CIVIL RIGHTS

Surveiling Police Surveillance — Gaining Access to Police Body and Dash Cameras

By Cory Morris

Police Body Cameras are now being utilized by state and local law enforcement agencies. As novel as they are, practitioners and citizens are becoming increasingly aware that such video exists and that it should be accessible to the public vis-à-vis the New York State Freedom of Information Law ("FOIL").

"[A] free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions. The more open a government is with its citizenry, the greater the understanding and participation of the public in government."[1] Although different in degree, records of Police Body Camera footage can and should be requested via FOIL.

Police Body Cameras arrived when public outcry for government accountability was at an all time high. Since the killing of Michael Brown, some have suggested that federal funding should be allocated for state and local Police Body Cameras.[2] Statistical data regarding police killing is resounding: "In 2011, police killed six people in Australia, two in England, six in Germany and, according to an FBI count, 404 in the United States."[3] In New York, largely in response to the high profile death of Eric Garner, Gov. Andrew Cuomo indicated that New York State will be paying for these body cameras ('bodycams') and training the police who wear the same.[4] With utilization of such expansive and detailed technology, the amount of records and information held by the government is growing exponentially.

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Arguments exist on each side of regulating Police Body Camera disclosure. Advocates argue police bodycams could provide a similar level of accountability — a layer of extra oversight that could put citizens and officers on their best behavior. They refer to statistics garnered from the Rialto Police Dept. in California as an example. In the first year after the cameras were introduced in February 2012, the number of complaints filed against officers fell by 88 percent in comparison with the previous 12 months. And statistics indicate that use of force by officers fell by almost 60 percent over that same period.

Certain groups, such as the American Civil Liberties Union, are concerned about police officer control, the ability to stop and start a recording at one's choosing and the ability to edit footage before its review and/or release. They argue that "[p]eople across the country have demanded more openness from authorities and note that recordings have at times directly countered police versions of events. The move toward secrecy is dashing any hope that the public would have instant replay following allegations of police misconduct."[5]

Proponents against disclosure argue that the sheer amount of data coupled with the potential for misuse requires some safeguarding. They point out that officials in more than a dozen states — as well as the district — have proposed restricting access or completely withholding the footage from the public. They cite privacy concerns and the time and cost of blurring images that identify victims, witnesses or bystanders.

Still, officials in other states find enormous value in such programs and disclosure, with some believing cameras may offer more benefits than merely reduced complaints against a police force. They are trying to find out if using video evidence in court has also led to more convictions. While weighing the pros and cons of disclosure is often difficult, it is beyond discussion that, once recorded, the camera footage becomes a police agency record subject to New York's Freedom of Information Law.

Celebrating the 40th anniversary of the New York Freedom of Information Law, the executive director of the New York State Committee on Open Government "recognize[d] that our police do a remarkable service for the citizens of this state, but current laws keep vital information about police activities from the public. This corrosive lack of transparency about police activities undermines accountability and diminishes public trust. Greater transparency is urgently needed."[6] In this same vein, The New York Times did an expose article[7] that highlighted the incredible potential the Police Body Camera has to uncover government abuse. Some argue this is not much different from the footage caught by police cruisers. The question may well become that if video is accessible via the dashboard camera then why not the police officer itself?

Other states have allowed for public access to Police Body Cameras in varying degrees. The Seattle Police Department posts body camera videos on YouTube, using a computer program to block audio and blur most of the footage. Although people can request a clearer video by completing a public-records request, officials said those requests are now more selective. There is great utility in release of some of these videos. For instance, law enforcement officials acknowledge that Dashboard Cameras have exonerated officers in over 90 percent of complaints.[8] Aside from this,

(Continued on page 27)

FAMILY LAW

Reviving "Unemancipation" Status in Child Support Applications

By Vesselin Mitev

Mom and Dad settle their divorce and agree on boilerplate conditions of emancipation for the children: turning 21, or becoming independent through full-time employment, or marriage, or entry into the military service. Because they have fancy lawyers, two other conditions are also written in, "conduct as set forth in the seminal case of *Roe v. Doe*, 29 NY 2d 188 (1971) and, separately, conduct as set forth in the case of *Cohen v. Schnepf*, 94 Ad2d 783 (2d Dept. 1983)" dealing with constructive emancipation of the children.

The oldest child then enters the U.S. Army, triggering the bargained-for contractual emancipation clause of "entry into the military service." This event is also memorialized in a court order dealing with arrears of child support add-ons. Sometime later, the child is discharged (honorably, let's say) prior to turning 21 and returns to live with non-custodial parent Dad. Dad, although the monied (ex) spouse, wastes no time in hustling back to court to file a support petition for the child.

As Mom's attorney, do you a) advise your client that she owes the child support; or b) move to dismiss and seek attorneys' fees for the inconvenience of having to oppose an obtuse application?

Choice "a" might seem like the obvious, easy answer. But there is plenty of grist for the mill should you choose option "b." While parents have a duty to support their child(ren) until age 21, (Family Court Act 413, it is equally well settled that parties can arrange their obligations vis a vis each other via a legally binding contract, which is the stipulation of settlement. At least one court has held that a court absolutely lacks the authority to reform the parties' contract under the guise of interpreting it, even with respect to child support, *Mark D. v. Brenda D.*, 27 Misc. 3d 713 (Sup. Ct. Nassau County 2010).

Vesselin Mitev

But the overarching issue is can a child's unemancipated status be "revived" by dint of an emancipation event ending, absent such an agreed-upon provision in the parties' agreement. Only one of the standard, boilerplate emancipation events is truly set in stone: turning 21. All others can revert back to "unemancipation" status, e.g., a full-time employment can be lost, a married child can be divorced, and an armed forces entrant can be discharged, but obviously, a child will never go back to being 19 after turning 21.

Self-evidently, such oscillations between statuses (emancipated vs. unemancipated) would, taken to their logical conclusions, grind the courts to a halt, should a petition be filed each time status changed, i.e., Bobby is 19, fully independent by dint of his full-time job, loses said job on Tuesday, is unemployed through Friday, then regains another full-time job on Monday; is anyone on the hook for those five days during which Bobby reverted back to "unemancipated" status? Since the law does not concern itself with trifles, the inquiry is academic.

Few courts have bothered with this analysis and the takeaway standard is as generic as it is unhelpful, at least at first blush: "...a child's unemancipated status may be revived, provided there has been a sufficient change in circumstances to warrant the corresponding change in status" see *Bogin v. Goodrich*, 265 A.D.2d 779 (3d Dept. 1999).

Dissecting those three lines reveals, importantly, that reversion is not mandatory but discretionary — "may be revived" — and that further, such discretion hinges on whether there has been a "sufficient change in circumstances" to warrant the corresponding change in status.

Provided that the agreement between the parties did not contemplate a discharge from military service as a reverting event, a solid argument may be made that the parties necessarily anticipated that discharge was a possibility (as was a divorce in the event of a child's marriage, or a loss of full-time employment) and that they chose not to include such language in their binding contract.

To be sure, the standard is "unanticipated and unreasonable" change in circumstances resulting in a concomitant need, where the parties have come to an agreement regarding child support, thus mounting an even thornier obstacle to the reversion argument. Parenthetically, it appears that only one court, out of the Fourth Department, (in a strained, circular decision) has held that a child's return to the *non-custodial* parent constituted a sufficient change in circumstances to revive the unemancipated status, *Baker v. Baker*, 129 AD3d 1541 (4th Dept. 2015).

In short, it is far from automatic that simply because a child has lost its emancipated status, that either party is responsible for payment of any child support. Instead, the case law suggests a detailed, factual analysis must be undertaken by the court that includes, as a preliminary matter, deciding whether inquiry into the matter is foreclosed due to any bargained-for terms and provisions in the parties' agreement; then consideration of whether the change is "unanticipated and unreasonable" and has resulted in a concomitant need, before deciding that revival of the emancipation status "may," not "should" occur.

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