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Recordings of Public Safety Officers On Duty

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OIS Video 1




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OIS 2



SCHELDROP BLADES Iowa Law Enforcement Facts

- 392 Law Enforcement Agencies in Iowa employing 8,896 sworn officers as of 2008 according to U.S. Department of Justice Bureau of Justice Statistics census.
- According to the National Law Enforcement Officers Memorial Fund, 143 police officers died in the line of duty in 2016.

SCHELDROP BLADES OIS Background

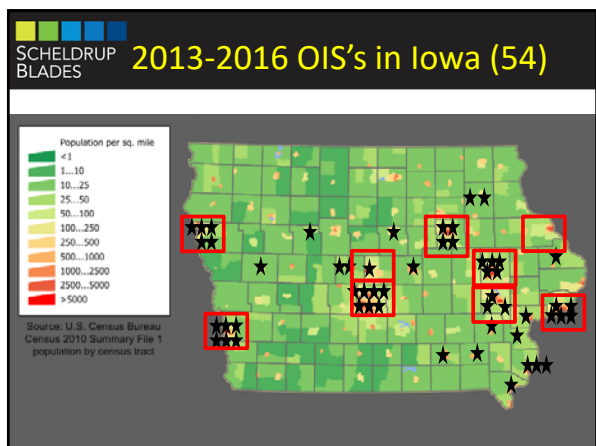
- Between Fiscal Year 2008 and May 1, 2017 Statewide the DCI investigated 100 OIS.
- 17 OIS between 2008-09 (avg 8.5 per year)
- 83 OIS between 2010-May 1, 2017 (11.19 per year)

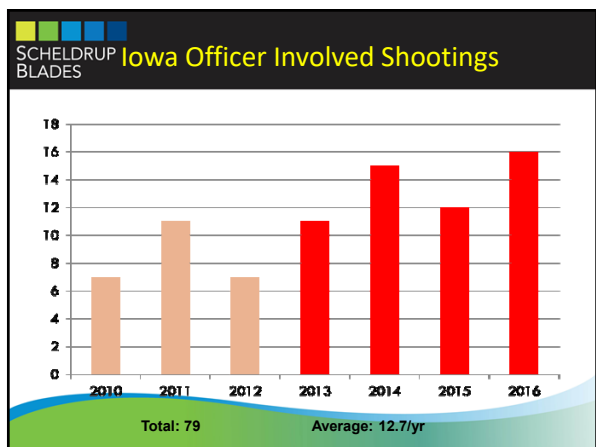
SCHELDROP BLADES 2013-2016 OIS's in Iowa (54)

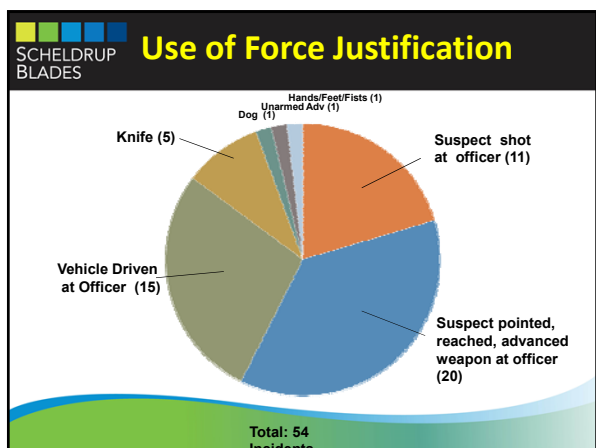
Population per sq. mile

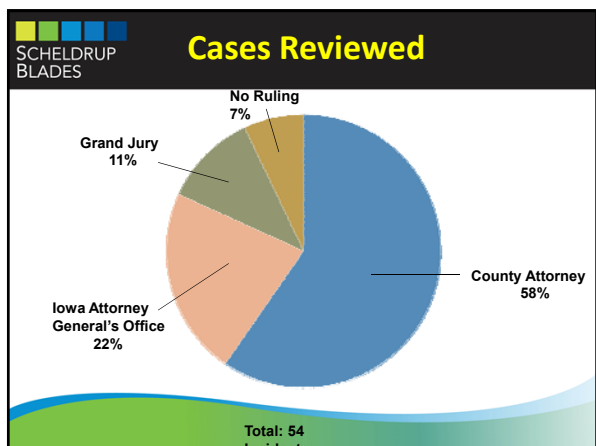
- <1
- 1...10
- 10...25
- 25...50
- 50...100
- 100...250
- 250...500
- 500...1000
- 1000...2500
- 2500...5000
- >5000

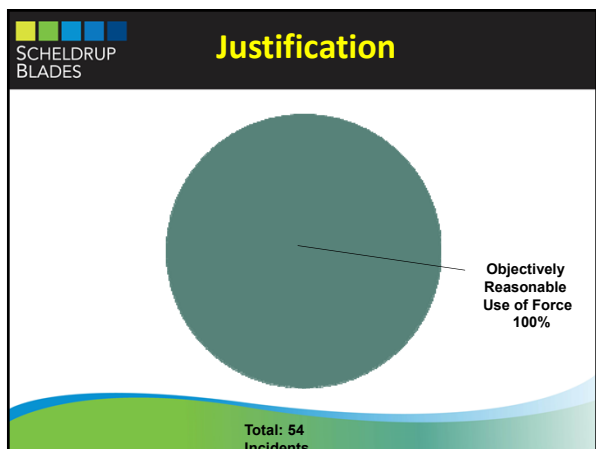
Source: U.S. Census Bureau Census 2010 Summary File 1 population by census tract

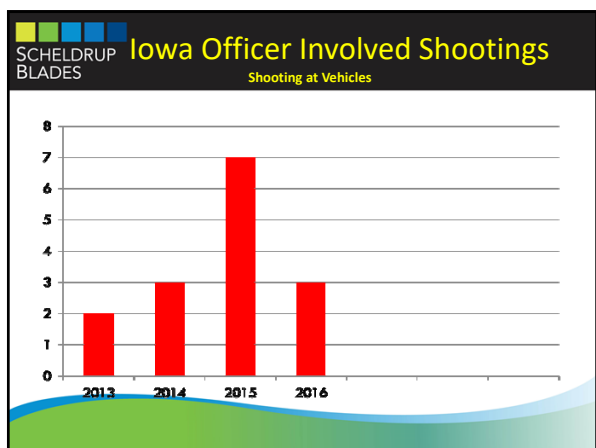















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- Number of officer involved shootings climbing.
- Must prepare.
- Must be able to identify issues before critical incident occurs and respond appropriately to incidents that arise.

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Some contributing UoF factors

- Length of officer's shift;
- Officer's physical and mental condition;
- Officer's training and experience;
- Officer's job satisfaction and work stress;
- Poorly drafted policies, guidelines, or procedures; and
- Environmental factors (weather).

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Dr. Artwohl

- Need to understand that after a traumatic and stressful event such as OIS officers may suffer psychological and physical effects.
 - 2nd guessing of their actions, or the actions of another officer and possibly suspect.
 - The dangers of talking to an officer to soon after the incident may result in them making statements that they haven't had time to process yet (in other words they haven't dealt with the 2nd guessing that comes naturally when someone encounters a traumatic or stressful event)
 - Making these types of 2nd guessing statements can potentially lead to unnecessary legal or disciplinary action against the officer

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- Because “police officers are often forced to make split-second judgments-in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation,” the reasonableness of the officers’ belief as to the appropriate level of force should be judged from...[the] perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. Saucier v. Katz, 533 U.S. 194, 205 (2001) (quoting Graham, 490 U.S. at 397).

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- “[U]nder Graham, we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes ‘reasonable’ action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” Smith v. Freland, 954 F.2d 343, 347 (6th Cir. 1992).


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- “Monday morning quarterbacking is not allowed... ‘Detached reflection cannot be demanded in the presence of an uplifted knife.’ ” Lamont v. New Jersey, 637 F.3d 177, 183 (3d Cir. 2011).
- Officers have “breathing room to make reasonable but mistaken judgments.” Ashcroft v. Al-Kidd, 563 U.S. 731 (2011).

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The perception by many, including some prosecutors and the general public is that because someone is a police officer they've had **training** and that the officer knows how to deal with every possible situation. The public and prosecutors may have unreasonable expectations of the officer to have total or perfect recall. Police Officers are just like everyone else, and those expectations are simply unrealistic.

You also need to be able to educate the County Attorney, AG and even the officer's agency about these types of statements and let them know that these emotions are normal and should not be the determining factor for any type of criminal or disciplinary actions against the officer.




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- During traumatic and stressful events such as OIS, the officer will experience what is often referred to as an Adrenalin Dump. This is an autonomic reaction that the body reacts to when it becomes stressed.
- As a result of the adrenal glands reacting to the stressful event, the body reacts in several ways resulting in perceptual distortions. These physical reactions and perceptual distortions will likely influence what or how much the officer will be able to recall after a traumatic or highly stressful event.
- The following are some of the perceptual problems an officer may experience
 - Selective attention
 - Pupil dilation
 - Auditory Exclusion
 - Time Distortion

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Officer perceives passenger as new threat, because he didn't see the drivers weapon when he removed his coat.


Due to stressful situation Officer can only focus attention on 1 subject at a time.




 **Pupillary Dilation**


- Allows more light to enter
- Improves perception of movement
- Disadvantages:
 - Loose Depth perception
 - Lose ability to see behind the threat
 - Inability to focus on the front sight
 - Inability to accurately gauge distance*




 **Auditory Exclusion**


- "Auditory exclusion"
 - Muffled and distant
 - Sensory gating
 - Brain screens out everything extraneous to immediate survival
- Inaccurate statements about number of shots fired and commands given
- Common when statement doesn't match recording of incident




 **Time Distortion**

- Tachypsychia- "speed of the mind"
 - Most officers report time slowing down
 - Some report time speeding up
 - Due to changes in temporal perception, should not discuss with officers how long an encounter took.




 **Practical Considerations**

- Advise officer to exercise his/her right to remain silent.
- Consider immediately hiring an outside attorney with experience representing departments and officers in civil litigation, as well as officers in criminal investigation, due to potential conflict of interest and complexity of these types of cases.

 **Practical Considerations**

- Do not have post-shooting conversations with an officer involved when the audio or video recordings are rolling.
 - Ask the officer if recording devices are turned off.
- Instruct the department and officer to NOT WRITE A WRITTEN REPORT. (Check department's policy too).
 - DCI can get the details from their interview. This will reduce any discrepancies between any written statement and what DCI gets from their interview.
 - DCI report will serve as report for incident.
- Instruct the department and officer to NOT review the video or audio recordings before you speak with the officer involved.
 - Obtain copies for your file.

 **Limitations and Issues with Body Worn Cameras**

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Video



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Body Cam Limitations


- Camera's view is not the officer's view (camera doesn't track eye/head movements)
- Some key observations/danger cues cannot be recorded (smells, peripheral views, muffled sounds, etc.)
- Camera speed differs from the speed of life (real life observation involves inputs from multiple senses and is not experienced in frames per second)
- Camera may see better or worse than an officer in low or bright light.

Force Science Institute, *10 Limitations of Body Cams You Need to Know for Your Protection* (2014).

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Body Cam Limitations

- Camera only records in 2-D.
- Multiple cameras may not be sufficient.
- Cameras cannot replace a complete investigation that looks for information that isn't recorded or is unexplained by the video alone.
- Video encourages second-guessing and Monday Morning Quarterbacking through the use of 20/20 hindsight.
 - No replay or slow motion in real life.


 **Body Cam Limitations**

- A body camera, like other technology, is subject to malfunction, error, and operational failure.
 - What happens when the equipment fails?
 - Is the department prepared?
 - Are you prepared as the department's attorney?
 - Is it a malfunction, or normal operation? (Buffer mode).


 **Policy Issues**


 **Policy Questions**

- Does your law enforcement agency have a critical incident or officer involved shooting policy?
 - They should.
- Does your law enforcement agency have a video and audio recording policy?
 - They should.
- WHERE did the policy come from?
 - Has it went through legal review process?


 **Policies**


- Does the policy address how and when should the officer turn on the body cam?




 **Policies**

- What is the department's policy regarding reviewing officers' body cam videos?
 - Random review/observation
 - Complaint-based review
 - Incident-based review



 **Policies**

- How and when can video be used to discipline officers?
- May the officer review the video following an OIS?
 - Department should allow before DCI interview.



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Collective Bargaining

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Sample CBA

- ▶ Misconduct detected during random or "targeted" review of video will not result in discipline, unless:
 - ▶ Alleged misconduct is criminal / could lead to criminal prosecution
 - ▶ Alleged misconduct is of a serious nature (i.e., normally would be associated with lengthy suspension / termination)
- ▶ Repeated minor violations of policy, after informal counseling, may result in progressive discipline.

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Sample CBA

- ▶ Pre-activation recording may not exceed 60 seconds and may not include audio.
- ▶ Officers will be provided training with respect to any camera system prior to its implementation.
- ▶ Recordings related to disciplinary actions against members may not be used for training while the matter is pending.




Sample CBA

- The Department’s policies shall:
 - Prohibit remote activated recording without the officer’s knowledge, unless immediately necessary for officer safety.
 - Require 24-hour advance notice prior to release of any video that is not considered to be a public record.



Third-Party Recording of Police



**Recording police officers
“First Amendment Audit”**

- First Amendment protects people photographing or video recording law enforcement performing their duties in public. See Fields v. City of Philadelphia, 862 F.3d 353, 356 (3rd Cir. 2017); Turner v. Driver, 848 F.3d 678, 690 (5th Cir. 2017); Glik v. Cunniffe, 655 F.3d 78, 82 (1st Cir. 2011); Smith v. City of Cumming, 212 F.3d 1332, 1333 (11th Cir. 2000); Fordyce v City of Seattle, 55 F.3d 436, 439 (9th Cir. 1995).
 - Subject to reasonable time, place, and manner restrictions.
- “The freedom of individuals to verbally oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.” Houston v. Hill, 482 U.S. 451, 462-63 (1987).

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Open Records Requests

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Exemptions Confidential Records

- Iowa Code section 22.7(5) peace officers' investigative reports.
- Iowa Code section 22.7(60) closed session information. See also Iowa Code section 21.5(c), (g), (h), (i), (k).


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Attorney Fee Awards


- Under Iowa Code section 22.10(3)(c), the court shall order the payment of all costs and reasonable attorney fees, including appellate attorney fees, to any plaintiff successfully establishing a violation of Iowa Code Chapter 22.
- "The plaintiff has the burden of proving both that the legal services performed were reasonably necessary and the charges themselves were reasonable."
Vaughan v. Must, Inc., 542 N.W.2d 533, 541 (Iowa 1996) (citing Green v. Iowa Dist. Ct. for Mills County, 415 N.W.2d 606, 608 (Iowa 1987)).


 **Preventing Release/Examination**

- If the municipality is considering releasing or permitting examination of a video and audio recording from a critical incident, they should notify the officer(s) because they may wish to seek an injunction under Iowa Code section 22.8. The court must find:
 - Examination would clearly not be in the public interest; and
 - Examination would substantially and irreparably injure any person or persons.
 - Consider Iowa Code section 22.15 (2017).


 **Practical considerations**

- Don't be complacent about possible civil claims.
 - If an attorney is requesting a recording, then that should be a yellow flag.
 - Consider notifying insurance carrier and requesting legal review of incident by outside defense counsel.


 **DISCIPLINARY ACTION**

 **Disciplinary overview**


- Officers do not lose their constitutional, statutory, or other legal rights (contractual) merely because of the job.
- Police officers are not relegated to a watered-down version of constitutional rights. Garrity v. State of N.J., 385 U.S. 493, 500 (1967).
- Peace officer's bill of rights. Iowa Code § 80F.1.

 **Officer has Right to Counsel**

- Right to counsel. Iowa Code § 80F.1(6).
- Right to counsel under Due Process Clause of 14th Amend. Garrity v. State of N.J., 385 U.S. 493, 499-501 (1967); Article I, section 10 of the Iowa Constitution.

 **Wrap-up**

- Departments and officers likely will be subject to intense media scrutiny in the event of an OIS, or if a lawsuit is filed. **BE PREPARED.**
- Ask questions if you have any concerns, don't wait for something to happen. **BE PROACTIVE.**



Questions

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