDAA, and I'll be moderating this panel. We're looking forward to kicking off what should be an exciting and informative week here with a little taste of what's happening in California and other states, and at the federal level on body cam policy.

So the reason we're starting with this panel is to sort of set the table for the rest of the summit. We want to take a short amount of time, lay out the issues that are going to be covered in a little greater depth in some of the upcoming panels, and, again, to see how different panels, the federal government, and here in California, how we're addressing some of the specific issues as we go through that.

To help do that I have three panelists here. Starting to my left we have Kristine Hamann, the executive director of the Prosecutor's Center for Excellence, which supports statewide prosecutor best practices committees, and provides guidance on policy matters to prosecutors across the country. Kristine brings nearly three decades of experience as a prosecutor, much of which was spent in the Manhattan District Attorney's Office. She's currently working with prosecutors from 30 states that are implementing or considering statewide best practices committees.

She chairs the New York State Best Practices Committee for Prosecutors and is co-chair of the National District Attorneys Association Best Practices Committee. She's also a member of the American Bar Association Task Force on body worn cameras. So let's welcome Kristine Hamann.

Moving down the line we have Deputy Chief Ken Bernard from the Sacramento California Police Department. He's a 24-year veteran of the Sac. P.D., currently overseeing the department's patrol and communications divisions. He graduated from San Diego State University, just like I did, with a Bachelor of Science Degree in Criminal Justice Administration. He has a Masters in Emergency Services Management from Long Beach State. He currently serves as the chair for the California Peace Officers Association Law and Legislation Committee, which reviews legislation having an impact on law enforcement and public safety. Let's welcome Ken Bernard.

And last but not least, Nelson Bunn, the director of Policy and Government Affairs for the National District Attorneys Association in Washington, D.C. Nelson works with Congress, federal agencies, and criminal justice system stakeholders. Prior to working at NDAA he was with The Charles Group in Washington, D.C. where, among other clients, he represented the Major County Sheriff's Association, and he also spent time in the Science and Technology Directorate at the Department of Homeland Security. He brings a wealth of knowledge on the federal legislative process as well as what's currently going on in front of Congress. We appreciate him making the trip all the way out here to California. Let's welcome Nelson Bunn.
So we'll have time at the end. We'll save about 15 minutes for Q&A. But I want to jump right in because there are a lot of issues to talk about. And I think, kind of the threshold question when we're talking about legislation on body cams is—or anytime we're codifying a set of best practices or considering doing that on an emerging issue or technology—we confront the question of whether those should take the form of recommendations or requirements or some combination of the two.

So I want to get a sense of how we're addressing that in California, at the federal level, and in other states, how are they handling that issue, and if you want to talk a little bit about the advantages and pitfalls of either recommendations versus requirements. And so Kris, why don't we start with you.

**KRISTINE HAMANN:** Thank you. ... I guess I should start by saying that there's been tremendous interest in body worn cameras. And as a result, legislators all around the country have been jumping in to try and inject themselves into this issue. It has brought them in a place where they probably don't have that much expertise. There are two areas that they're looking at. One they don't have that much expertise. There are two areas that they're looking at. One they don't have that much expertise. There are two areas that they're looking at. One they don't have that much expertise.

The one area that they are looking at is how to deal with the Freedom of Information Act with regard to body worn cameras. And I'll talk about that in a second. And the second is what to do with body worn camera policy.

Traditionally legislators have not involved themselves in the minutiae of police or prosecution policy. They have left that to the discretion of police departments around the country to deal with the issues as they see fit within their jurisdictions. I think that is something that they should continue to do, particularly because the whole area of body worn cameras is evolving so fast that we—even those of us who are looking at it closely—do not necessarily have ... our arms wrapped around all the issues that are coming up.

... I'm lucky enough to teach a class at Georgetown Law School, and I had some very energetic law students, and I asked them to look at what's going on around the country. And I can see that almost every state—not all—is proposing legislation. And legislators love this. You know, it's high profile. They like to propose something. They're coming at it from many different angles—from privacy angles, from law enforcement angles, from Freedom of Information Act angles—so there's all kinds of legislation being proposed.

Most of it has not passed. ... In most of the instances, I think as legislators get closer to the issue, they realize how complicated it is, number one. And number two, how expensive it is. So that has sort of kicked them back a little bit. However, there have been some states that have proposed legislation and there is a summary of that in your materials, which is very helpful. The types of legislation that have been passed fall into three categories. One category is "let's study this some more." That's fine. I think that's terrific. If the legislature wants law enforcement and others to study the issues, great. That's what we're doing here today. Hopefully they put a little money behind having a real study looking at research. There's a lot of research going on, by the way, right at the moment, that we haven't seen the results of.

In Los Angeles, there is a very robust research project ... going on that's placing researchers in police cars, watching what happens with the public as the police come out with their cameras to look at all kinds of things: How does it affect the police officer? How does it affect morale? How does it affect the relationship with the witness? Is there a chilling effect where people won't speak? When do you turn it on and off? ... so all of this is ongoing, and yet we don't know the results of that study, so those are great things. So anyways, some of the legislation, a small number of it, is calling for a study. Super.

Another category is dealing with the Freedom of Information Act. I'm sure you're all aware of what happened in Washington state, where a gentleman made a Freedom of Information Act request for all the police departments' body worn camera footage. I think he wanted to start a YouTube channel or something. And their statute did not prevent that. So that sent ripples of concern throughout the country and some of the legislation they passed started to deal with that issue.

So that is something that I think is a legitimate issue for the legislature to look at. The type of thing that this category of legislation has provided might make sense. ... What I've seen in the legislation that's passed is they've amended their Freedom of Information Act to just pertain to the person in the video asking for a particular incident to get a copy of a particular incident. So rather than being able to come in and ask for everything, if you're in the video you can come in and ask "I want a copy of the video where I was recorded on January 16 at from 400 to 500." And they even—some even have further restrictions, and if you want to see it, you have to come into the police department to see it.

So I've seen that kind of restriction on Freedom of Information Act, and I'm sure there'll be evolutions of that. But that makes sense because, obviously in Washington, it completely threw them for a loop. And I think what they ultimately did was, they got some technology that fuzzed up 10,000 hours' worth of video and just handed it out. I guess it looks like you are looking through Vaseline or something, you know, like it was just very blurry.

But the third category of legislation deals with specific policy considerations for the use of a body worn camera. And that is the area that concerns me for a couple of reasons. Number one, I don't think we know enough to really have a good idea of what works and what doesn't work. And secondly, in ways that's probably unintended, it's putting the legislature in a very odd position.

So just to give you an example, there are some states that are limiting an officer's ability to film in private locations. And you can understand why that's the case. Where there are people who might be embarrassed if you film at a hospital room or in someone's private home or if someone is undressed, you can understand why there may be an instinct to restrict police officers' recording of that. What worries me about that, however,
is a police officer is lawfully allowed to be there. You are there, provided you're a lawfully allowed to be in someone's private home or in their hospital room or at some location and your eyes are allowed to see it.

I can't quite understand why there's a reason you cannot record it. Everyone else in that room can record it but you. So it strikes me that there is a concern there. That does not mean that down the road that that recording cannot be redacted. We can always redact it, and we can always seek protection of that private material if we wanted. But if there is a desire for transparency and for truth in what an officer sees, that impulse, albeit it might be well-intentioned, strikes me as something that restricts an officer's ability to actually defend what happened at a particular location. So that's just one example where I've seen some legislation that specifically says you have to turn off the camera when that happens. And so I think these things still have to play out. And I'll end there.

SEAN HOFFMAN: All right, thank you. Ken, you've been kind of involved in the legislative arena in Sacramento with your involvement with CPOA. I know we've seen a lot of different bills, approaching different points in the body cam process from ... when you turn it on, when you turn it off, to the data-retention storage aspect of it. What do you think the California legislature is getting right as they try to do this? Maybe that's kind of a loaded question, right?

KEN BERNARD: Yes, well first of all, thank you for having me here. I'm certainly no expert when it comes to the capital ... but I was asked to chair this committee for our association, so I've been doing that for about a year. And what an interesting time. The body worn camera, if you're following it at the capital, is a big hot issue and there's been some—in our opinion—some very, very poorly written bills that have come forward to try to mandate every little thing within the departments that will install these.

And then Senator Huff, who spoke this morning, simply had a bill that stated any department that deploys body worn cameras shall have a policy, right? And that got shot down. So they're still making a mess at the capital and I don't know where it's going to land. It's very concerning to those of us in law enforcement because we feel very strongly that it's not a one-size-fits-all. ... What one department may mean to do—a perfect example is some departments in our state are under a consent decree. So some of these issues have already been decided for them. The majority are not, right? I think it also gets lost when we have this discussion.

Although for most departments body cameras are new or they're getting them or they're just coming. In my department, for instance, we've had 15 years of in-car cameras, right, with footage—two generations of that. And so from our perspective, for an organization like mine that has successfully figured out how to manage this footage—how it is to be used—we feel like we're just going to start using body cameras and use our—virtually the same policies with the same rules, right? They've already been legislated. We know the rules of evidence when it comes to those things. And so it's a little—it's very concerning for CPOA, Cal Chiefs, State Sheriffs' association, [that] the people are getting in the weeds.

And then I guess the final, and this could be really bad, if they mandate what department's policies will look like. Because I've heard from some very large departments, particularly sheriffs, who have a little more freedom than chiefs often do, that they just won't implement body cameras. So now you're going to go against the desire of transparency. They'll just refuse to implement body cameras, and that's a big deal.

And then just kind of an interesting thing that's Sacramento-specific. In an officer involved shooting, we allow our officers to look at body worn camera footage before they give their statement. And we have the luxury that our officers—currently the vast, vast majority of time—give voluntary statements. They are not coerced to give a statement. So their statement is voluntary. It goes as part of the report to be reviewed by the DA.

I can [assure] you that if they tell us that we can't look at those cameras anymore, those voluntary statements from our officers are going to go away and

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Ken graduated from California State University, San Diego, with a Bachelor of Science degree in Criminal Justice Administration, and earned his Master of Science degree in Criminal Justice Management from California State University, Long Beach.

Deputy Chief Ken Bernard also serves as the chair for the California Peace Officers' Association Law and Legislation Committee. The committee reviews current legislation having an impact on law enforcement and public safety.
Sacramento County will have—the DA's office will have to make findings and decisions absent the officer's perspective. So a couple things.

SEAN HOFFMAN: Thank you. Nelson, obviously we talk about some of the concerns of implementing a top-down one-size-fits-all model at the state level, and I think that's really magnified at the federal level when we're talking about Congressional activity. How are they— I mean, do they recognize the challenges inherent with that? And if so, what's the approach and what are the bills that are currently pending in front of this Congress?

NELSON BUNN, JR.: So they do recognize, to a certain extent, that a one-size-fits-all approach does not work. Last year in the Senate Judiciary Committee there was a hearing where, at the end of the day, after a sheriff testified, we had a DA testify, and somebody from a civil liberties privacy group testified. And they closed the hearing with, "Well, I think we all on both sides of the aisle have seen that this is not an easy issue. It's very complicated. We're not really sure where we should go from here."

And so the legislation that we have seen at the federal level, there are two specific bills that have been introduced. And what we have seen is that they don't mandate anything across the board. Per usual with any kind of funding, they do have strings attached should you choose to apply for a grant. So both bills allow for matching grants to state and local entities that apply for them for purchasing of body worn cameras—for the actual equipment itself. For implementation cost, now that is left vague and, as we all know, that's very complicated, ranging from data storage and retention, the time personnel costs for individuals to go through to redact innocent bystanders, for example, on footage.

And so what we have seen is if you choose to apply for a grant and you receive that grant, then you have certain stipulations that you have to follow, such as having mandated retention protocols in place, developing policy guidelines for your agency. One of the bills, for example, looks at agencies that have very few officers with cameras. It also looks at what your crime rate is in that area. And then you would be given preferential points, if you will, in your grant application to the federal government if you meet these certain criteria. And then, based on that, you're also required to report data back to the federal government on the use of the cameras, what kind of information are you collecting, ranging from the age and sex of a person to the type of response call it was, et cetera.

So the federal government has not tried to really mandate anything they— any time that someone mentions trying to mandate a bill that would go affect everyone across the country, it doesn't go anywhere. And I think that that's going to be the course for the remainder of this year. I mean, all my other panelists said the same thing, that there's no silver bullet to any of this.

I did want to mention, too, though, that there are other sort of two parallel tracks in addition to actual statutory changes in legislation. And we've seen that through the appropriations side of the house. And that's money that goes out to the field. And so the current administration did put out sort of an investment plan for policing in the communities. About $236 million over three years was the plan. And that would include about $75 million for body worn cameras and implementation costs.

What we have seen is a concern or a question over whether or not that money is going slowly towards purchasing of cameras, which in the grand scheme of things is the cheap part of the equation, as opposed to other aspects of it as I mentioned earlier—personnel costs, data retention and storage—all of that. And so what we are trying to do at the federal level is make sure that any money that is going out to the field is shaped in a way that really captures the true cost of a plan or program in place so that agencies aren't burdened with the back-end cost, even though they can afford the front-end of the cost with the purchasing of some of the cameras.

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NELSON BUNN, JR. has comprehensive experience across Congress, federal agencies, and the criminal justice system stakeholder community. Nelson served as the Director of Government Affairs for The Charles Group in Washington, D.C., where, among other clients, he represented the Major County Sheriffs’ Association (MCSA), an organization representing elected sheriffs from counties with populations over 500,000, and collectively representing over 100 million Americans. Nelson was the primary voice for those sheriffs in D.C., successfully grew membership and the influence of MCSA into one of the leading voices on law enforcement issues among agency and Congressional staff. Additionally, he cultivated relationships among other criminal justice stakeholders and outside organizations, resulting in steadfast partnerships and even several grant and technical assistance opportunities.

Nelson also brings federal agency experience as he spent time in the Science and Technology Directorate at the Department of Homeland Security. With that experience, he brings insight into crisis-response programs and emerging technologies in the first-responder community.

Nelson graduated from Washington and Lee University with a double major in Politics and Spanish in 2008. In December 2013, he finished his Masters in International Affairs with a concentration in International Law & Organizations from the Elliott School of International Affairs at George Washington University.

Nelson is originally from Raleigh, North Carolina.

But as Kris said, we haven’t really seen a lot of research yet as a lot of agencies are really in pilot phases.

And then the third area. The third bucket is sort of training and technical assistance. This past fiscal year there was a grant for an entity, if you will, to sort of be a hub for training and technical assistance to the field surrounding body worn cameras. As agencies are implementing programs during pilot programs, et cetera, they sort of have a hotline or a contact at the federal level that can provide any expertise or training guidance, or other questions that they may have.

And we actually had the Bureau of Justice Assistance, through the Department of Justice, put out a toolkit. It’s actually very, very extensive ranging from training—it’s got a training tab, a privacy tab, a broader-implementation guidance for law enforcement agencies. And there’s a ton of materials in that toolkit. And it’s very easy to find. You just go to bja.gov and it’s BWC for body worn cameras. And it has pretty much anything you can think of that are—new materials are being uploaded daily as a way just to answer any questions that you may have and provide technical assistance.

So those are the three sort of main buckets. But I think at the end of the day, we will not see anything mandated from the federal level. Some money will go to the field for that, for agencies that are willing to take that money knowing that strings are attached, but we haven’t seen any kind of broad-based mandate across the states.

SEAN HOFFMAN: Thanks. I want to go back to something that Kris said in her comments which was, she talked about the fact that state legislatures and legislators, they really like to get involved in this kind of stuff. And I often tell the folks at CDAA that, if you read the newspaper in the fall you know what the bills are going to look like in the spring. Because they see something in the newspaper and they immediately ... want to fix it. They want to introduce legislation.

Do you think that high-profile incidents like the Mario Woods shooting in San Francisco, for example—do you think those are helpful, and that they kind of help cut through the inertia of the legislative process that normally ... hamstrings things, or do they hinder progress by making things a little more defensive and adversarial?

KRISTINE HAMANN: I think it does both. Things are moving at a pace in criminal justice that I don’t think we have seen in a very long time. The amount of discussion, ideas, money—or some money—coming towards it is, I think, unprecedented, at least in what I’ve seen. So to some extent, though all of that pressure comes from bad things, and if you are a prosecutor or police, I think we feel quite beleaguered right at the moment.

My view is that when you are presented with a lemon make lemonade, and that we can use this time to forge all our own initiatives and our own direction. We just have to speak up and engage. There is an opportunity for that, but obviously, much of it is being driven by things that are very negative for law enforcement. And the legislature loves to jump into the middle of that. And they often don’t really have the expertise to understand how to fix any of the issues that have arisen.

SEAN HOFFMAN: Sure. Nelson, do you think that, at the federal level again, as they kind of waded into this area, you know, how much are they reaching out to law enforcement stakeholders of this on the front-end? Or is it more what we’ve seen in California, I think, which is the bill gets introduced, and then we are immediately on the defensive trying to fix problems with it that could have been addressed with some outreach on the front-end?

NELSON BUNN, JR.: Actually they’ve been pretty good about reaching out on the front-end. And I think that’s because they saw one hearing I mentioned, that everything was so complicated as they heard from different stakeholders ... that had interest in the issue. They’ve actually been pretty good about making sure they have as much information as they possibly can. And I think because they don’t have enough information to really move forward on a solid bill, and
that’s why we kind of haven’t seen it, [and we] have traction.

There have been a number of congressional staff briefings on the Hill where they have stakeholders come up. The bills that I mentioned, the staff for those offices have been really good about reaching out to us, and other law enforcement groups at the national level, to better understand how the body camera issue affects that particular stakeholder group and what their perspective is as they approach the issue.

Obviously, it’s very different for a law enforcement agency on the front-end that’s responding to a call for service, as opposed to once it gets to a DA’s office where you have to worry about chain-of-custody issues, discovery process, et cetera.

And so they have been very good, overall, and have not really jumped the gun, at least that’s my … take on it. Even though there have been bills introduced, any time that I certainly have called staff and said, “Look, I’m a little concerned that the language here is not adequately capturing what the reality is in the field,” they’ve been very open and willing to make changes and better understand why that change is necessary, and not really shoot from the hip on it, so far on this particular issue. Other issues they haven’t been as good. but this one in particular. they have been pretty good about.

SEAN HOFFMAN: Great. Ken, going back to the number of bills that have been introduced in California, the big one, obviously, was 8066 last year. That really did try to address a lot of the kind of discrete issues that go along with the implementation of the body worn camera program. What do you think was the big sticking point with that bill? What seemed to cause the most controversy in the Legislature?

KEN BERNARD: It was just the one-size-fits-all, I think.

SEAN HOFFMAN: Yes.

KEN BERNARD: And it was, from CPOA’s perspective, it was— it went beyond a lot of things. But it was very much used for politics to control policing and we felt it was an indictment on policing based on the way it was written. So lots of people jumped in and fought that aggressively.

SEAN HOFFMAN: Okay. You know, one of the issues that seems to come up over and over again as we talk about these different policies, is the issue of whether officers should be able to review the tape before writing the report, or after writing the report. Kris, you know, kind of [from] a 30,000 view, … what are the approaches being taken in some of these other states? I mean, do they tend to fall on one side of that line or the other, or are they leaving it up to the locals to decide?

KRISTINE HAMANN: … Some legislation actually mandates this particular point. My guess is that where the police unions have been involved, the legislation says that the officer can view it in advance. Other states have said they cannot view it in advance. I just want to throw out a third option that I heard from the United Kingdom.

As those of you all know, that in the use-of-force case, the officer’s subjective belief—reasonable subjective belief—is what a prosecutor is going to look at to determine if their activity was—if the use of force was reasonable. In the United Kingdom they’ve taken a different approach, where they have asked the officer first, without letting him look at the video, what … he or she thought they saw at the point of time that the use of force was used in order to capture that subjective belief. In other words, if the officer thought he saw [a] gun he can say, “I thought I saw a gun and I used use of force.”

They then allow the officer to view the video after that initial statement and make a second statement that after viewing it now, the officer can see, “oh my God, it was not a gun, but I thought it was a gun.” So one view of this is that if you allow the officer to speak first you capture what could be their defense in the case, which is their own personal subjective belief as to why they used the use of force.

But I must say, this whole area of whether witnesses should be allowed to see a video of what actually occurred and how that affects your memory, this is all very new to us. It comes up in other arenas as
Kristine Hamann is the executive director and founder of Prosecutors’ Center for Excellence (PCE). PCE supports statewide prosecutor Best Practices Committees and provides guidance on policy matters to prosecutors across the country. The Best Practices Committees are devoted to proactively improving the criminal justice system and assessing emerging issues.

Ms. Hamann is working with prosecutors from 30 states that are implementing or considering statewide Best Practices Committees. She participates and presents at national and statewide prosecutor meetings on a regular basis and provides technical assistance.

From July 2013 to January 2016, Kristine Hamann was a visiting fellow at the Department of Justice/Bureau of Justice Assistance. She is the chair of the New York State Best Practices Committee for prosecutors and she is a co-chair of the National District Attorneys Association’s Best Practices Committee. She is independent counsel to the Conviction Integrity Unit of the United States Attorney’s Office for the District of Columbia and she is an adjunct professor at Georgetown Law School. She is a member of the ABA Criminal Justice Council and the ABA Task Force on Body Worn Cameras.

Ms. Hamann is a former prosecutor who has received various awards including Prosecutor of the Year (NY State Bar Association 2013), Prosecutor of the Year for Executive Leadership (NY District Attorneys Association 2010), Excellence in Government Award (Albany Law School 2008), and Public Service Award (NY County Bar Association 2005).

Well. When can you show your witnesses surveillance videos? What impact does it have on them?

So I don’t know if we really understand how these things affect someone’s memory. I can understand why police want to see the video first. But I do want to just throw [out there] all this other iteration that has been adopted by police in the United Kingdom.

Sean Hoffman: Ken, what are your thoughts on this as the only police officer up here on the panel? Where do you fall on that issue?

Ken Bernard: Well, coming from my organization, we allow our officers to view their in-car camera tapes for any use of force, and we would continue to do that. When you know, what Kris was just saying—that there’s an argument for that, it could make some sense, but you’re assuming that their first statement that they give—or is received with open arms and that’s a good thing. We all know that that first statement, if it contradicts the facts at all, will be everywhere on the news.

Kristine Hamann: Right, no I understand...

Ken Bernard: ...that very night.

Kristine Hamann: ...it’s difficult I just wanted to—that there’s a—sort of a different point.

Ken Bernard: And I think, fundamentally as these discussions had—it’s viewed by us as what this really is is an integrity test, right? They want to catch us lying and catch us making a mistake. So we feel, my organization and CPOA feel, very strongly that that’s an individual decision for chiefs and sheriffs in their communities to make.

Sean Hoffman: Nelson, I know the process is a little different in Congress than it is in some of the state legislatures. But, you know, who are the—who are really—who’s really driving the bus on this? I mean, who are the players that are interested in the issue and then trying to advance policies whether it’s tied to funding or otherwise that the people need to be aware of?

Nelson Bunn, Jr.: Sure. Well, one of the bills is a bill from Senator Scott in South Carolina. And so when you—once you had the South Carolina shooting, that was sort of a reaction to that. At the hearing last year he testified himself, as a sitting senator, before the stakeholder panel so he’s been someone that has mentioned it quite a bit.

We’ve also had Senator Paul from Kentucky and then Senator Schatz from Hawaii that have another bill. And then Congresswoman Brown from Florida has sort of the Senate equivalent of these bills in the House. And so those have been the main people that have spoken a lot about it.

I would say, more than anything, it’s been some of the civil liberties groups and civil rights group that have really pushed it the most. But I can say that when you talk with some of them, and talk on panels with them—I’ve been on many a panel with other civil liberty groups on this issue—and we all are generally in agreement [that] it’s a very complicated issue. We might disagree on little individual policy items within a broader program, but more times than not, it’s generally agreed that the issues are complicated. Obviously, whether or not to view the footage ahead of time is a controversial one that we have sort of chosen to not weigh [in on] and let individual agencies make that determination.

And we’ve seen the national law enforcement groups sort of take that same particular stance—that they’re fine with officers viewing it ahead of time. But they’re sort of leaving it up to their individual members. But it hasn’t been. You haven’t seen like a chairman of [the] Judiciary Committee, for example, really pushing this issue. It’s been individual members that have had incidents in their districts, or that are getting pressure from civil liberty privacy groups, et cetera, to push the issue forward.

But as I mentioned, it hasn’t really gained a whole lot of traction. And if you look at the broader [picture], as Kris sort of alluded to, there’s so many issues going on in the broader criminal justice system right now. That [it’s] one of the sort of “falls lower on the totem pole,” and so you haven’t really seen the traction for it
because it is so complicated, and you—there are other issues that are being pushed by people in higher positions within committees and within the process at the federal level, that the body worn camera issue, although it’s talked about in the broader conversation, it’s not towards the top of the list.

SEAN HOFFMAN: Kris, one of the other really big issues is the Public Records Act aspect of these things. Can you give us a taste of … how different states are coming down on that issue as far as are they exempting everything? Are they exempting nothing? Are they carving out particular incidents?

KRISTINE HAMANN: They’re doing all kinds of things. And so some are exempting these tapes until the case is over. Others, as I mentioned before, are making it very particularized so that you can only make a request for something where you were on it, on a particular day, at a particular time. Others create a whole series of exceptions to [the] Freedom of Information Act that would allow an exception while an investigation is ongoing. So they’re sort of all over the place.

And there is a lot of pressure for some groups that don’t want total freedom of information for these records from the get-go. But obviously, those of us who are doing investigations, we understand that that would be very detrimental. So most of the legislation I’ve seen has been restricting Freedom of Information Act, but not all of them.

SEAN HOFFMAN: Okay.

KRISTINE HAMANN: But I just wanted to say one thing about body worn cameras in this regard: [my] guess is that most of the public thinks about body worn cameras as a way to figure out what’s going on with use of force—that that’s the driving motive behind it. And that is what’s driving it. For those of us who are looking at it—and I know David and I have worked on this a lot—what we see is, as this evolves, what body worn cameras really are is evidence. And what we’re getting here is evidence.

And when you see that it is evidence, that can help us make sure we get our cases right. It’s very valuable. If you see it as evidence, it helps you sort of analyze what to do with that with regard to [the] Freedom of Information Act—how to deal with it in terms of policies—because it’s just evidence.

SEAN HOFFMAN: Ken, do you think—I know that in California a lot of the body worn camera legislation that we looked at last year—most of that we were kind of on the defensive there. It wasn’t a proactive approach. Do you think there’s a space and an opportunity within this discussion for law enforcement to proactively come up with legislation? I mean, do you think that’s an appropriate thing for us to do and is it something that … we should do?

KEN BERNARD: Yes, but I think getting an invite to the table is going to be difficult. So I would encourage anybody who has a legislator in your hometown that is going to introduce some legislation, [to] see if you can get their ear and have a conversation with them. Because the folks who are putting the aggressive things out there aren’t interested in our viewpoint.

So I think there’s an opportunity. We just met with Senator Huff about a month ago and … he’s thinking about revising his bill to do something else. And one of the things he’s thinking about including in his new bill would be language to the effect that any policy that the department has to be vetted through the public … before it’s part of the department’s policy, right? And so that’s kind of an interesting process there.

And then, okay, what does that mean? If we present it to [the city] council is that the public? Are you talking about the stakeholder meetings in the community? And in fact, we’re having—in my department we’re having the same conversation because our grant that we got from the feds has, … as one of the components, that there has to be a public vetting.

But a concern for law enforcement with that mandating of a stakeholder meeting because it’s body worn cameras, you know, and it’s a sexy time to get involved in, that is: what’s next, right? It is now what to look—get your firearms policy, "[T]his whole area of whether witnesses should be allowed to see a video of what actually occurred and how that affects your memory, this is all very new to us. It comes up in other arenas, as well. When can you show your witnesses surveillance videos? What impact does it have on them?"
—KRISTINE HAMANN
and now want to look at your driving policy, and now every policy that an organization has is subject to review by the public? And that can be a very difficult thing for our profession.

SEAN HOFFMAN: Sure. We've got about 15 minutes left so I guess let's open it up and if anyone has any questions for any of the panelists? We've got one in the back.

MAN: Yes, is there any money for DA's offices?

SEAN HOFFMAN: I think the question was is there any money for DA's offices?

KRISTINE HAMANN: I guess I can answer that. It seems that everyone has completely forgotten the prosecutors in this conversation. Luckily, the BJA solicitation for this $25 million requires that whoever receives the funding has to talk to their DA's office. But I sort of see it as a cobra that swallows a football. That football is like, just up at the neck level, which is where the cops are. And the football is working its way through the body.

And it's going to hit us and it's just going to— it's like a tsunami on its way to us as prosecutors. Because at the end of the day, I think the people who are going to be viewing the tapes are the prosecutors and that's very time-consuming. Reviewing and redacting and turning it over to the defense is all going to be on the prosecutor.

SEAN HOFFMAN: Okay.

MAN: Chief, I have one more question. We— I'm glad you mentioned the issue of evidence 'cause today it (unintelligible) technology changes. Today it's a body cam, tomorrow there's going to be a drone in every car. In about 20 years, you know, [it's] called a beehive, which, basically, you got these digital bees, you let them out and they go everywhere and take pictures for you.

So as this is changing the policy, what I'm after is about the— actually the delivery. So ... a prosecutor ... is going to be getting and receiving digital evidence, not just body camera [data] because body camera is one piece of the puzzle. Collecting this digital evidence, is there a policy they can clearly state that this is a push towards the prosecutor model, but asking the prosecutor to go back to every single digital collector system out in the world to bring it back so the prosecutors can prosecute cases and not become digital evidence collectors?

So from a policy and practice perspective, could we at least maybe think of that angle? And then the other one, talk about standards. So if I put my, you know, a constituent's hat on, I would really hate to see that agencies which spend money to record digital evidence [as] part of doing their job, but us, going back from a prosecutor perspective, to have to go back and spend money again on the ability to review that. Lack of agreed upon evidence from, at least from the public, empathy to produce evidence, you know, we should have the standards so that we can minimize the policy and expedite the process of justice.

KRISTINE HAMANN: I guess I can just respond quickly.

SEAN HOFFMAN: Sure.

KRISTINE HAMANN: We're being inundated with digital evidence. Just in any routine case, detectives are being sent out to look for surveillance video. I mean, we're constantly hunting for digital evidence. You can hear the debate that's going on between Apple and the FBI. This is going to be our lives. So the more we can get standardized ways of receiving it, standardized ways of storing it, standardized ways of retaining it, the better off we'll all be.

SEAN HOFFMAN: Gary?

GARY: Chief, you mentioned this notion [of] vetting the policy through the public in some fashion or maybe the government body. And from my look at this, I think that might be a good thing, in the sense that it will show that the departments of police agencies are open to public input and it'll get their buy in. And I think in the end it will help us control access to the data, where we won't be subject to [a] Public Record Act request.

And the other thing, just last week the San Diego city attorney issued an opinion
which said that the mayor would have the call on access to police body camera data, obviously with his chief. But it said, ultimately, it goes to the mayor. So the signal that sends to me at least, is that the quote, “civilian oversight” is going to have something to say about that. And as soon as it gets to that point, the public is going to [be] involved one way or the other.

KEN BERNARD: Yes, I— you're not saying anything that I would disagree with. And I think that it may, in fact, be a best practice on sensitive policies, [and] that progressive organizations probably already are ... doing that in some cases, and will continue to do that. There are others where they don't do that, and don't have the—you know, lots of sheriff departments won't do that unless they're— that politically there's a need to do that. So I don't disagree with you.

I think that there's room here for a lot of public discussion about what the expectations are going to be. But from our perspective and the conversations we've had, you know, that's starting something that we've always been able to, you know—we answer to a boss: the mayor and the city council. And their expectations are that our policy is this. They certainly have the ability to change that. So that's already there. It's just new and different for us.

MAN: Yes, hi. Again this is from the district attorney side. I'd like to know if there has been any kind of consideration of ... minimum technology standards dealing basically [with] time-stamping on cameras, enabling synchronization of multiple officers cameras, also the ability to export clips for prosecution that follows a best evidence practice. ... [A] lot of the workarounds we're doing actually destroys that. And I think that's something that affects the technical side of every prosecution.

KRISTINE HAMANN: I don't know of any best practices yet. To me, the big struggle is just making sure the police are even properly identifying an incident and a recording. That is a technology that's evolving, and evolving in different ways. And if you have—if you're a prosecutor in a county with 10 different police departments, you might get 10 different solutions. I mean, we're in a— the Wild West when it comes to those issues right at the moment.

NELSON BUNN, JR. ... I think in your packets [there is] one of the articles I co-authored this past fall. We sort of talk about some of the new technologies that are emerging on this and— like tagging for example— that if an officer—if he or she feels that they're about to come upon an incident that probably they would want that to be recorded, that they can sort of tag in their body camera so then when you go back to the footage you can see that at minute 350 that there was a potential incident that could be reviewed.

There's been no effort at the federal level to do anything of that sort, but they're having conversations about what types of technology are out there, how the best way to maintain chain of custody for this evidence before it gets to the prosecutor's office. We had a DA that had multiple agencies in his jurisdiction and [he] gets to trial and ... found out there was a fifth body camera and he only had ... footage [from four]. [He] went back to the law enforcement agency. They had destroyed the camera footage because it had been a certain period of time. And of course, as you can imagine, the case was thrown out for destruction of evidence.

So figuring out a way to make sure that the prosecutor's office gets all of the right information, as you said, exporting clips, making sure you have the right information, and all of the information—it's being talked about but there's not any one approach at this point.

SEAN HOFFMAN: Sure.

WOMAN: I'm just curious on your view on if there's any emerging best practices with respect to the filming of sexual assault victims? Obviously from an evidentiary standpoint it may well make sense. But from a victim's standpoint, particularly if there's objection, I wonder what your thoughts are? This is such a difficult issue, particularly for those of us in university law enforcement with all of the plethora of federal and state laws around this, so I'm curious your views.

KRISTINE HAMANN: I don't know that a best practice has been evolved. I just have a personal opinion. It strikes me that the officers' default should be to record, but if they feel that that would interfere with the interview, the officer should have the discretion to stop the recording and then explain that. But that's just my personal opinion.

MAN: Okay.

KRISTINE HAMANN: I know that, again just hearing from the experience in the UK, they, for example, record the comments of domestic violence victims and find it useful down the road when there is often a recantation. So that has been helpful. But again, if it interferes with getting a full statement from a victim, it would strike me that a policy should allow the officer to turn off the camera at his or her discretion. That's just my opinion.

SEAN HOFFMAN: Any other questions from the audience? Over here.

MAN: Yes. I've been on an OIS team for 14 years, and I'm not sure it's a good idea to have a national or state policy on whether officers can view body cameras or car cameras before. And the reason is the facts will dictate what should be done.

I'll give you an example. I responded to [an] OIS on Valentine's Day about five years ago. There were four shooters. One car camera. Three cops with rifles had the view of the car camera, one cop did not. I made the decision to allow them to view only if they had that car camera view, and no audio for any of them. So I think the facts will dictate what should be viewed and when.

MAN: I agree with you.

SEAN HOFFMAN: Any others?

MAN: I have a question regarding the grant money. And the question I have is, that do you have to do the public informational meeting before you get the grant money, or do you do it afterwards, or how do you do that process of making applications for the grants?
KEN BERNARD: I'm not the grant expert, but I do know that in ours, we got the grant. And, you know, like any grant, there's reporting. We had to have ... a check-off that we met with the community, in whatever form that means, within a year of getting that grant and before we implement[ed] our policy. So ... we got the grant just with the agreement that that was the step we were going to take.

MAN: (Unintelligible) just for cameras?

KEN BERNARD: No, because it also included some Sacramento folks here, and actually our grant administrator. If you — after we're done I can introduce you, and she can walk you through the steps.

SEAN HOFFMAN: All right. Anybody else? All right any ... final comments, things that you want to address that we haven't had an opportunity to cover? Do you think there is — are there states out there that are that you would say are really doing this the right way? They're ...

KRISTINE HAMANN: I think everyone's in the same boat.

KEN BERNARD: Yes.

KRISTINE HAMANN: This is hard, and I am very grateful to the CDAA and the Foundation for having this kind of meeting. This is what we need in order to figure out amongst ourselves what to do and also to form a coalition of law enforcement to voice our opinions about what to do. So I think it's very valuable to work together.

SEAN HOFFMAN: Oh, go ahead.

KEN BERNARD: I was just going to add, the lady who talked about, you know, the sexual assault and do we video that, do we not video it? And we were having that discussion right now and I think a real problem for us as we go through this, [is] that if we start having shelves and one-size-fits-all. And there's always going to be an exception where it will be appropriate to do something, you know, that's not the standard in order to protect evidence, and there's also times when we're going to need to turn that off in order to get the best evidence. So I think we as a group in this profession, need to be staying away from any "everything is always the same and everybody in the state does it exactly the same" or we're going to have a problem with it.

NELSON BUNN, JR.: The only thing I was going to mention is, you know, as we talk about agencies that are just starting pilot programs, for example, and we haven't — we don't have a widespread deployment of body cameras right now, but we're already seeing ... legal challenges to the ones that exist.

And Kris mentioned earlier unions being involved, and that's one sort of bucket area [where] we've seen a few legal challenges already is officer unions challenging policies based on what to do with off-duty officers, for example.

And then the other bucket that we've seen challenges already, are for charging under [a] public records request. Sort of charging for the footage to be released — sort of whether or not the costs are exorbitant or that there's not a uniformity in those costs across the board. And so those are two areas. I think we're going to see many more areas of legal challenges, but those are two that already have several cases pending related to unions and charging for footage to be released, so...

KRISTINE HAMANN: I just wanted to piggyback on what you said with regard to the word "shall." Any legislation that has the word "shall" in it is really a potential for an exclusion remedy, so that if the legislation says "shall" and the officer has not done that, that could very well mean you cannot use that evidence. And that's a very stringent consequence.

SEAN HOFFMAN: Sure. Well, thank you all three of you for taking the time to come and kick this off with us. I'll turn it back over to Mark.

MARK ZAHNER: All right let's give thanks to our panel. As you can see this is — we wanted to start with legislation, not because it's the most riveting subject out there, but because it certainly is the end product in a lot of ways for where this whole subject is going to go, like so many subjects that are involved. And so this was a good way to kind of tee up the issues.

And I think—as you can see federally and across the United States and in California—all of the issues that we brought up in our presentation and our summit are things that are currently involved in legislative effort one way or the other. And how we do, and how we win that battle— because obviously we heard some very strong points of view here about, for example, to allow the officer to view or not to view. We're going to hear more about that. We're going to hear more about that subject matter today. But we have some very strong views on it.

And so we can't just go in when we have a contrary view to what the legislation and says and say, "no, we don't want it." We have to be armed with knowledge. We have to be armed with allies who can come in and testify with us. And we also have to have any kind of evidence, empirical evidence, that's out there to help bolster our claim. It's going to be an uphill battle. I can guarantee you, certainly in California, everything we do is an uphill battle when it comes to criminal law issues.