Public Safety Worker Privacy Rights in the Age of AI & Digital Surveillance

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AI & Digital Surveillance

April 9, 2025

10:00 AM PT / 1:00 PM ET

60 minutes

Presented By Richard Poulson

As artificial intelligence, digital surveillance, and new technologies reshape the public safety workplace, police, fire, and corrections employees face growing threats to their privacy rights—both on and off duty.

Join LRIS for this one-hour webinar covering the most pressing privacy concerns for public safety workers, including:

AI & Workplace Monitoring: How artificial intelligence is being used to track, evaluate, and investigate employees.

Personal Devices & Digital Privacy: Can your employer access your phone, personal messages, or online activity?

Anonymity Protections Under Victims' Rights Laws: How *Marsy's Law* and similar statutes can shield public safety employees from having their personal information disclosed.

Richard Poulson has been representing labor unions for his entire career, representing union clients in collective bargaining, interest and grievance arbitration and employment-related litigation. He is a partner with the Philadelphia, Pennsylvania firm of Willig, Williams & Davidson, where he focuses on advising and representing police, fire, paramedic and other uniformed employees regarding municipal affairs and public employment. He earned his B.A. from La Salle University (1992) and his J.D. from the Catholic University of America, Columbus School of Law (1997). Rick is the Executive Director of LRIS. Since its inception in 1981, LRIS has been a valuable resource for public safety labor relations. LRIS conducts labor seminars, publishes a monthly newsletter, and currently has five books in print.

[Richard G. Poulson | Willig, Williams & Davidson (wwdlaw.com)](http://wwdlaw.com)

Public Safety Employee Privacy Rights in the Age of Digital Surveillance

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LRIS Seminars

The Rights Of Police Officers

June 18-20
The Horseshow Hotel
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Union Leadership In Action: Enforcing The Law, Enforcing The Contract

September 10-12
The Horseshoe Hotel
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First Thursday Podcast
by
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LRIS.com/podcasts

Available on LRIS.com and your favorite podcast app.

LRIS's monthly First Thursday podcast covers the latest news, court decisions, and arbitration awards in the public safety labor and employment arena.

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- AI and Workplace Monitoring
- Personal Devices and Digital Privacy
- Anonymity Protections under Victims' Rights Laws

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New Technology And Bargaining

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What is Negotiable?
NLRA vs. Public Sector

NLRA requirement to bargain over wages, benefits and working conditions with their unions applies GENERALLY in the public sector, depending on state and locality.

Same GENERAL statement applies to whether bargaining topics qualify as mandatory, permissive or illegal.

YM MV

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What is Negotiable?
The General Framework

General Scope of Collective Bargaining:
- Employer must bargain over *wages, hours, and other terms and conditions of employment.*

Three Types of Bargaining Subjects:
- Mandatory
- Permissive
- Illegal

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AI And Bargaining

Question: Is an employer's use of AI to evaluate an employee's performance a negotiable working condition?

Answer: Probably yes, though the law is quite sparse on the issue.

ANALYSIS

Uncharted Territories: Unions Versus AI in the Workplace—a Legal Battle for the Future

New Technology -- Body Cameras

New Hampshire Troopers Assn v. New Hampshire Dept of Safety
PSLN, September 2024

- Employer required to engage in impact bargaining over implementation of PWC program.
- Employer violated requirement by refusing to respond to union proposals to address impact.

Negotiable

ARTIFICAL INTELLIGENCE AND WORKPLACE MONITORING

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AI in the Public Safety Workplace

AI has been used by law enforcement for years, particularly to detect and predict crime (facial recognition, etc.)

2023-24 saw the first major applications of AI as a workplace management tool.

- Body-worn camera video processing.
- Automated report writing,
- Call triaging.
- Answering non-emergency calls.

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AI-Based "Intervention" Benchmark Analytics

Claims to "predict 85% of all 'major adverse investigations' before they even happen."
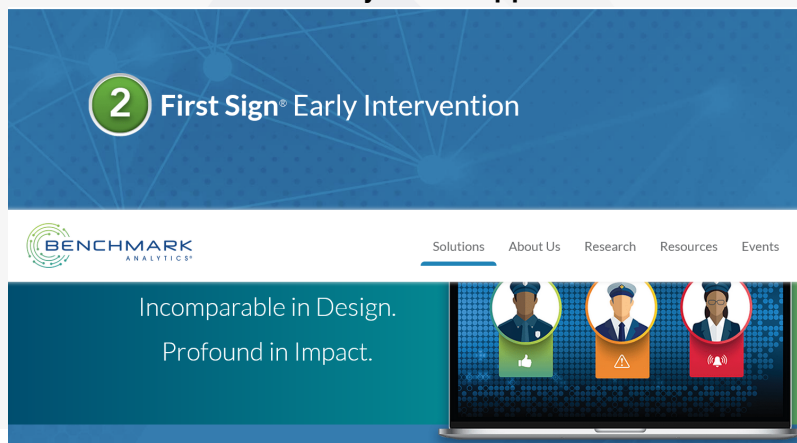
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AI-Based "Intervention" Systems Benchmark Analytics

The Minnesota Star Tribune

### Stopping the next Derek Chauvin: Minneapolis to invest in software to flag problem cops

Minneapolis wants to spend $1.25 million on new technology to help identify warning signs of bad policing. But the city has tried this before and failed.

By Andy Mannix

JULY 16, 2022 AT 7:00PM

Ron Huberman, CEO of Chicago-based Benchmark Analytics, calls his product "the Holy Grail of police reform" for its data-driven approach to addressing police conduct. Benchmark launched in 2017 and is now one of the leaders in the industry. Its website calls its product a "revolutionary, all-in-one solution" in a time when "policing in America is at a crossroads."

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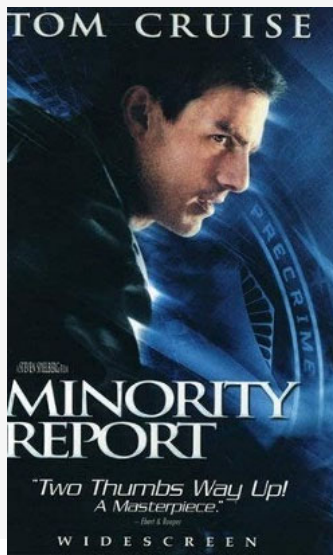
From Benchmark Analytics

- "First Sign analyzes arrest records, stop and service-call information, use-of-force data, internal affairs reports, dispatch information, and other data to monitor officer's conduct."
- "The system allows supervisors to determine if officers are out of compliance with policies."
- "Each officer is given a risk score based on the system metrics and supervisors then uses the risk scores to determine whether the officer needs counseling, training, or to be terminated."

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From "Intervention" to Wellness & Advocacy

Marketing strategy has moved from punitive to positive, likely due to recruiting and retention crisis.
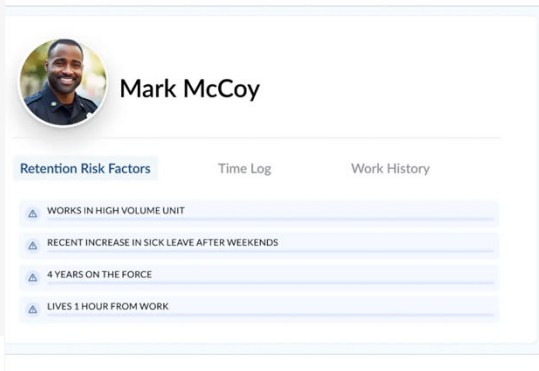
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From "Intervention" to Wellness & Advocacy

Marketing strategy has moved from punitive to positive, likely due to recruiting and retention crisis.

Mark McCoy

Retention Risk Factors   Time Log   Work History

⚠ WORKS IN HIGH VOLUME UNIT
⚠ RECENT INCREASE IN SICK LEAVE AFTER WEEKENDS
⚠ 4 YEARS ON THE FORCE
⚠ LIVES 1 HOUR FROM WORK

Address Your Agency's Turnover Challenges Head On

Turnover is impacting 80% of police agencies nationwide. That's why Benchmark developed First Sign Retention Monitor. This first-of-its-kind solution was built specifically for the law enforcement environment and addresses the unique retention challenges associated with policing careers.

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From "Intervention" to Wellness & Advocacy

Officers at Risks

Kate Smith
Officer

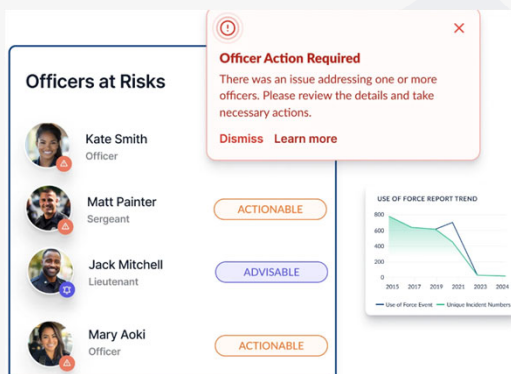Matt Painter
Sergeant   ACTIONABLE

Jack Mitchell
Lieutenant   ADVISABLE

Mary Aoki
Officer   ACTIONABLE

Officer Action Required
There was an issue addressing one or more officers. Please review the details and take necessary actions.

Dismiss   Learn more

USE OF FORCE REPORT TREND

800
600
400
200
0
2015 2017 2019 2021 2023 2024

— Use of Force Event   — Unique Incident Numbers

Get the Most Out of Your Early Intervention Efforts

C.A.R.E. (Case Action Response Engine) is a powerful way to support officers identified in First Sign as those at risk of an adverse event. It allows you to build, implement, track, and evaluate an officer-specific action plan, all within one comprehensive platform.

With C.A.R.E., you're investing in your officers' careers, your agency's reputation, and your community's safety.

No mention of discipline in current marketing materials.

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Truleo Monitoring - What Do They Do?

CONVERTS BWC VIDEOS INTO AN ASSET FOR POSITIVE REINFORCEMENT AND TRAINING

TRULEO provides unbiased, objective 100% body camera analysis. "Random" body camera reviews are full of supervisor bias and fail to surface anything valuable. These "random" reviews are only scanning about 1% of an agency's footage and fail to recognize officers for doing a good job.

Improve Training

Automatically surface high stress situations for supervisors to identify a training opportunity or give praise for high composure.

Increase Retention

Officers who are appreciated stay around. Recognize their good work with automatically-surfaced high professionalism and give credit for de-escalation attempts.

Lift Morale

Recognizing good work shapes a positive culture and strengthens leadership. Measuring community gratitude shows officers their efforts make a difference.

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What Does It Do? - Example

Algorithm reviews data for examples of "high professionalism".
So, what exactly is high professionalism?

"Giving explanation is a key feature to being awarded High Professionalism in TRULEO. Twenty-five (25) or more words during a call is the first step to being awarded a High Professionalism label."

And what is the opposite of "high professionalism" …

https://help.truleo.co/what-are-some-examples-of-explanation-that-include-25-or-more-words

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AXON and Audio Transcription

DRAFT ONE

2024. Axon's Draft One.

- **AI software that drafts police report narratives in seconds based on auto-transcribed body-worn camera audio.**

- **Requires reports to be reviewed and approved by human officer.**

- **Axon has pursued an aggressive marketing strategy.**

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Two Critical Studies

- Axon's First Draft "performs worse with longer interviews, pursuits, and traffic accidents" and "in loud environments or when unrelated conversations interject (such as radio chatter)." (IVPM Research, May 2024)

- Ferguson, Andrew Guthrie, *Generative Suspicion and the Risks of AI-Assisted Police Reports* (July 17, 2024):

"Promises around innovation are countered by concerns around how the models were trained, questions around error, hallucinations, and bias in transcription, and how the final police report will be impacted by the generative prompts. Issues around structure, timing, legal gap-filling, and factual gap-filling are all addressed, with an eye toward comparing this innovation to existing human report writing."

Available at SSRN: https://ssrn.com/abstract=4897632

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Concerns

KOMONEWS

AI-assisted police reports not welcome in King County due to potential errors

by Jeremy Harris, KOMO News Reporter | Fri, September 27th 2024 at 11:40 AM
Updated Sat, September 28th 2024 at 2:43 PM

"KING COUNTY, Wash. — The King County Prosecuting Attorney's Office (KCPAO) has instructed police agencies to not use Artificial Intelligence (AI) when writing reports. In a memo to police chiefs sent this week, Chief Deputy Prosecutor Daniel J. Clark said any reports written with the assistance of AI will be rejected due to the possibility of errors."

- Action in response to incident in which prosecutors noticed an AI-assisted report made a reference to an officer who was <u>not</u> at the scene.

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Home > Journal of Experimental Criminology > Article

No man's hand: artificial intelligence does not improve police report writing speed

Open access | Published: 02 October 2024
(2024) Cite this article

Journal of Experimental Criminology

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- "In both our pre-registered analysis and several alternative specifications, including a difference-in-differences analysis conducted over a full year, our findings consistently indicate that AI assistance did not significantly improve the speed of officers' report writing."
- "While AI tools like "Draft One" may offer other benefits—such as improved consistency, accuracy, and report quality—the initial promises of this technology do not translate into the time savings that were anticipated."

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AI And Body Cam Video
The Problems

- AI still has a long ways to go. For example, the problem of "hallucinations," not understood by researchers.

- The evidence is very clear that bodycams don't change police/public interactions. What purpose would the AI serve?

- The public records implications.

Key Issues for Unions

- Notice and consent for AI monitoring
- Transparency in algorithms and evaluations
- Safeguards against bias or false positives
- Grievability of AI-based discipline

AI and Bargaining

Privacy and Family Safety (Sample Proposal)

A. <u>Artificial Intelligence</u>. The Employer shall not use any artificial intelligence systems or algorithms to monitor, predict or evaluate the performance of officers.

B. <u>Cell Phones</u>. The Employer shall not be permitted to access an officer's personal cell phone absent a warrant or officer consent.

C. <u>Family Safety</u>. The Employer shall not release the identities of any officer involved in a shooting or other use of force if no criminal charges have been filed against the officer, absent the consent of the officer.

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AI And Bargaining

).Analyses completed by artificial intelligence systems or programs ("AI") will not be used as the sole basis for decisions related to Unit employee discipline or officer assignments.

The City must notify officers, in writing, of the artificial intelligence systems or programs ("AI") utilized by the City to review or analyze officer data, the specific data collected and analyzed by these systems, and how any analyses may be used.

If an "AI" system that is implemented by the department produces or presents faulty data or misinformation related to officer reassignment or discipline; the department in consultation with the association may pause the utilization of the "AI" system. At that time the City and the association will reconvene to assess the issue and determine the appropriate action moving forward.

Artificial intelligence is the simulation of human intelligence processes by machines, especially computer systems, to perform tasks requiring cognition, including, but not limited to, learning, reasoning, self-correction, and creativity.

City of Phoenix and Phoenix Law Enforcement Assn,

2024-2026 MOA

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PERSONAL DEVICES AND DIGITAL PRIVACY

Off-Duty Use of Personal Tech

- Social media activity
- Fitness trackers and personal surveillance data
- Text messages and private group chats

Technology Issues and Personal Cell Phones

Why would an employer want to examine the contents of an employee's cell phone?

What's On A Cell Phone?

Call records	Text and email messages	Photos	Location data	Search history	Metadata (data that gives information about other data)	And more …

Privacy Issues, Cell Phones

Riley v. California (2014)

- Police stopped David Riley for a traffic violation. Seized and searched cell phone without a warrant.

- Digital evidence from cell phone tied Riley to a gang shooting.

- Riley moved to suppress the evidence, arguing the warrantless search violated the Fourth Amendment.

- US Supreme Court held that cell phones are unlike other forms of property for purposes of searches incident to an arrest

- Search of a cell phone will almost always require probable cause and a warrant.

Riley v. California, 573 U.S. 373 (2014)

Privacy Issues, Cell Phones

Riley v. California (2014)

- How does *Riley* apply to employer requests during discipline investigations to examine the personal cell phones of employees?

- The traditional difference in standards between criminal and disciplinary searches.

- Does the employee have a reasonable expectation of privacy?

- Is the search consistent with "the standard of reasonableness under all of the circumstances."

Employee-Owned Cell Phones

Turiano v. City of Phoenix, (2022)

FRONT (GRAPHIC REPRESENTATION) BACK (PHOTO OF ACTUAL COIN)

- During a protest, Phoenix police officer hit a protester in the groin with a 40 mm OC less impact round. Media attention.
- Someone (not the officer) made up a challenge coin depicted a caricature of the protester being hit in the groin by Turiano's munition, along with the words "Good Night Left Nut."
- On the other side, the coin stated the date and location of the protest and the phrase "Make America Great Again One Nut at a Time."

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Employee-Owned Cell Phones

Turiano v. City of Phoenix

- "One Nut" challenge coin becomes subject of local news story.
- City conducts internal investigation into potential connection between coin and neo-Nazi slogan "Good Night Left Side."
- City ordered Officer Turiano to turn over his cell phone as part of its internal investigation. Threatened discipline if insubordinate.
- Turiano sued ... and won. Court concluded that Turiano had reasonable expectation of privacy in the data on his personal cell phone.

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Employee-Owned Cell Phones

Turiano v. City of Phoenix

- "City did not purchase the phone and does not pay for the data plan, Turiano generally does not use the phone for work purposes, and no other City employees have access to the phone or its data. And the imaged data contains an enormous amount of deeply personal information that is entirely unconnected with [his] employment."

- "Cell phones are so pervasive an aspect of modern life that virtually any public employee will have, and occasionally use, a personal cell phone during business hours."

- "Even under the workplace exception set forth in O'Connor, the City's proposed search is unconstitutional."

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Employer-Owned Cell Phones

- *Smith v. City of Pelham* (Alabama 2021). An officer plugs her personal cell phone into her work computer. Unknown to her, the phone backs up its files to the computer, including nude photographs of her "with other people." The employer uses the files to terminate her. No expectation of privacy.

- *State v. Bowers* (Wisconsin, PSLN 2023). Detective had a property interest and expectation of privacy in Dropbox account on a work computer. *"By using a password that is not shared, these users expect their cloud-storage accounts to remain private unless the user shares the files with others, even if the information is stored by a third party."*

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Some Cell Phone Advice

Because of privacy and public records law concerns, employers and unions would be well-advised to counsel employees/ members that:

- Personal cell phones should not be used for employer business.
- Employer cell phones should **never** be used for personal business.

Cell Phones and Bargaining

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ANONYMITY PROTECTIONS UNDER VICTIMS' RIGHTS LAWS

First Responders as Victims – Privacy Challenges

Public safety employees are frequently victims of:

- Assault
- Threats
- Domestic violence

Names often released in:

- Police reports
- News coverage
- Public records requests

Doxing and social media targeting growing concerns

Introduction to Marsy's Law and Similar Measures

Marsy's Law: constitutional amendment in several states
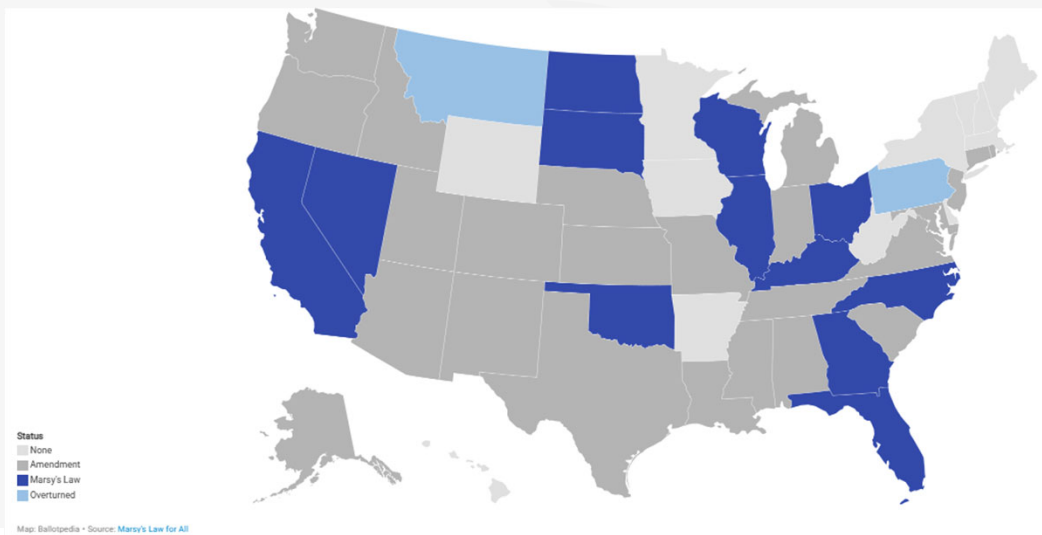
Grants victims:

- Right to privacy and protection
- Right to prevent disclosure of identifying information

Public safety employees are not excluded in statutory text.

May qualify as "victims" under those laws.

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Introduction to Marsy's Law and Similar Measures

https://ballotpedia.org/History_of_Marsy%27s_Law_crime_victim_rights_ballot_measures

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What Marsy's Law Can Protect

Officer name withheld from:

- Incident reports
- Court filings
- Media and FOIA requests

Redaction of personal details:

- Address, ID numbers, family info

Limits on compelled victim testimony (in some cases)

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Tension with Transparency and Accountability

Media and open-government groups typically challenge protections as applied to police officers.

Lawsuits allege:

- Marsy's Law shields police misconduct
- Undermines public trust

Privacy rights vs. public access: an ongoing legal tug-of-war.

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City of Tallahassee v. Florida PBA

May 2020, two Tallahassee police officers were involved in separate fatal shootings while on duty.

- No criminal charges filed.
- City prepared to release officers' names in response to media request.
- PBA sued on behalf of the officers to prevent the release of their names, invoking Marsy's Law amendment in the Florida Constitution.

City of Tallahassee v. Fla. Police Benevolent Ass'n, 368 So. 3d 626 (Fla. 2023)

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City of Tallahassee v. Florida PBA (FL 2023)

November 30, 2023. Florida Supreme Court held that Marsy's Law does not categorically shield the <u>names</u> of crime victims, including police officers, from public disclosure.

- While the amendment protects against the release of information that could be used to locate or harass victims, Court held that a person's name alone does not constitute such information.
- Court cited other state laws that specifically protect "identity."

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Columbus Dispatch v. City of Columbus PD

Columbus Police Department denied *Columbus Dispatch* record request for body cam footage and other information following a fatal police shooting.

- Department provided records but redacted individual officers' names because the officers were crime "victims" under Ohio's 2017 Marsy's Law amendment to its constitution.
- Ohio Supreme Court heard oral argument in February 2025.

State ex rel. Gatehouse Media Ohio Holdings II, Inc. v. Columbus Police Dept., 176 Ohio St.3d 1452, 2024-Ohio-5897, 248 N.E.3d 272 (2024)

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Union Strategies & Takeaways

Bargaining and Policy Actions:
- Negotiate procedures for name redaction and victim confidentiality
- Push for agency policies affirming officers' right to invoke protections

What Union Reps Should Do:
- Educate members on eligibility and process to claim protections
- Coordinate with legal counsel in critical incidents early
- Advocate/bargain for delayed or conditional name release in media disclosures

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Anonymity and Bargaining

<u>Privacy and Family Safety (Sample Proposal)</u>

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