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# Women's Justice Center Centro de Justicia Para Mujeres

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PO Box 7510, Santa Rosa, CA 95407



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## **Re: Use of Police Body Cameras in Law Enforcement Victim Contacts in Cases of Violence Against Women and Children**

To Nancy Palandati, Co-Chair of Sonoma County ACLU and ACLU Members, to the Sonoma County Law Enforcement Sub-Committee Task Force, and to the Public,

Thank you for requesting our thoughts and concerns on the use of police body cameras as it pertains to victims of violence against women and children. The following are our initial thoughts on the subject.

We look forward to any feedback you or others may have and to providing additional input as we all evolve on this issue and work toward the best possible policy. Please feel free to distribute this as you wish.

Sincerely,  
Marie De Santis, Director

### **OVERVIEW: Pages 1 & 2**

**RECOMMENDATION: There Should Be Video, or at the Very Least, Audio Recordings Made in ALL Law Enforcement Victim Contacts in Cases of Violence Against Women and Children, Including in Contacts with Non-Uniformed as Well as with Uniformed Officers, and Including During All Phone Contacts.**

**Denying the accountability protection of law enforcement recordings to women and children in gender based crimes, while providing that protection to the rest of the community, is a wholesale violation of women's constitutional rights to equal protection of the laws.**

We strongly disagree with Sheriff Steve Freitas' position, or that of any police department, of selectively not recording law enforcement contacts with victims of violence against women and children.

The Sheriff's argument that he is concerned for victim privacy is spurious and self-serving as law enforcement throughout Sonoma County has, for years, been regularly and routinely making a large array of video, audio, and photographic recordings of many of the most sensitive of victim contacts and statements, at the most sensitive of times, whenever it serves law enforcement interests.

For example, law enforcement throughout Sonoma County makes audio recordings of all

victim 911 calls. They routinely make audio recordings of the in-depth rape victim interviews from start to finish. Audio recordings are always made of victim pretext calls. Fully identifiable still photographs are taken of victims' injuries in all states of victim dress and undress. Most telling of all, fully identifiable face and body video recordings are routinely made of child sexual assault victim in-depth interviews on a nearly daily basis.

Throughout our 23 years of working with victims of these crimes in Sonoma County we have not had victims complain about law enforcement making any of these recordings, nor have we seen careless law enforcement release of these recordings. Strict protocols and identity hiding measures are already routinely used for each media type for preventing unwarranted releases, for preventing identifying of victims, and for protecting victim privacy.

Law enforcement should not be allowed to hide behind claims of concern for victim privacy in order to deny recording of victim contacts whenever law enforcement chooses, as it is precisely the unrecorded contacts with victims that are most rife with a damaging array of law enforcement misconduct in these cases. The nature of these misconducts aim primarily at dissuading victims, suppressing evidence, denying justice, and 'ditching' these cases, as is described and documented in more detail further on. \*\*\* See pages 3 and 5.

This widespread and deeply hidden law enforcement misconduct in cases of violence against women and children, that occurs primarily when law enforcement is alone with victims, continues to occur throughout our county. It causes immense added risks to individual victims and to the public in general, and is the root cause of Sonoma County's dangerously low prosecution rates in these cases. \*\*\* See page 5. Recording all contacts with victims is one of many urgently needed remedies.

California has passed a number of laws with the precise intent of attempting to stem the tide of these law enforcement misconducts in cases of violence against women and children, but because of frequent law enforcement non-compliance with these laws, along with the high level of invisibility of law enforcement/victim contacts in these cases, the laws haven't had the needed effect. (\*\*\*) See pages 4 and 5)

Most importantly, given the plethora of law enforcement recordings already being made of victims' most sensitive moments, in all media forms, whenever it suits law enforcement, for law enforcement now to selectively, unnecessarily, and wholesale deny full recording coverage to victims of violence against women, while providing this level of protection and accountability to all other citizen contacts, constitutes a massive discriminatory denial of women's constitutional rights to equal protection of the law.

Historical factors also inform and heighten the imperative to record all law enforcement/victim contacts. For well over a century, up into recent decades, the excuse of the privacy of family matters was a primary excuse, if not the primary excuse, for law enforcement's blanket refusals to deal with violence against women and children. And further, law enforcement's historical discriminatory hostility to women and to these cases is also well documented and continues on to this day.

The Sheriff's Department, and other police agencies in our county, cannot be allowed to perpetuate these extremely dangerous and discriminatory policies toward women and children into the 21<sup>st</sup> century.

**There is Compelling Need to Record ALL Law Enforcement Contacts With Victims of Violence Against Women and Children as Recording is the Most Immediate Effective Means of Reducing the Rampant Law Enforcement Misconducts and Violations That Are Especially Rife in these Contacts.**

\* The serious violent offenses most poorly handled by law enforcement are the crimes of violence against women and children, as the disastrous local and national statistics all attest. (See local statistics on p5.)

\* The dangerously low prosecution rates for these crimes stem most frequently from law enforcement misconducts at victim-law enforcement contacts, particularly during contacts where the law enforcement officer is alone with the victim.

**The Principle Law Enforcement Misconducts That Occur During Law Enforcement Contact with Victims Are:**

- a general law enforcement obstruction of justice and denial of equal protection by
  - \* dismissing, disregarding, degrading, discouraging, and dissuading victims,
  - \* misinforming and outright lying to victims about their rights, the viability of their cases, about what can and can't be done, about evidence, points of law, available police procedures, and more,
  - \* failures to ask key and required questions about threats, weapons, injuries, witnesses, abuse history, evidence, etc.
  - \* failure to write down critical elements of victim statements and evidence leads,
  - \* failures to impart required information on victims' rights, denial of victims' rights to be accompanied by an advocate and support person of her choice in law enforcement interviews, denial of other victim rights,
  - \* failures to provide adequate language interpreting,
  - \* failures to follow up with questions on evidence leads in victim statements, failures to properly and fully take witness statements and child witness statements, failure to properly interview witnesses,
  - \* withholding critical law enforcement powers, failures to provide required victim protections, failure to write reports, and more.

\* Once these kinds of violations occur at victim contact it is often the end of the case as victims retreat in despair, or it is the beginning of a failed investigation as evidence leads in the victim statement have been overwhelmingly suppressed and/or left unrecorded in writing.

It must be understood that these outcomes are often the intent of these officers' violations, as too many officers are still hostile to and biased against these cases. They want these victims and their cases to go away as quickly as possible so they can get back to what too many officers narrowly view as 'real police work'. As you can imagine, when such officers are alone with victims it's far too easy for the officer to disparage the victim and her case, withhold proper written record of what happened, steer the victim wrong, and be done with it.

Law enforcement agencies are almost always complicit in these misconducts and tend to circle the wagons around the most egregious officer offenders.

Unlike victims of police brutality who know what hit them, the victims of the above kinds of police misconduct are often left profoundly confused, despairing, and not knowing where to turn, as they've been led to believe that nothing more can be done, or there's not enough evidence, or that there wasn't a crime committed. When, and if, victims do complain, there are

rarely any witnesses to support them.

Clearly video, or even audio recordings, would capture the majority of these misconducts. It's critical that ALL victim contacts with law enforcement be covered in this way, as these kinds of misconduct are perpetrated by non-uniformed officers as well as uniformed officers.

**California Has Passed Many Laws Attempting to Stem the Rampant and Dangerous Law Enforcement Misconduct that Occurs in Victim-law Enforcement Contacts in Cases of Violence Against Women and Children. These Laws Have Been Only Minimally Successful Due to the Fact That These Contacts Remain Mostly out of Public and Witness View and that Law Enforcement Continues to Violate the Laws.**

Here are just four of many more California laws that have attempted to get control of the rampant law enforcement misconduct in cases of violence against women and children:

1. **California Penal Code Sections 679.04 and 679.05** carve out unique rights for victims of domestic violence and sexual assault to be accompanied by an advocate and a support person of the victim's choice in all law enforcement interviews.

These two laws also obligate law enforcement to inform victims of these rights, something law enforcement in Sonoma County almost never does.

These two laws make an exception for the initial contact with law enforcement for the obvious reason that the initial contact is usually under urgent circumstances, and, as such, there is not sufficient time for either victims or law enforcement to bring advocates and support persons into the picture.

This fact only heightens the imperative for law enforcement recording ALL contacts with victims, especially the initial contact.

2. **California Family Code Section 6228** obligates law enforcement to give domestic violence victims a full copy of their police report within five days of the victim making the request. This law recognizes the widespread law enforcement practice in domestic violence cases of leaving out key elements of victim statements and key evidence in the written report. By obligating law enforcement to give domestic violence victims an opportunity to review the reports at any time, it was hoped victim review of the reports would serve as a check on this kind of misconduct.

The law has helped to some extent. However, too many victims do not know of this right, and many others have difficulty evaluating the report. Additionally, as is the situation in a case we are working right now where law enforcement abuse has been extreme, Santa Rosa Police are simply just refusing the victim's repeated requests for a copy of the report.

3. **California Penal Code Section 836(c)(1)** requires law enforcement to make an arrest on all domestic violence restraining order violations. This law was passed in recognition of the all too frequent practice of law enforcement officers to deny women police action in these cases and, instead, tell women to go back to family court. The law was passed, in fact, in the wake of the high number of women who were ending up murdered after police walked away without taking actions when the women reported domestic violence restraining order violations.

4. **California Penal Code Section 13730** mandates that police write a written incident report on all domestic violence related calls. This law was passed in recognition of the many times victims have reported domestic violence and police have walked away and written NOTHING. We have a domestic violence kidnap case right now in which SRPD officers walked away and wrote nothing despite the law and despite multiple neighbor witnesses calling 911 in distress at seeing the struggling woman being forced into the car.

**Sonoma County Law Enforcement Violence Against Women Statistics, as Well as National Statistics, Show the Extent of the Disastrous Dangers and Injustices That Result from the Misconduct in Law Enforcement Contacts with Victims in These Cases.**

Here we provide only the local statistics most relevant to the question of police body cameras. The statistics are for the year 2011, the most recent year for which we have statistics. They represent a compilation of the violence against women statistics from each of Sonoma County's ten law enforcement policing agencies, including the Sheriff's department.

These statistics show that, in Sonoma County, the overwhelming majority of crimes of violence against women and children are buried alive in the darkness of our police and Sheriff's departments without ever even being sent to the District Attorney's Office for review, thus ending any possibility of the women's access to justice and the protections justice affords.

In 2011, in Sonoma County,

- \* 75% of all rape reports taken by police and Sheriff were never even sent to the DA's Office for review,
- \* 75% of all child sex abuse reports taken by police or Sheriff were never even sent to the DA's Office for review
- \* Over 70% of all domestic violence related calls for service to police and Sheriff never resulted in reports being sent to the DA's office for review

Keep in mind that in regard to the rape and child sex abuse cases, these statistics represent only the cases where police reports have been written. Cases where police fail to write a report are completely lost in the void.

These statistics also show that despite all the law enforcement polished public rhetoric about how much they care about the victims, behind the scenes, our local police handling of these cases hasn't improved much at all over the many years we've been gathering these statistics. (For more extensive statistics, see [p5 of our newsletter here](#) at <http://justicewomen.com/NL36.pdf> )

**Further Considerations for Law Enforcement Recording in All Cases of Violence Against Women and Children:**

**EVIDENCE ENHANCEMENT: Even under the best law enforcement circumstances, recordings would hugely enhance the evidentiary value of police contact with victims of violence against women and children.**

Much of the evidence, and most all evidence leads, in these cases are contained in the victim statements, this due in part to the fact that the victim and suspect almost always have an ongoing, either intimate or close, social relationship. Due to the highly emotional nature of

victim statements in these cases, even the most diligent officers commonly fail to catch all the details in the victims' telling of their stories. Recording would be invaluable in regularly and reliably filling in the gaps.

**California Laws Recognize the Need for Enhanced Privacy Protections for Victims for Victims of Violence Against Women and Children in the Law Enforcement Process. However, These Laws Pertain Principally to Keeping a Victim's Name from Being Made Public, Something That Law Enforcement Has Had No Trouble Doing Despite All the Video, Audio, and Photos It's Already Making.**

There is, for example, the rape victim's right to keep identifying information off the record throughout much of the law enforcement process, and the right of people to report child abuse anonymously, and more. However, to our knowledge, California law has never sought to restrict any kind of recording law enforcement can or can't make in properly responding to victims of violence against women and children cases..

As stated earlier, in 23 years of working with victims of violence against women and children in Sonoma County, we are not aware of law enforcement breaching victim privacy protections though they routinely make an array of audio, video, and photographic recordings of victims. If anything, a problem for victims has been that law enforcement has held these records too tightly, even when victims have the right to see them. Nor can we remember any victims, or child victim's parents, expressing any concern when law enforcement has wanted to make audio or video recordings.

Victims' privacy concerns seem to revolve mostly around wanting to keep their names and identity from going public. And in this regard law enforcement has been diligent. It is plausible that more extensive law enforcement recordings could discourage an occasional victim from coming forward, just as this expanded recording could plausibly discourage an occasional victim or witness in other crime categories. However, as we've argued throughout, the urgency of stemming the dangers and damage of existing widespread law enforcement misconducts in these cases far outweighs hypothetical concerns.

Furthermore, in the case where a victim might object to recordings, there is no reason law enforcement couldn't handle this situation in the way it will be handling their recordings of other objecting victims, witnesses, and confidential informants.

In debating these issues, it is critical to keep in mind that principal reasons victims of violence against women give for not reporting to law enforcement is victims' fears that law enforcement will not do anything and/or fears that law enforcement will not believe them. Recording law enforcement/victim contacts should, in fact, benefit greatly in helping allay those fears.

It should also be considered that victims themselves are changing in the way they respond to these crimes. Today, there has been a welcome lessening of the excruciating self-blaming victims of these crimes have suffered, and a healthy increase in victim demands for justice and vindication. Indeed, many young women across the country are making their own videos talking about their rapes and rage and posting those videos on youtube or facebook and getting them into the press.

Of course, victim privacy should and can be fully protected under a policy of mandated recording of all law enforcement/victim contacts! But In light of all the above facts and discussion, Sheriff Freitas' professed concern for victim privacy as a pretext for selectively keeping these contacts in the dark in cases of violence against women and children is not only disingenuous and discriminatory, it should also be considered suspect.