COMMENTS

As If All The World Were Watching: Why Today’s Law Enforcement Needs To Be Wearing Body Cameras
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The widespread use of body-worn cameras among police departments across the nation is not only the next logical step in law enforcement, but in the wake of the confrontation in Ferguson, Missouri between Michael Brown and Darren Wilson, it is also crucial to ensuring the safety of both civilians and officers alike. This article discusses the numerous advantages to body-worn technology and the positive results that have been demonstrated by precincts already utilizing the equipment; as well as dispels several counter arguments, namely that body-worn cameras are a violation of privacy.

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A prevalent issue that homeschooled students face is access to interscholastic athletics at public schools. Over the past several decades, the United States has seen an upward trend in the number of children who are homeschooled. In Illinois, the local public school school determines whether homeschooled students may participate in activities at public schools. While this Comment explores a sample of varying laws and regulations on homeschooled student participation in public school athletics, the purpose is to examine the debate on homeschooler's access to public schools and why the Illinois Legislature should create a minimum standard that would allow homeschooled students to participate in interscholastic athletics in public schools.
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As If All the World Were Watching: Why Today’s Law Enforcement Needs To Be Wearing Body Cameras

RIKKILEE MOSER*

The widespread use of body-worn cameras among police departments across the nation is not only the next logical step in law enforcement, but in the wake of the confrontation in Ferguson, Missouri between Michael Brown and Darren Wilson, it is also crucial to ensuring the safety of both civilians and officers alike. This article discusses the numerous advantages to body-worn technology and the positive results that have been demonstrated by precincts already utilizing the equipment; as well as dispels several counter arguments, namely that body-worn cameras are a violation of privacy.

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I. INTRODUCTION

It was Saturday, August 9, 2014, in Ferguson, Missouri.¹ Michael Brown and his friend had just shoplifted a single pack of cigarillos and

* Juris Doctor Candidate, May 2016, Northern Illinois University College of Law. I would like to thank my family and friends for their never ending support and encouragement; and I would like to thank Abigail Buckels for helping me realize the importance of this topic. I also wish to acknowledge the hours of hard work that the members of the Northern Illinois University Law Review have put into not only this article, but the entire publication.

¹ Rachel Clarke & Christopher Lett, What Happened When Michael Brown Met Officer Darren Wilson, CNN (Aug. 26, 2014, 5:00 PM), perma.cc/TR2W-U6EN.
were heading home down the middle of the street. A squad car approached them and the officer, Darren Wilson, began to curse at them to get out of the road. The two young men responded by saying that they were a minute away from their destination and would soon be out of the street. Frustrated, Wilson threw the car in reverse, backing up so quickly he almost hit Brown and his friend. Inches away, when the officer attempted to open the car door, it slammed closed off the bodies of both boys. Still inside the vehicle, Wilson reached out, grabbed Brown by the neck, and pulled him in through the open window. When Brown resisted, Wilson grabbed his gun and threatened to shoot. An instant later he did just that—striking Brown with a bullet. Fear stricken, Brown turned to run from the squad car. It was then that Wilson exited the vehicle, took aim, and shot at the retreating Brown. At that point the teenager turned with his hands up to face the officer, begging for him to cease fire. Wilson ignored the request and fired upon Brown several more times before the eighteen-year-old finally collapsed dead on the ground.

At least, that is the story according to Brown’s friend and other witnesses. If you ask Officer Wilson however, a different story is relayed.

It was Saturday, August 9, 2014, in Ferguson, Missouri. While on another call, Officer Darren Wilson heard a description from dispatch of two suspects of an alleged strong-arm robbery at a local convenience store. After leaving the scene of his original call, the officer encountered the suspects walking down the middle of the street and requested that they relocate from the road where they were blocking traffic. The two young men refused with cursing. At this point, the officer backed the squad car
up and attempted to exit the vehicle.\textsuperscript{19} However, Brown and his friend slammed the car door violently shut before Wilson was able to get out.\textsuperscript{20} Wilson again attempted to vacate the vehicle, but Brown shoved him back inside and punched him in the face.\textsuperscript{21} It was then that the officer reached for his gun, which Brown immediately grabbed for as well.\textsuperscript{22} Brown had the gun turned against the hip of Wilson, and when the officer shoved it away the gun went off.\textsuperscript{23} Afterwards, Brown took off running.\textsuperscript{24} Protocol calls for pursuit, so Wilson exited the vehicle and yelled at Brown to freeze.\textsuperscript{25} The teen stopped, turned to face the officer, and began to taunt him.\textsuperscript{26} Then Brown began to rush at full speed towards Wilson.\textsuperscript{27} The officer opened fire, which seemingly had no effect on Brown who kept rushing forward; so Wilson continued to shoot until the young man fell dead several feet in front of him.\textsuperscript{28}

The only similarities between these two accounts of the exact same event are the date and location. So who are we supposed to believe? That same question was presented to a twelve person grand jury in St. Louis County.\textsuperscript{29} Over the three months following the incident, seventy hours of testimony from sixty witnesses were presented.\textsuperscript{30} On November 24, 2014, the grand jury’s verdict to not indict Officer Wilson was released.\textsuperscript{31} This decision sparked mass outrage, chaos, riots, and destruction across the country—with its epicenter in Ferguson.\textsuperscript{32} Even the National Guard was deployed, which had been on standby per the request of Missouri Governor Jay Nixon.\textsuperscript{33} Protesters shut down the interstate, all incoming St. Louis flights were cancelled, and the area above Ferguson was temporarily declared a no-fly zone.\textsuperscript{34} Media reporters were pelted with rocks and other
materials in an attempt to prevent reporting of the destruction.\textsuperscript{35} As many as twenty-five stores were looted and set ablaze—including the convenience store which Brown had robbed prior to his death.\textsuperscript{36} Additionally, multiple vehicles were also set on fire.\textsuperscript{37} In fact, there were so many fires that the fire department could not reach them all.\textsuperscript{38} The police department made over eighty arrests that fateful night, and St. Louis Police Chief Jon Belmar claimed he heard numerous shots ring out, none of which he avows were fired by law enforcement.\textsuperscript{39}

Unfortunately, this particular example is not a unique one.\textsuperscript{40} Although the extreme level of rioting seen in Ferguson may be rare, it is actually quite common for “radically divergent accounts of incidents” to be presented following an altercation involving law enforcement.\textsuperscript{41} The sad irony however, is that the contradiction between witnesses and Officer Wilson could have easily been resolved; and even more so, Michael Brown’s life could have potentially been spared.

The Ferguson Police Department, at the time of the shooting, had a supply of what are commonly known as body-worn cameras.\textsuperscript{42} These devices attach to the uniform of an officer and, in startling clarity, record both video and audio of an officer’s interactions with the public.\textsuperscript{43} If these devices had been in use on August 9 instead of sitting in a storage room, the small town of Ferguson, Missouri would not be talked about in homes across the country. Either the witnesses’ stories or Wilson’s story would be verified and the proper steps would accordingly have been taken.

Retired commander of officer training, Neill Franklin, stated that during training sessions he would tell officers to behave as though they were constantly being filmed.\textsuperscript{44} His reasoning was that “[police officers] – like

\textsuperscript{35} Id.
\textsuperscript{36} Gunshots, Looting After Grand Jury in Ferguson Case Does Not Indict Officer in Michael Brown Shooting, FOX NEWS (Nov. 25, 2014), perma.cc/M4GJ-UN46 [hereinafter Gunshots]; Basu, supra note 29.
\textsuperscript{37} Basu, supra note 29.
\textsuperscript{38} Id.
\textsuperscript{39} Gunshots, supra note 36; Basu, supra note 29.
\textsuperscript{40} David A. Harris, Picture This: Body-Worn Video Devices (Head Cams) as Tools for Ensuring Fourth Amendment Compliance By Police, 43 TEX. TECH L. REV. 357, 357 (2010).
\textsuperscript{41} Jay Stanley, Police Body-Mounted Cameras: With Right Policies in Place, a Win For All, ACLU 1 (Oct. 2013), perma.cc/TN7E-MV76.
\textsuperscript{43} E.g., Harris, supra note 40, at 362.
\textsuperscript{44} Neill Franklin, Body Cameras Could Restore Trust in Police, N.Y. TIMES (Oct. 22, 2013, 4:44 PM), perma.cc/Y66S-AUXR.
most people – behave better when they believe they’re being watched.45 Assuming the witness testimony is truthful—if Officer Wilson had known his actions were being documented, more likely than not he never would have pulled that trigger. However, on the converse, if Wilson’s story is the truthful one, his actions would be justified and he would not have been forced to resign.46

Thus, the aim of this Comment is to prove that mandating the use of body-worn technology among all police departments across the nation protects the undeserving victims of police brutality, the officers against career threatening false accusations, and police departments against timely and costly criminal investigations. Part II of this Comment will first provide a brief summary of the issue of police use of excessive force, as well as the historical background of heightened police tactics and the use of body-worn cameras. Part III will establish that implementing regulations governing the use of such devices protects primarily the general public, yet Part IV will illustrate that law enforcement officers reap the benefits as well. The focus of Part V will be to rebut the major arguments in opposition of body-worn cameras—namely the invasion of privacy. Afterwards, this Comment will offer several suggestions in Part VI for appropriate standards pertaining to body-worn technology, and will ultimately conclude in Part VII.

II. BACKGROUND AND HISTORY

A. POLICE USE OF EXCESSIVE FORCE

“[H]istory exposes an unfortunate number of instances where those sworn to serve and protect have fallen well short of the acceptable standard.”47 And there is indeed a clear standard. The International Association of Chiefs of Police published a continuum of appropriate use of officer force based on the amount of resistance faced.48

45. Id.
47. Steven A. Lautt, Comment, Sunlight is Still the Best Disinfectant: The Case for a First Amendment Right to Record the Police, 51 WASHBURN L.J. 349, 352 (2012).
<table>
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*Use-of-Force Continuum* 49

Furthermore, in an attempt to avoid ambiguity and subjectivity, the Association has also defined the latter four levels of resistance. Passive resistance is considered to be present when “[t]he subject fails to obey verbal direction, preventing the officer from taking lawful action.” 50 Active resistance occurs when “[t]he subject’s actions are intended to facilitate an escape or prevent an arrest. The action is not likely to cause injury.” 51 Aggressive resistance exists when “[t]he subject has battered or is about to batter an officer, and the subject’s action is likely to cause injury.” 52 Lastly, deadly force resistance is identified when “[t]he subject’s actions are likely to cause death or significant bodily harm to the officer or another person.” 53

Unfortunately, these standards are not always met. One of the most prominent instances of law enforcement falling short of the acceptable standard of use of force involved a man named Rodney King. The police conduct was so egregious that their acquittals sparked riots across Los Angeles. 54 In a unique twist for the early 1990s, the King beating was captured on camera by an amateur bystander. 55 It is presumable that if the officers

49. *Id.*
50. *Id.* at 73.
51. *Id.*
52. *Id.*
53. Miller, *supra* note 48, at 73.
55. *Id.*
involved had known they were being filmed they would not have continued to kick, beat, and otherwise brutalize a defenseless man.56

The Rodney King case from 1991 is unfortunately not the only example of police brutality that history produces. In 1998, an unarmed black man was shot forty-one times and killed in the entry of his own home; incredulously, the New York officers were acquitted of all charges.57 An unarmed individual in the entryway of his own home does not display any sort of resistance or threat to an officer, and does not warrant a single shot fired, let alone forty-one.58 According to the continuum, the proper response by officers would have been mere presence and verbal commands.59

In 2002, two California police officers were secretly filmed beating a handcuffed sixteen-year-old boy by repeatedly punching and choking him, as well as slamming his limp body against the trunk of their squad car even after he had passed out.60 Once an individual is unconscious they are no longer resisting in any manner, and officer use of force should immediately cease.61

In 2006, an unarmed Maryland college student “suspected” of theft was killed after he was struck in the back eight times by an officer firing sixteen bullets.62 An unarmed individual whose back is turned away from an officer constitutes minimal threat. Even if the student was displaying active resistance by attempting to escape, the proper response would have been to use intermediate weapons.63

Three years later, in 2009, a special needs fifteen-year-old boy was punched, slammed into a row of lockers, and wrestled to the ground by a Chicago policeman after the teen “talked back” to the officer.64 Back talk from a teenager can hardly be considered resistance. While it may have

56. *Infra* pp. 18-19.
58. See Miller, supra note 48, at 72-73.
59. Id.
61. See Miller, supra note 48, at 72-73.
63. See Miller, supra note 48, at 72-73.
64. Kim Janssen & Jeremy Gorner, *Dolton Cop Caught on Camera in Student’s Beating is in Jail on Rape Charge*, CHI. TRIB. (Oct. 9, 2009), perma.cc/2WLG-K8HN (reporting that not only did this particular officer beat a special needs teenager, but is also now imprisoned for an unrelated rape charge following his departure from the Chicago police force).
offended the officer, the boy’s actions in no way constituted a threat or warranted any level of physical retaliation.\textsuperscript{65}

In 2014, an unarmed mentally ill man named Ezell Ford was shot and killed by two Los Angeles police officers.\textsuperscript{66} Similar to the discrepancies in Ferguson, the officers involved offered one story where the victim was violent towards them, while witnesses offered a different version where a struggle never ensued.\textsuperscript{67} Unless the officers’ story was proven true (which is nearly impossible without video evidence) and the amount of violence displayed by Mr. Ford was enough to threaten death or serious bodily injury to the two officers, less lethal means should have been used.\textsuperscript{68}

Less than a week after the Ford incident, New York officers were caught on tape beating a man being arrested without cause.\textsuperscript{69} Santiago Hernandez was compliant with a stop-and-frisk which turned up no results, yet when the officer attempted to handcuff him Hernandez refused to put his arm behind his back and questioned why he was being placed under arrest.\textsuperscript{70} At this point the officers on scene began to punch, kick, beat with their batons, and even pepper spray the man.\textsuperscript{71} Hernandez cannot be considered to have displayed even passive resistance since that requires the prevention of performance of a \textit{lawful} act.\textsuperscript{72} The officer had no lawful reason to arrest Mr. Hernandez at that moment.\textsuperscript{73}

Unnecessary use of violence is not limited to local law enforcement either. Officers of the United States Customs and Border Patrol (CBP), a division of the Department of Homeland Security, have ended the lives of twenty-seven people in the last four years.\textsuperscript{74} Even more troubling, the list of deceased includes “minors, U.S. citizens, individuals alleged to be throwing rocks, and individuals killed while on the Mexican side of the border.”\textsuperscript{75} The American Civil Liberties Union (ACLU) reported that “CBP officials

\begin{thebibliography}{1}
\bibitem{65} See Miller, supra note 48, at 72-73.
\bibitem{66} Thomas Johnson, Ezell Ford: The Mentally Ill Black Man Killed by the LAPD Two Days After Michael Brown’s Death, WASH. POST (Aug. 15, 2014), perma.cc/U89N-5NHK.
\bibitem{67} Id.
\bibitem{68} See Miller, supra note 48, at 72-73.
\bibitem{69} Ed Mazza, Santiago Hernandez Claims Police Brutality in NYPD Beating Caught on Video, HUFFINGTON POST (Sept. 8, 2014, 2:52 AM), perma.cc/BZC7-QP4J.
\bibitem{70} Id.
\bibitem{71} Id.
\bibitem{72} See Miller, supra note 48, at 72-73.
\bibitem{73} See Mazza, supra note 69.
\bibitem{74} Strengthening CBP with the Use of Body-Worn Cameras, ACLU, perma.cc/P2ZU-D9ZA (last updated June 27, 2014).
\bibitem{75} Id.
\end{thebibliography}
at ports of entry have a pattern of using force abusively and some Border Patrol agents have improperly used force on children.”\(^7^6\)

The stories are endless. That is not to say however, that all cops are corrupt or engage in the use of excessive force. There are plenty of honest police officers in this country; the problem is that “plenty” is not enough. “No person should be above the law, particularly those sworn to uphold it.”\(^7^7\) Even one life unjustly taken is one too many. That is why the implementation of body-worn cameras is crucial to our society.

The fact that police brutality does occur is not something that remains a mystery. The United States government is, and was, well aware of the issue, prompting Congress to pass the Violent Crime Control and Law Enforcement Act of 1994.\(^7^8\) This Act specified that “[t]he Attorney General shall, through appropriate means, acquire data about the use of excessive force by law enforcement officers. . . . [and] publish an annual summary of the data acquired.”\(^7^9\) Despite this federal law, information on police use of excessive force has not been collected or reported in over a decade.\(^8^0\)

B. USE OF BODY-WORN CAMERAS

Body-worn technology is not a novel issue. Agencies in the United Kingdom began testing body cameras as early as 2005.\(^8^1\) Plymouth, England commenced its first tests using a head-mounted video system, and continued its use in 2006 during the department’s Domestic Violence Enforcement Campaign.\(^8^2\) After these maiden trials, the Police Standards Unit found that the potential for body-worn cameras to significantly “improve the effectiveness of operational policing” was great.\(^8^3\) It was reported that as a result of head cameras in the Plymouth Police Department, officers had a heightened awareness of their behavior, which led to an increased manner of professionalism when interacting with the public.\(^8^4\) Additionally, numerous complaints against the officers were quickly and easily negated after footage of the encounter was viewed.\(^8^5\)

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76. Id.
77. Franklin, supra note 44 (emphasis added).
79. Id.
81. Harris, supra note 40, at 361.
82. Martin Goodall, Guidance for the Police Use of Body-Worn Video Devices, POLICE AND CRIME STANDARDS DIRECTORATE 6 (July 2007), perma.cc/VG3R-K2YN.
83. Id.
84. Id. at 32.
85. Id.
Specifically, the Police Standards Unit reported seven key aspects of policing that were enhanced by the use of this technology. First, evidence is able to be recorded with far greater precision, thus, eliminating doubt about what actually transpired. Second, officers save precious time with less paperwork and fewer court visits. Third, charges are less likely to be contested when conduct was captured on film, leading to a more prompt resolution of cases. Fourth, when an officer deploys the use of a firearm their actions may more easily be proven justified (or unjustified). Fifth, prosecution of domestic violence is made easier by presenting an accurate record of the scene, including the emotional state of the victim. After all, “videos often provide a raw, unedited portrayal of events that compels the viewer in a way that conventional second-hand . . . reports simply cannot.” Sixth, individuals reduce erratic behavior when confronted by an officer with a head camera. Seventh, and lastly, body-worn technology is an invaluable tool for training new officers; as well as evaluating the performance of both rookie and experienced officers.

This small study that began with one head camera morphed into a national phenomenon within less than a decade. Today, every police force in the United Kingdom uses body-worn technology in some manner or another. In fact, Paul Kinsella of the Body Worn Video Steering Group and the West Mercia Police even claims that the first instances of uniform national standards for the implementation and use of body cameras are imminent.

Following the trend, in 2013, Rialto—a small town in Southern California—conducted a field experiment to test “whether police body-worn cameras would lead to socially-desirable behavior of the officers who wear

86. Goodall, supra note 82, at 7-8.
87. Id. at 7; Harris, supra note 40, at 361.
88. Goodall, supra note 82, at 7; Harris, supra note 40, at 361.
89. Goodall, supra note 82, at 7; Harris, supra note 40, at 361.
90. Goodall, supra note 82, at 7; Harris, supra note 40, at 362.
91. Goodall, supra note 82, at 8; Harris, supra note 40, at 362.
92. Lautt, supra note 47, at 350.
93. Goodall, supra note 82, at 8.
94. Id.
95. Id. at 30.
96. See Jose Sanchez de Muniain, Are You Getting the Full Picture?, 27 APCO CAN. 20, 21 (2014), perma.cc/X9TT-7D5G.
97. Id.
98. The West Mercia Police are in charge of the fourth largest geographic area in all of England and Wales. About Us, WEST MERCIA POLICE, perma.cc/4YUK-ALUK (last visited Dec. 16, 2015).
99. Sanchez de Muniain, supra note 96.
them.\(^\text{100}\) For an entire year officers’ shifts were randomly assigned to either a control group or an experimental group.\(^\text{101}\) The control group consisted of officers who did not have a camera, while those in the experimental group were fitted with a high definition (HD) body-worn camera that captured audio and video of every single police-public encounter during that shift.\(^\text{102}\) The rectitude of research was maintained by monitoring footage to ensure that all officers were complying with the regulations of the experiment.\(^\text{103}\) Preliminary results showed that there were twice as many instances of force used during shifts without cameras than during shifts with cameras.\(^\text{104}\) Furthermore, compared with the previous year, complaints against officers plummeted by an astounding 88%, while officers’ use of force declined by 60%.\(^\text{105}\) Rialto, California’s police chief and thirty-four year police force veteran, William Farrar, said that he believed the cameras had a positive impact on both the citizens and the officers, and that the body-worn devices “mitigated a lot of circumstances instead of escalating them.”\(^\text{106}\)

Rialto is not the only stateside precinct to implement the use of body-worn cameras.\(^\text{107}\) Arizona cities Phoenix and Mesa both piloted their own programs as well. In 2012, the Mesa Police Department outfitted fifty officers with body cameras for a year-long study.\(^\text{108}\) Results from the police officers with body cameras were compared to a control group of demographically similar officers without the technology.\(^\text{109}\) The outcomes showed that, during the first eight months of the study, a total of eight complaints were filed against those with body cameras, while twenty-three complaints were filed against officers without the devices.\(^\text{110}\) And just to prove that the distinction was not due to the unique officers in each group, Mesa also compared the camera users to their performance the preceding year before the technology had been introduced.\(^\text{111}\) By the time the project was to be com-


\(^{101}\) Id. at 5.

\(^{102}\) Id.

\(^{103}\) Id.

\(^{104}\) Id. at 8.

\(^{105}\) Rory Carroll, California Police Use of Body Cameras Cuts Violence and Complaints, THE GUARDIAN (Nov. 4, 2013, 12:00 PM), perma.cc/BWJ4-T87L.

\(^{106}\) Ashley Fantz, No Dashcams in Ferguson: One Less Tool in Michael Brown Shooting Investigation, CNN (Aug. 14, 2014, 10:02 PM), perma.cc/Z3P8-K9ZM.


\(^{109}\) Id. at 18.

\(^{110}\) Id. at 21.

\(^{111}\) Id.
pleted, it was projected that a total of twelve complaints would be made against the officers in the study, while thirty had been made the year before.\textsuperscript{112} 80% of Mesa officers further stated they believed the cameras would improve the quality of evidence, and 76% said they would facilitate domestic violence cases by preserving the demeanor of the victim.\textsuperscript{113} Furthermore, in 2013, Phoenix began its year-long trial with a test group of fifty-six officers equipped with body-worn cameras.\textsuperscript{114} This group was compared to a neighboring squad of fifty officers without cameras.\textsuperscript{115} Law enforcement from the test group affirmed that the devices caused citizens to behave better once they realized they were on film.\textsuperscript{116}

Many other cities have also implemented body-camera procedures for their officers, although they have not undergone official comparative studies as Rialto, Mesa, and Phoenix have done.\textsuperscript{117} The Police Executive Research Forum found that of 254 departments surveyed—about a quarter of them used body cameras.\textsuperscript{118} Additionally, of the one hundred most populous U.S. cities, forty-one are currently using body-worn technology, and twenty-five have plans to do so in the near future.\textsuperscript{119}

Washington D.C. police began their trial program in October of 2014 and was so successful that in order to fund a full-scale program outfitting all D.C. patrol officers with body-worn cameras, Mayor Muriel Bowser allotted $5.1 million for the project in her 2016 Fiscal Year budget proposal.\textsuperscript{120} Similarly, Chicago delved into its pilot trial in January of 2015, with hopes to extend the program another four years after a favorable preliminary finding.\textsuperscript{121} Additionally, in New York City, Judge Shira A. Scheindlin provided a judicial mandate for officer-worn cameras for three reasons.\textsuperscript{122}

First, [the recordings] will provide a contemporaneous, objective record of stops and frisks . . . .

\textsuperscript{112} White, supra note 108, at 21.
\textsuperscript{113} Id. at 25.
\textsuperscript{114} Id.
\textsuperscript{115} Id.
\textsuperscript{116} Id. at 23.
\textsuperscript{118} Id.
\textsuperscript{119} Id.
\textsuperscript{120} Is Your Police Force Wearing Body Cameras?, Vocativ (Nov. 15, 2014, 10:11 AM), perma.cc/D9GP-RXNF.
\textsuperscript{121} Metropolitan Police Department, MPD and Body-Worn Cameras, DC.gov, perma.cc/MUP8-9PZ (last visited Dec. 16, 2015).
\textsuperscript{122} Derrick Blakley, Chicago Police To Begin Testing Body Cams This Week, CBS Chi. (Jan. 20, 2015, 6:26 PM), perma.cc/3XNH-9KEP.
\textsuperscript{122} Floyd v. City of New York, 959 F. Supp. 2d 668, 685 (S.D.N.Y. 2013).
[which] may either confirm or refute the belief of some minorities that they have been stopped simply as a result of their race, or based on the clothes they wore . . . . Second, the knowledge that an exchange is being recorded will encourage lawful and respectful interactions on the part of both parties. Third, the recordings will diminish the sense on the part of those who file complaints that it is their word against the police.\textsuperscript{123}

Moreover, several states have also introduced legislation requiring the use of body-worn technology throughout their jurisdictions. Lawmakers in Maryland,\textsuperscript{124} Mississippi,\textsuperscript{125} Missouri,\textsuperscript{126} New Hampshire,\textsuperscript{127} New Jersey,\textsuperscript{128} and New York\textsuperscript{129} have previously presented bills to their respective legislatures.

Maryland House Bill 633 was originally brought in the House of Representatives in January of 2014, and suggested that police officers in the city of Baltimore be required to wear a camera and record video, without audio, of all interactions between the officer and the public.\textsuperscript{130} Footage was to be preserved for a minimum of thirty days.\textsuperscript{131} At the same time, Mississippi also attempted to pass an act requiring that law enforcement be provided with body-worn cameras with which to capture both audio and video.\textsuperscript{132} Mississippi House Bill 1069 further suggested the use of penalties for those officers who failed to follow the provisions of the act.\textsuperscript{133} Again in January of 2014, in the Missouri House of Representatives, Bill 1699 was introduced requiring the same policies as the Maryland bill—law enforcement to wear a camera during their shift and to store footage for at least thirty days.\textsuperscript{134} The only difference in Missouri was that the use of audio was also required along with the video recordings.\textsuperscript{135} New Hampshire House

\textsuperscript{123} Id. (emphasis omitted).
\textsuperscript{131} Id.
\textsuperscript{133} Id.
\textsuperscript{134} H.B. 1699, 97th Gen. Assemb., 2d Reg. Sess. (Mo. 2014) (bill was referred to, and died with, the Crime Prevention and Public Safety Committee).
\textsuperscript{135} Id.
Bill 1575 was introduced with bipartisan support in December of 2013, and required that all uniformed state police officers wear a camera and record both video and audio of each interaction with the public.\footnote{136} New Jersey Assembly Bill 3852 was introduced in October of 2014, and not only required the use of body cameras for all state and local officers, but also specified that the cameras were to be purchased with the fines collected from certain crimes.\footnote{137} Lastly, New York Assembly Bill 8243, introduced in November of 2013, was unique in that it called for the commissioner of criminal justice to establish a pilot program using body-worn technology on officers throughout the city of New York.\footnote{138}

Moreover, United States Congressman Al Green introduced Bill 5407 into the House of Representatives on September 8, 2014.\footnote{139} The bill’s stated purpose was “[t]o direct the Attorney General to conduct a study on the cost of the purchase and use of body cameras by State and local law enforcement agencies, and to require law enforcement agencies to purchase and use body cameras as a condition on the receipt of Federal funding.”\footnote{140} Although by the end of the 113th congressional meeting forty-two others had joined Representative Green in co-sponsoring the bill, it was never enacted before the session expired.\footnote{141} However, the mere fact that this type of legislation is being introduced all across the country, including at the Federal level, is encouraging progress.

C. USE OF SIMILAR DEVICES

Although there is strong opposition to the use of body-worn cameras, criticism is not uncommon when it comes to new and innovative ideas. Two staples in the law enforcement profession—dashboard cameras and electroshock weapons (more commonly known as stun guns or Tasers\footnote{142})—were originally met with similar distrust.\footnote{143} Police officers were initially very
resistant to the idea of dash cams because they felt as though “they were being spied on, or that they weren’t trusted to do their job. But after awhile, they realized it was the best possible tool to prevent someone from making a bogus claim against them. They realized that if they were doing their job, footage could back them up.” In 2002, the International Association of Chiefs of Police investigated the evidence and found that dash cams heightened officer safety, documented citizen behavior and violations, reduced court time and frivolous lawsuits, and increased the likelihood of successful prosecution. Ultimately, by 2003 over half of all precincts in the United States had dashboard cameras installed in their patrol cars, and by 2007 it was 61%. Similarly, stun guns went from introduction to use in over two-thirds of police departments across the nation in about a decade’s time.

Today, not only are stun guns and dash cams widely accepted among police departments spanning all fifty states, but miniature cameras attachable to the actual Taser itself have also become quite common. In fact, according to Taser International, the manufacturer of Taser cams and arguably the most recognizable name in the stun gun industry, over 110,000 devices are used across the country today. These devices accomplish precisely what body-worn cameras aim to do—simply in a more limited capacity. Stun guns and dash cams have been promising initial steps, yet in order to keep up with technological advances and respect the safety of both civilians and their law enforcement counterparts, greater strides still need to be made.

III. PROTECTING THE CITIZENS

As displayed in Part II(A) of this Comment, police brutality is all too common. The ACLU made a bold, yet necessary, statement in regard to the Customs and Border Patrol, asserting that “[a]n agency-wide policy that mandates appropriate use of body-worn cameras in enforcement interactions with the public would provide much-needed oversight in response to

144. Fantz, supra note 106.
146. Fantz, supra note 106.
147. Id.
148. See id.
criticisms about CBP’s track record. Cameras would help deter violence . . . and exonerate those who face false accusations of misconduct.” If the ACLU’s suggestion was heeded, it would be a great improvement of the current situation; however, it would not target the area in most need. There are approximately sixty thousand CBP employees, while the number of local and state law enforcement officers is closer to 1.1 million.

In addition to the use of excessive force, police perjury is often another tactic used to prevent less than appropriate conduct from coming to light. “[B]rutality and abuse cannot occur absent police control over the determination of facts in subsequent litigation. . . . This sort of behavior can survive only if it can be effectively covered-up.” Professor of Law, Donald Dripps, drew attention to the plain and simple fact that, all too often, determining the facts comes down to a swearing contest between the officer and the individual. When this is the case, who is more credible? Is the police chief more likely to believe his own sergeant, or an individual complaining against his department? Is the judge more likely to believe an officer sworn to uphold the law, or an ordinary citizen? Undeniably the officer’s story is more likely to be favored in most scenarios. Yet at the same time, do these officers not have the most to lose? Do they not have the stronger incentive to fabricate the facts of the encounter? Future outcomes are determined by controlling what happened in the past. If a law enforcement agent can convince his superiors that his version of the story is accurate and that he was acting pursuant to his authority as an officer, then there will be no consequences to befall him. He will be absolved of any wrongdoing while the victim is viewed as the true delinquent and possibly even punished. However, with the use of body-worn cameras, officers would not be given the opportunity to control the past. The true facts would be clearly displayed through captured audio and video.

Evidence suggests that individuals are far more likely to be found guilty by their peers when there is direct proof available, versus when they

151. Strengthening CBP with the Use of Body-Worn Cameras, supra note 74.
154. See Donald A. Dripps, Police, Plus Perjury, Equals Polygraphy, 86 J. Crim. L. & Criminology 693 (1996) (arguing that polygraph tests should be admitted as evidence to court proceedings in instances where the determination of facts comes down to the story of the officer versus the story of the civilian).
155. Id. at 700-01.
156. Id. at 716.
157. See id.
158. Id. (citing George Orwell, 1984, at 19 (1949)).
are forced to rely on circumstantial inferences.\textsuperscript{159} Perhaps that is why, despite being presented with the equivalent of thousands of pages of evidence, the Ferguson grand jury refused to return a true bill for Officer Wilson.\textsuperscript{160} Of course, we do not know that for sure, and it is unlikely that we ever will, but experiments involving similar situations have indicated that might be the case.\textsuperscript{161} One particular study asked participants to determine the culpability of an individual based on a given scenario.\textsuperscript{162} One group was presented with direct evidence, while the other was presented with circumstantial evidence.\textsuperscript{163} Even though the circumstantial evidence, when compiled, added up to the equivalent of the direct evidence, only 60\% of respondents stated they would convict; whereas slightly over 81\% of those who received the direct evidence chose to convict.\textsuperscript{164} Several similar studies yielded parallel results.\textsuperscript{165} These experiments are not conclusive as to what prompted

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{159} See Eyal Zamir et al., \textit{Seeing is Believing: The Anti-Inference Bias}, 89 IND. L.J. 195, 195 (2014).
\item \textsuperscript{160} Holly Yan, \textit{Ferguson Case: New Mountain of Grand Jury Documents Released}, CNN (Dec. 9, 2014, 11:17 AM), perma.cc/ZK4U-BR9B.
\item \textsuperscript{161} See Zamir, \textit{supra} note 159.
\item \textsuperscript{162} Id. at 205. The scenario involved speeding on a toll way. The direct evidence situation presented a single speed camera registering a car traveling at 125 KPH on a road with a specified speed limit of 100 KPH. The camera admittedly had a probability of error of 2\%. On the other hand, when circumstantial evidence was presented requiring the participants to make inferences, there were two cameras that captured not the speed of the vehicle, but the exact time the car passed by each location a camera was installed at. Based on the distance between the two cameras and the time elapsed between the moment the car passed each camera, it was inferred that the driver had been traveling at 125 KPH. The probability of error was again 2\%. Id. at 205.
\item \textsuperscript{163} Id.
\item \textsuperscript{164} Id. at 206.
\item \textsuperscript{165} Zamir, \textit{supra} note 159, at 207-14. In one experiment, participants were asked to imagine they were part of a team of experts expected to implement a new policy regarding the enforcement of speed limits. Two options were presented: the first was comparable to the direct evidence scenario in the first study where cameras were to be installed that registered the exact speed of the driver; the second was similar to the circumstantial evidence situation in the first study where multiple cameras would be installed which recorded the time each vehicle passed by. Each respondent was asked whether they preferred method one, method two, or were indifferent. 53.1\% reported to favor the first direct evidence option, while 24.5\% preferred method two and 22.4\% found themselves indifferent. Id. at 208. Another experiment focused on eyewitness testimony. The direct evidence scenario presented a tourist bus, legally limited to transporting no more than fifty individuals at one time, which was stuck and in need of assistance. An officer who arrived on scene observed that there were actually fifty-four tourists on board. In the circumstantial evidence situation however, two minibuses arrived to take the tourists away. Each minibus was capable of seating twenty-five individuals. After the two busses left completely full, there were still four remaining tourists stuck on the original tour bus. Based on the remaining passengers the policeman inferred that the tour bus had been carrying fifty-four individuals. 64\% of participants chose to convict the tour bus driver of breaking the law when presented with the direct evidence, while only 38.1\% chose to find the driver guilty when inferences had to be made. Id. at 209-10.
\end{enumerate}
\end{footnotesize}
the decision in Ferguson, nor do they predict how other grand juries would rule in the absence of footage from a body-worn camera. However, one thing is certain: across the board the ability to witness something with one’s own eye is given *considerably* more weight than deduced facts from other sources of evidence.166

Additionally, the use of body-worn technology has great potential to not only ensure that the truth is told, but to prevent abhorrent behavior from occurring in the first place. “A voluminous body of research across various disciplines has shown that when humans become self-conscious about being watched, they often alter their conduct.”167 This phenomenon is supported by a well-known theory of psychology known as reactivity. Reactivity suggests the knowledge that oneself is being observed will trigger a change in behavior.168 This idea was proven when scientists at the Center for Behavior and Evolution conducted an experiment in which they hung posters containing images of human eyes in public areas.169 The results showed that even the mere resemblance of a watchful eye was enough to alter the demeanor of most people.170 This indicates that while knowingly on film, both the public and the police will be on their best behavior.

IV. PROTECTING THE POLICE

Not only would the use of body-worn cameras protect the general public against police brutality, but would also provide numerous benefits for law enforcement as well. As evidenced in both the British and Californian

Yet another experiment considered two dairy farmers selling their milk, which must be free of antibiotic residue. Milk from each farmer is transported in a single truck, so a sample from each farm is taken before the milk is combined. In the direct evidence situation, a yogurt batch was a failure and it was revealed through the samples that farmer one had antibiotics in his milk, while farmer two’s sample had none. In the circumstantial evidence scenario farmer one’s sample was lost and could not be tested, while farmer two’s sample turned up no evidence of antibiotic residue. In both instances the probability that the laboratory results were correct was 85%. 81.7% of participants stated they would find farmer one culpable when his milk tested positive, while only 40.2% said they would convict the farmer even in the absence of his lab results. *Id.* at 213-14.

166. Zamir, *supra* note 159, at 220.
170. *Id.* (the experiment was conducted by swapping pictures of flowers with pictures of human eyes at a popular Newcastle University cafeteria where observers had previously recorded significant instances of littering and failure to clean up after oneself; however, when the posters containing eyes were displayed, people were twice as likely to clean up after themselves than when the posters with flowers were displayed)
field experiments, when law enforcement was equipped with a recording device, false accusations against the officers significantly decreased.\textsuperscript{171} Additionally, in a study conducted by the International Association of Chiefs of Police, 50\% of complaints against officers were withdrawn when video evidence was available.\textsuperscript{172} Cutting unwarranted claims in half saves precious time and money for the precinct as well as the court, and allows officers more time to devote to serving and protecting the public instead of defending bogus accusations.

For those complaints that were not dropped, an astonishing 93\% of officers were exonerated when video evidence was introduced.\textsuperscript{173} During the first week of the Rialto field study, officers wearing body cameras were dispatched to a public location where a man was waiting in his car with a gun.\textsuperscript{174} Upon arrival of law enforcement, the man exited his vehicle and raised his gun toward the officers.\textsuperscript{175} One officer, responding appropriately to the situation, fired his own gun in response.\textsuperscript{176} A bystander also filmed the interaction with his cell phone and sent the footage to local media outlets.\textsuperscript{177} Since the bystander was at an inadequate vantage point his commentary included that it appeared the officer had opened fire without provocation.\textsuperscript{178} Luckily for the officer, who in this scenario had complied with the proper standards and committed no wrongdoing, body-cam footage was presented and disproved the accusations made by the bystander.\textsuperscript{179} When officers are compliant with the law, body-worn technology clearly offers a unique protection that would not otherwise be available.

It is important to note that today only 9\% of American adults do not have a cell phone.\textsuperscript{180} In a nation with a population of over 322 million people, 9\% barely scratches the surface.\textsuperscript{181} Additionally, over half of adult cell phone users have a smartphone, which means fancy cameras with quick access to social media outlets.\textsuperscript{182} Even those phones that are not considered

\footnotesize{171. See Carroll, supra note 105; Farrer, supra note 100, at 8.}
\footnotesize{172. Strengthening CBP with the Use of Body-Worn Cameras, supra note 74 (citing Steve Lovell, Body-Worn (Video) Evidence, 12:2 EVIDENCE TECH. MAGAZINE, Mar.-Apr. 2014, at 24, perma.cc/UNV4-VL4E).}
\footnotesize{173. Id.}
\footnotesize{174. Fantz, supra note 106.}
\footnotesize{175. Id.}
\footnotesize{176. Id.}
\footnotesize{177. Id.}
\footnotesize{178. Id.}
\footnotesize{179. Fantz, supra note 106.}
\footnotesize{180. Mark Rogowsky, More Than Half of Us Have Smartphones, Giving Apple and Google Much to Smile About, FORBES (June 6, 2013, 10:04 AM), perma.cc/T63B-UKY4.}
\footnotesize{181. U.S. and World Population Clock, U.S. CENSUS BUREAU, perma.cc/L8V6-6NJZ (last visited Dec. 16, 2015).}
\footnotesize{182. Rogowsky, supra note 180.}
“smart” are still more likely than not to have a basic functioning camera built in. This advance in technology has led to the increase of “citizen-initiated video surveillance of police officers.”

There have been many instances where a confrontation between an officer and a citizen has gone viral after being posted on the internet. Whether this is a good thing or not, it is undeniably unavoidable. One fact is clear with citizen recorded video— it does not provide in-the-action footage as adequately as body-worn cameras do. As evidenced in the situation previously mentioned in Rialto, sometimes smartphones, or their wielders, simply get it wrong. Recording encounters is not something that should be left up to individual bystanders, but instead ought to be harnessed by law enforcement entities and utilized in a way that provides the most accurate and unbiased results. Dallas Chief of Police, David Brown, recognized this need and aptly stated that body-worn cameras are the future of policing.

An additional benefit for police forces, and potentially citizens as well, is that footage from body-worn cameras can help supplement witness testimony. Recently, more acknowledgement has been given to the fact that witness credibility may not be as strong as we would like. There are two unavoidable limitations that are attached to eyewitnesses: “(1) the natural fallibility of an individual’s perception and memory; and (2) the mind’s vulnerability with respect to suggestive influences.” There is no way that a single individual can take in an entire scene with all of the minute, yet crucial, details it has to offer. However, with body-worn technology there is no need for a witness to do so. The camera will capture the situation in near-perfect detail. Furthermore, the camera will retain the details exactly as they were, without the possibility of distortion. Similarly, while one’s memories may be susceptible to both internal and external manipulation, video footage safely stored off-site with secured access is free from potential alterations.

184. Id.
187. Id. at 11.
188. Id. at 12.
189. Id. at 13.
V. OVERCOMING THE OPPOSITION

A. PRIVACY

One of the primary arguments against mandating the use of body-worn cameras is that it violates the privacy of not only the officer, but the citizens as well. There is no mistaking that privacy is a legitimate concern; however, this technology does not violate any constitutional interests. The United States Code outlines that:

It shall not be unlawful under this chapter [18 USCS §§ 2510 et seq.] for a person not acting under color of law to intercept a wire, oral, or electronic communication where such person is a party to the communication or where one of the parties to the communication has given prior consent to such interception unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of any State.

An officer of the law who has consented to wearing a recording device would therefore satisfy this requirement that at least one party involved be on notice.

In addition to this federal law, there are also individual state wiretapping laws to be aware of. While federally the United States operates under a one-party consent law (meaning that consent from only one party to the conversation is necessary), there are eight multi-party consent states that mandate the approval of all parties to have any in-person conversation recorded. These states are: California, Florida, Maryland, Massachusetts, Montana, New Hampshire, Pennsylvania, and Washington.

194. MD. CODE ANN., CTS. & JUD. PROC. § 10-402(c)(3) (West 2015).
195. MASS. GEN. LAWS ANN. ch. 272, § 99(C) (West 2014).
198. 18 PA. CONS. STAT. ANN. § 5704(4) (West 2015).
moreover, over half of those states provide varying exceptions for officers obtaining communications in the course of their duties.200

Furthermore, an additional exception that every multi-party consent state reserves is that permission from each participant is only necessary when the conversation has a reasonable expectation of privacy.201 the general rule of thumb is that there is no privacy in that which is already public.202 essentially, anything said or done in the purview of others in a public setting carries no protectable privacy interest.203 therefore, someone being stopped on the street or in a park has no reasonable expectation of privacy and a recording from a body-worn camera could legally be made by an officer in any state.204

in the context of the fourth amendment,

as the search location moves away from the inside of one’s home, the objective reasonableness of the privacy expectation becomes more remote. . . . because as the search moves away from a person’s home, it becomes more likely that the person has voluntarily consented to having the information made available to others.205


200. fla. stat. § 934.03(2)(c) (2015) (allowing law enforcement to record without the consent of all parties for the purpose of obtaining evidence in a criminal investigation); md. code ann., cts. & jud. proc. § 10-402(c)(2, 4, 6) (west 2015) (allowing law enforcement to record without the consent of all parties during criminal investigations, or during the detention of a vehicle after making the recording known); mass. gen. laws ann. ch. 272, § 99(d)(1)(c, e) (west 2014) (allowing law enforcement to record without the consent of all parties pursuant to the laws of the united states and acting within their authority or for the safety of undercover officers); n.h. rev. stat. ann. § 570-a:2(1)(d, j, k) (2015) (allowing law enforcement to record without the consent of all parties during investigations of certain crimes, or during a routine stop or in conjunction with an electroshock device if proper notification is given); 18 pa. cons. stat. ann. § 5704(16) (west 2015) (allowing law enforcement to record without the consent of all parties if (1) the recording does not take place in the home, (2) the officer is in uniform, (3) the officer is in close proximity, (4) the officer is using an approved device, and (5) the officers notifies the parties of the recording).

201. cal. penal code § 632 (west 2014); fla. stat. § 934.03 (2015); md. code ann., cts. & jud. proc. § 10-402(c)(3) (west 2015); mass. gen. laws ann. ch. 272, § 99(c) (west 2014); mont. code ann. § 45-8-213 (2015); n.h. rev. stat. ann. § 570-a:2 (2015); 18 pa. cons. stat. ann. § 5704 (west 2015); wash. rev. code § 9.73.030 (2015).

reamer anderson, supra note 190, at 553 (quoting gill v. hearst pub. co., 253 p.2d 441, 444 (cal. 1953)).

202. see reamer anderson, supra note 190.

203. see generally id.

204. id. at 561.
The same ought to be true in the context of audio and visual recordings. Moreover, the United States Supreme Court has consistently ruled that there is no legitimate expectation of privacy in information shared with third parties.\textsuperscript{206} Thus, even if an officer were to record an encounter in the home, presumably anything that the home-owner says or does is willingly shared with a third party (the officer) and therefore a reasonable expectation of privacy no longer exists.\textsuperscript{207} Supreme Court case law is also quite clear that the free flow of information is absolutely crucial to society, especially when it relates to government affairs.\textsuperscript{208}

Another privacy concern pertains to embarrassment and loss of dignity.\textsuperscript{209} If the video captured by body-worn technology was leaked or shared with any number of people, the parties involved may suffer humiliation or unwanted attention and notoriety from the public.\textsuperscript{210} However, this could be easily avoided—simply protect the footage by storing what is captured on a secure server which is only viewed by superior officers in the instance of a dispute.\textsuperscript{211} Thus, there is little to no risk of exposure. Even though there may be no reasonable expectation of privacy, this simple precaution would nonetheless minimize the possibility for individuals to suffer as a result of exposure exceeding their scope of expectations.

B. OTHER CONCERNS

Opponents of this technology have also stated that officers wearing the cameras may hesitate in life-threatening situations, knowing that their actions are being captured on film.\textsuperscript{212} However, in a survey conducted of officers in twenty-one departments across the United States, 86\% admitted that cameras did not have any bearing on their ability to handle a situation, while 89\% stated cameras had zero influence over their decision of whether or not to use force.\textsuperscript{213} This lack of influence is due to the fact that in emergency circumstances a spontaneous physiological reaction causes the chemical epinephrine (more commonly known as adrenaline) to surge through the body inciting instinct to take over.\textsuperscript{214} If an officer was facing a threat in

\begin{itemize}
\item[206.] Smith v. Maryland, 442 U.S. 735, 743-44 (1979).
\item[207.] See Reamer Anderson, supra note 190, at 562.
\item[208.] Lautt, supra note 47, at 374 (citing Stanley v. Georgia, 394 U.S. 57, 564 (1969); Mills v. Alabama, 384 U.S. 214, 218 (1966)).
\item[209.] Reamer Anderson, supra note 190, at 574.
\item[210.] Id.
\item[212.] Lautt, supra note 47, at 355.
\item[213.] Fantz, supra note 106.
\item[214.] Epinephrine, UNIV. OF DEL. (2000), perma.cc/SJW6-AQ3T.
\end{itemize}
which he truly believed his life to be in danger, the fact that his actions were going to be caught on camera would barely be a fleeting thought.215 Joseph LeDoux, a professor of neural science and psychology at New York University, explains that the brain’s reaction to fear is done “outside of conscious awareness” and that “[w]e respond to danger, then only afterward realize danger is present.”216 It is evident that even if an officer were cognizant of the body camera, as soon as a justified threat presented itself, the subconscious would take over and the officer would not hesitate to act.

A third foible asserted by adversaries to this advancement is that the device is an encumbrance to officers in the field.217 However, most versions of the camera are approximately the size of a pager and clip to the officer’s uniform, hat, or sunglasses.218 The devices used in Rialto, California weigh about 108 grams—less than the weight of a typical cell phone.219 Furthermore, the cameras are fully water resistant which means that their use is not restricted in the rain or snow.220 Many versions also offer low-light retina displays which provide clear video even in the dark.221 Sporting such a small size and light weight, not to mention the additional features and capabilities, these body-worn cameras can hardly be called encumbrances.

Cost is also an issue commonly raised in objection to body-worn technology. Depending upon the audio and video quality as well as recording capabilities, the price tag of each unit will vary from $120 to $2,000.223 Currently, Taser is advertising their Axon body device for $400224 and their Axon Flex, which attaches to a pair of sunglasses, costs $600.225 The other leading competitor in body-worn technology, Veivu, offers the VIEVU2 for $350226 and the LE3 for $900.227 Unfortunately, these numbers do not cover

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216. Id.
217. Mims, supra note 42.
218. Harris, supra note 40, at 361 n.28.
219. Farrer, supra note 100, at 6.
220. See Will Shanklin, iPhone 6 vs. Galaxy S5, GIZMAG (Sept. 10, 2014), perma.cc/7G79-ZPXD.
221. Farrer, supra note 100, at 6.
223. Strengthening CBP with the Use of Body-Worn Cameras, supra note 74; U.S. DEP’T OF JUSTICE, supra note 212, at 32.
the cost of storage, tech support, and other incidental expenses. Regardless of whether the footage is stored on a cloud and managed by an off-site company or kept in-house on a secure database, the additional maintenance cost will be a hefty one.\textsuperscript{228} The most popular database is Evidence.com which offers storage packages ranging from $15 to $99 a month per user.\textsuperscript{229} One cost minimizing tactic however, would be to forgo storing each video indefinitely. For example, Washington D.C. precincts keep footage not needed for court for a total of ninety days before deleting it.\textsuperscript{230} By reducing the length of time each video is stored (unless there is an ongoing dispute pertaining to that particular footage), storage space necessary, and thereby costs, would be significantly reduced.\textsuperscript{231}

On average, law enforcement in the United States spends over two billion dollars per year resolving claims.\textsuperscript{232} That is about $1,818 per state/local officer. Logically, the one-time purchase of a body-worn camera, even including additional incurred expenses, would save precincts significant costs in the long run—not to mention the fact that human lives could be spared with this technology.

The importance of body-worn cameras despite the price has even been recognized at the Executive level.\textsuperscript{233} On December 1, 2014, President Barack Obama proposed a plan that would provide seventy-five million dollars over a period of three years in order to reimburse police departments half of the cost of buying body-worn cameras and a storage plan.\textsuperscript{234} This would provide for 50,000 recording devices to communities across the United States.\textsuperscript{235} Additionally, presidential candidate Hillary Clinton stated that “[w]e should make sure that every police department in the country has body cameras to record interaction between offices [sic] on patrol and suspects” in an attempt to improve transparency and accountability as well as protect innocent people on both sides of the spectrum.\textsuperscript{236}

\begin{footnotes}

\textsuperscript{228}. U.S. DEP’T OF JUSTICE, supra note 212, at 32.
\textsuperscript{229}. EVIDENCE.COM, perma.cc/3MAZ-635T (last visited Sept. 26, 2015).
\textsuperscript{230}. Hermann, supra note 117.
\textsuperscript{231}. \textit{See id.}
\textsuperscript{232}. TASER INT’L, Annual Report (Form 10-K) 7 (Mar.12, 2015).
\textsuperscript{233}. Hermann, supra note 117.
\textsuperscript{234}. \textit{Id.}
\textsuperscript{235}. \textit{Id.}
\textsuperscript{236}. Brianna Keilar & Dan Merica, \textit{Hillary Clinton calls for mandatory police body cameras, end ’era of mass incarceration’}, CNN (Apr. 29, 2015, 7:49 PM), perma.cc/H2X6-3992.
\end{footnotes}
VI. SETTING THE STANDARDS

With such extensive divergences among existing policies regarding body-worn cameras, it is crucial to develop certain national standards if this technology is going to live up to its potential. Identifying certain practices from various cities and melding them into an all encompassing model is critical. Although there are countless methods of implementing policies for body-worn technology, there are five pivotal standards that should be mandatory procedure among all jurisdictions.

First, officers should not be in control of when the camera is turned on and off. Officer discretion leads to “forgetful” moments, such as that in Albuquerque when the officer used lethal force against a nineteen-year-old female, yet had failed to turn his camera on beforehand.237 Also insufficient is the instruction to turn the camera on in instances which might result in a complaint. Police-citizen encounters often escalate quickly, and there is no telling what might transpire from a seemingly routine stop.238 For example, a New Orleans officer had not turned her camera on before making a traffic stop, and the situation ended with the driver being shot in the head.239 The rule of thumb should be that the camera is on if the officer is coming into contact with the public in any capacity.240 Additionally, the officer should make every effort to inform the subjects they are being recorded unless doing so would prove to be a safety hazard or otherwise impractical.241

Furthermore, there needs to be more than a slap on the wrist for an officer who fails to activate the camera before an encounter.242 As suggested in a 2013 ACLU report, precincts should adopt not only some form of disciplinary action, but also an exclusionary rule that would prohibit the use of evidence obtained during an unrecorded encounter.243 Moreover, “[a]nother means of enforcement might be to stipulate that in any instance in which an officer wearing a camera is accused of misconduct, a failure to record that incident would create an evidentiary presumption against the officer.”244 Although these cameras aim to protect and assist officers, without the threat of significant negative consequences for non-compliance, the policies would be nothing but futile facades.

238. See id.
239. Id.
240. See Harris, supra note 40, at 365.
242. See Stanley, supra note 41, at 3.
243. Id.
244. Id.
Second, footage should not be reviewable by a commanding officer unless a complaint has been made or force was reportedly used.\(^{245}\) The amount of time required to examine each moment of captured footage would be daunting and nugatory; thus, it should be verified that video was uploaded at the end of the officer’s shift, yet without justifiable reason to watch what was uploaded the recordings should be secured without further action. Furthermore, although officers ought to fill out their own field reports, they also ought to be allowed to view the footage in the instance of a claim against them. This allows them to refresh their memories and make an accurate statement before the court or an administrative review.\(^{246}\)

Third, releasing recordings to the public ought to be treated with the utmost care. Naturally, when there is video evidence the public will demand for it to be released; however, this request should only be complied with if there are legitimate claims of misconduct.\(^{247}\) Moreover, the release should be focused, with no extraneous footage being presented to the public. The identities of the individuals in the recording should be protected (unless otherwise already widely known) by blurring/blacking out faces and distorting voices.\(^{248}\)

Fourth, at the end of each shift, police officers should upload their footage in a secure manner that prevents tampering with, altering, or deleting the recordings.\(^{249}\) Once secured on a server or in a database, that footage should not be accessible without the authority of a superior, and only in the instances mentioned above. The records ought to be stored for a specified time, ideally ninety days, before being destroyed in the absence of a claim.\(^{250}\)

Fifth, in order to ensure that law enforcement across the nation are on equal footing, as well as understand the technology and its potential consequences, there needs to be uniform training programs.\(^{251}\) Each officer equipped with a camera ought to complete a training program that explains the way the cameras function, the department’s policies and protocols, and an overview of the relevant state privacy laws that might affect recording in certain situations.\(^{252}\) Additionally, manuals must be made available to each officer to ensure that he or she is constantly informed if a question arises.\(^{253}\)
VII. CONCLUSION

Without a doubt, mandating national protocols for police officer body-worn technology is not going to be an easy task. However, neither is it going to be an easy task for Officer Darren Wilson to rebuild his life with a new career path. Nor was it an easy task for the parents of Michael Brown to bury their teenage son. This technology has its challenges, as does any form of technology; but that does not mean we should give-up. The benefits, as proven in this Comment, far outweigh the consequences. Citizens are far less likely to suffer unwarranted brutality at the hands of an officer,254 and it is much more improbable that the police will face false accusations from the public.255 Thomas Jefferson wisely said: “Whenever you do a thing, act as if all the world were watching.”256 In order to prevent another Rodney King or Michael Brown situation, both citizens and officers alike must act as if all the world were watching—which can only be accomplished through the wide-spread use of body-worn cameras.

254. Supra, Part IV.
255. Supra, Part V.
256. van der Linden, supra note 169 (quoting Thomas Jefferson).
Equal Access: A Proposal for Homeschooled Students and Athletics

CORA MOY

A prevalent issue that homeschooled students face is access to interscholastic athletics at public schools. Over the past several decades, the United States has seen an upward trend in the number of children who are homeschooled. In Illinois, the local public school school determines whether homeschooled students may participate in activities at public schools. While this Comment explores a sample of varying laws and regulations on homeschooled student participation in public school athletics, the purpose is to examine the debate on homeschooler's access to public schools and why the Illinois Legislature should create a minimum standard that would allow homeschooled students to participate in interscholastic athletics in public schools.

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I. INTRODUCTION

Sports and other forms of vigorous physical activity provide educational experience which cannot be duplicated in the classroom. They are an uncompromising laboratory in which we must think and act quickly and efficiently under pressure and then force us to meet our own inadequacies face-to-face and to do something about them, as nothing else does. Sports resemble life in capsule form and the participant quickly learns that his performance depends upon the development of strength, stamina, self-discipline and a sure and steady judgment.¹

Mike Beasley, Kevin Johnson, Sam Warren, Jason Taylor, and Tim Tebow are just a few professional athletes who were homeschooled students. Although Tim Tebow and Jason Taylor were homeschooled students, they were allowed to play on their high school football teams.² Instrumental to their success as professional athletes was the ability to participate in public school interscholastic athletic activities to develop their athletic talents.

¹ Brandin Heidbreder, Senior Project, Does it Pay to be a High School Athlete?, XV The Park Place Economist 19, 19 (Apr. 2007), perma.cc/2WW7-UPJN (citing John M. Barron et. al., The Effects of High School Athletic Participation on Education and Labor Market Outcomes, 82 Rev. of Econ. Stat. 409, 409 (Aug. 2000)).

Their ability to showcase their talents enabled them to receive college athletic scholarships. For example, Jason Taylor received a National Collegiate Athletic Association (NCAA) scholarship and played football at the University of Akron, later playing for the Miami Dolphins.3

Children, are considered to be homeschooled if (1) they are ages 5-7 in a grade equivalent to at least kindergarten and no higher than grade 12; (2) their parents report them as being schooled at home . . . and (3) their part-time enrollment in public or private schools does not exceed 25 hours per week.4

In the United States, the number of homeschooled students increased from 850,000 in 1999 to 1.5 million in 2007.5 Statistics from a survey completed by the National Household Education Surveys Program show that 3% of students were homeschooled during the 2011-2012 school year.6 Although this accounts for approximately 1.77 million students enrolled in kindergarten to twelfth grade,7 this may be an underestimation as some states do not require registration of homeschooled students.8 An upward trend in the number of homeschoolers has impacted homeschooling regulations across the United States. Homeschoolers’ ability to access interscholastic athletics at public schools is becoming a prevalent issue for parents, schools, and athletic associations.

Neither the United States Constitution, the United States Supreme Court, nor any other court has addressed the constitutional status of homeschooling. Each state recognizes the right of parents to homeschool their children.9 However, no court has upheld a constitutional right to access public schools or addressed the issue of homeschooled students participat-

5. Id.
8. 105 Ill. Comp. Stat. 5/2-3.25o(b) (2015) (“All non-public elementary and secondary schools in the State of Illinois may voluntarily register with the State Board of Education on an annual basis.”).
ing in public school extracurricular activities. The ability of homeschooled students to participate in public school activities varies from state to state. Some states have prohibited homeschooled students from participating in any public school activity, including classes, extracurricular activities, and interscholastic activities. Other states have enacted legislation permitting homeschooled students to participate in public school activities. Generally, these states set out requirements that homeschooled students must meet prior to participating in public school activities.

One variation of access allows homeschooled students to participate in athletics at the public school they would have attended, determined by the location of their residence. Some states allow homeschoolers to organize their own athletic teams to compete against other schools; however, homeschooled children are only eligible to participate on teams designated for homeschooled students. In other states, such as Illinois, the local public school determines whether a homeschooled student may participate in classes, extracurricular activities, and/or interscholastic teams.

This Comment explores the varying laws and regulations on homeschooled student participation in public school athletics and examines why the Illinois Legislature should create a statute concerning homeschooled


13. See id.; see also Jones v. W. Va. State Bd. of Educ., 622 S.E.2d 289 (W. Va. 2005) (the governing athletic association completely bans homeschoolers from interscholastic competition; homeschooled are only able to compete amongst other homeschooled students or against schools that are not members of the state’s interscholastic athletic federation).


15. HSLDA State Laws, supra note 12.


students’ participation in public school interscholastic athletics. Part II provides a brief history on the evolution of homeschooling rights in the United States. It begins with compulsory education laws, then discusses the evolution for parents’ rights to homeschool their child.

Part III examines state laws and regulations regarding homeschooled students’ rights to participate in public school interscholastic athletics. Part III will briefly discuss various state regulations and how they address the issue of students who are homeschooled and their ability to participate in public school interscholastic athletics. It will summarize the laws of: Florida, Nevada, Arkansas, Pennsylvania, Maine, Montana, and California.

Part IV concerns Illinois homeschooling laws and regulations. It begins by giving a brief summary of current Illinois homeschooling laws and Illinois athletic association by-laws. It also examines the debate on whether or not to permit homeschooled students to participate in public school athletics.

Part V will propose and discuss statutory language that would allow homeschooled students access to public school athletics. It also addresses the concerns of opponents to equal access of public school athletics.

II. HISTORY ON THE RIGHT TO HOMESCHOOL

Education laws in the United States are founded upon English Poor Laws. Under English statutes of the sixteenth and seventeenth centuries, poor children would become productive citizens under the guidance of a master by being taught a trade or profession.

Massachusetts Bay Colony was the first to establish a compulsory education law in 1642, where parents and masters were responsible for providing a fundamental education for children including reading and religious instruction. In 1852, Massachusetts was also the first state to establish a compulsory attendance statute requiring children between ages eight and fourteen to attend school. Sparking the debate on homeschooling was the enactment of compulsory attendance statutes, as some parents wanted to educate their children at home. Even so, by 1918, all states had compulsory attendance laws.

Today, an upward trend in homeschooling may be attributable to parents wanting to provide religious or moral instruction, concerns regarding

20. Id., supra note 19, at 470.
21. Id.
22. Id.
23. Id. at 471.
the environment of schools, and/or dissatisfaction with academic instruction at schools. The Constitution does not address is whether states or parents retain the constitutional right to control the education of children. Moreover, the United States Supreme Court has not specifically ruled on homeschooling nor has the Court defined the scope of state homeschooling statues and regulations. However, the Supreme Court has set guidelines on constitutional limits of state regulation of education.

In Meyer v. Nebraska, the Court recognized that “[t]he American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted.” The Meyer Court found that the Fourteenth Amendment included the right to “acquire useful knowledge” and the right to “bring up children.”

Two years after Meyer, in Pierce v. Society of the Holy Names of Jesus and Mary, the Supreme Court upheld the right of parents to send their children to private schools. To comply with an Oregon law that required all children to attend public schools, students from two private schools were forced to withdraw. The Court recognized the “liberty of parents and guardians to direct the upbringing and education of [their] children.” The Court effectively held that states cannot require children to receive their education only from a public school because parents have the right to make decisions regarding the education of their children.

In Wisconsin v. Yoder, the Court held that Amish parents were not required to send their children to public schools for religious reasons and allowed parents to educate their children at home. States recognize the right of parents to homeschool their children because of the rulings in Meyer, Pierce, and Yoder. Courts have yet to rule on the permissive scope of state regulation and whether or not homeschooled students are permitted to participate in public school athletic teams.

24. Plantly, supra note 4, at 135 (Table A-6-2).
26. Id. at 400.
27. Id. at 399.
29. Pierce, 268 U.S. at 534-35.
30. Id. at 530-33.
31. Id. at 534.
32. See id. at 535. (“The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only.”).
34. See id. at 234 (“For the reasons stated we hold, with the Supreme Court of Wisconsin, that the First and Fourteenth Amendments prevent the State from compelling respondents to cause their children to attend formal high school to age 16.”).
35. See Yoder, 406 U.S. at 205; Pierce, 268 U.S. at 534-35; Meyer, 262 U.S. at 400.
Organizations that support homeschoolers have risen and are reflective of the growing popularity in homeschooling. Parents and interested parties, such as the Home School Legal Defense Association (HSLDA), are created to inform and to keep current with homeschooling legislation. HSLDA is a national organization comprised of parents and attorneys who lobby for homeschoolers’ rights. One of the prevalent issues that organizations such as HSLDA track is the ability for homeschooled students to participate in public school athletics.

III. DISCUSSION OF STATE STATUTES AND REGULATIONS OF HOMESCHOoled STUDENTS PARTICIPATION IN PUBLIC SCHOOL ATHLETICS

States vary on how they address public school athletic accessibility by homeschooled students. This section examines a small sampling of the range of statutes and regulations regarding homeschoolers’ participation in athletics at public schools. Generally, these state homeschooling laws can be classified into three broad categories: private school laws, equivalency laws, and home education laws.

Private school laws do not make any distinctions between homeschooling and private schools, essentially categorizing homeschooling with private schools. These states tend to have broad qualification statutes either allowing or prohibiting student participation in public school activities, including athletics. Also included in this category are states that do not have any regulations mandating or permitting homeschoolers access to public schools. In these states, individual schools and school districts have the authority to determine whether homeschoolers can participate in public school activities. There is no standard policy or guidance for homeschoolers, as regulations vary from district to district within the state. In some cases, school districts defer to athletic association by-laws.
Equivalency laws generally allow homeschoolers to participate in interscholastic activities at public schools with additional layers of regulation.\textsuperscript{45} In order for a homeschooled student to qualify for participation, homeschoolers need to receive academic instruction equivalent to that provided by the public school system.\textsuperscript{46} These states tend to require more documentation from parents to show that the homeschooled student meets the standards. Some of the requirements that homeschoolers would follow in these states include: complying with state homeschool laws, meeting the same eligibility requirements as public school students, and documentation that verifies the student is passing core subjects.\textsuperscript{47} Requirements are often part of the public school’s policy or by state athletic association’s bylaws.\textsuperscript{48}

Lastly, there are home education laws. These states generally single out homeschoolers for specific regulations.\textsuperscript{49} Under this category, there is a wide array of requirements ranging from lenient to strict depending upon the state. For example, Wisconsin’s homeschooling laws require annual submission of a statement of enrollment.\textsuperscript{50} In contrast, Pennsylvania’s homeschooling law requires annual reports and evaluations of the homeschooled student’s progress by a qualified teacher or psychologist.\textsuperscript{51}

Currently, there are nineteen states that allow homeschooled students access to interscholastic activities.\textsuperscript{52} Five states allow homeschooled students to participate in interscholastic activities with the approval of the local school district.\textsuperscript{53} Another five states allow homeschooled students to participate in interscholastic activities if they are enrolled part time or are dual enrolled.\textsuperscript{54} There are twenty-one states where athletic associations prohibit homeschooled students from participating in interscholastic activities.\textsuperscript{55} Some states and athletic associations may not outright prohibit homeschooled students from participating; however, requirements for interscholastic athletic participation may include being enrolled full time at the

\textsuperscript{45} Keddie, \textit{supra} note 39, at 642.
\textsuperscript{46} \textit{See} McMullen, \textit{supra} note 38, at 88-89.
\textsuperscript{47} HSLDA \textit{Equal Access}, \textit{supra} note 10.
\textsuperscript{48} \textit{Id}.
\textsuperscript{49} \textit{See} McMullen, \textit{supra} note 38, at 89-91.
\textsuperscript{50} \textit{Wis. Stat.} § 115.30(3) (2015).
\textsuperscript{51} 24 PA. CONS. STAT. ANN. § 13-1327.1(e)(2) (West 2015).
\textsuperscript{53} \textit{Id}.
\textsuperscript{54} \textit{Id}.
\textsuperscript{55} \textit{Id}. 
member school. This would effectively bar homeschooled students from being eligible to participate in public school athletics.

A. FLORIDA

One example of a state with private school laws is Florida. The Florida Legislature passed the Craig Dickinson Act in 1996, making no distinction between students who attend private school or receive home education. The Craig Dickinson Act forbids the governing public school athletic organization from discriminating against students based on their choice of education. Under the Craig Dickinson Act, homeschooled students are able to participate in public school extracurricular activities, including athletics. Homeschooled children are able to “participate at the public school to which the student would be assigned according to district school board attendance area policies or which the student could choose to attend pursuant to district or interdistrict controlled open enrollment provisions . . . .”

Under this Act, homeschooled students must meet the standards required of public school students and demonstrate educational progress in order to participate in public school sports. Parents need to submit a letter of intent to homeschool their child and maintain an academic portfolio of the child’s work. Furthermore, the parent and school principal will agree to the method of demonstrating educational progress. The Act suggests several options such as having a certified teacher chosen by the parent to review the student’s work or submission of standardized test scores.

B. NEVADA

Nevada is an example of a state with equivalency laws. As of 2003, both the Nevada Revised Statutes and the Nevada Interscholastic Activities Association allow homeschoolers to participate in public school sports. In
Nevada, legislation allows homeschooled children to participate in interscholastic activities, subject to statutory requirements. This includes filing a notice of intent of a homeschooled student to participate in programs and activities with the school district.

Additionally, homeschooled students are only allowed to participate at a public school within the school district of the child’s residence. The Nevada Revised Statutes further outline what rules and regulations apply to homeschoolers if they choose to participate in interscholastic activities. These requirements include qualifying to play on the sport team, fees for participation, having insurance, transportation, and disciplinary procedures. Interestingly, the statute states: “Neither the school district nor a public school may prescribe any regulations . . . governing the eligibility or participation of the homeschooled child that are more restrictive than the provisions governing [public school students].” The Nevada Revised Statute also provides that a homeschooled student’s participation in athletics may be revoked if the student fails to comply with the requirements set forth by governing statutes, or applicable rules and regulations.

C. ARKANSAS

Prior to April 2013, Arkansas did not have any laws or regulations regarding homeschoolers and their ability to participate in public school athletics. When homeschooling became legal in Arkansas, the Pulaski County Flames formed in 1985. The Pulaski County Flames is a program that organizes activities and events for homeschool students. Here, homeschooled students are able to participate and compete in athletic programs.

On August 1, 2012, the Arkansas Activities Association (AAA) voted to allow homeschooled students to play on public school athletic teams. On April 22, 2013, House Bill 1789 was approved, allowing homeschooled students to participate in public school interscholastic activities, including

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72. Id.
76. Id.
77. Id.
78. Id.
athletics.\textsuperscript{79} Provided that the homeschooled student meets applicable requirements, they are eligible to participate at their local public school.\textsuperscript{80} Requirements that homeschooled students must meet include: a “require[ment] to be at school not more than one (1) period per school day,”\textsuperscript{81} scores at the thirtieth percentile or higher on a nationally recognized standardized test, and that the student makes the team.\textsuperscript{82} However, the school district has the discretion to allow a student to participate with a lower score or no test score.\textsuperscript{83}

D. PENNSYLVANIA

In addition to Pennsylvania’s home education law, the PA Equal Access Bill was signed on November 10, 2005, and went into effect January 1, 2006.\textsuperscript{84} Under section 511, homeschoolers have full access to participation in any activity subject to provisions of section 511; this includes athletics.\textsuperscript{85} Homeschooled students must meet the same eligibility requirements as public school students in order to be eligible to participate in extracurricular activities at their neighborhood school.\textsuperscript{86} Homeschoolers must also comply with all policies, rules, and regulations of the governing athletic organization.

The Pennsylvania Interscholastic Athletic Association (PIAA) establishes the policies and procedures for interscholastic athletics in public schools.\textsuperscript{87} PIAA also has requirements that homeschoolers must meet, including completion of a physical examination, pursuing a full-time academic curriculum, and passing at least four full-credit subjects.\textsuperscript{88} As homeschooling does not necessarily have a formal grading system, proving that a homeschooler meets the minimal standards of academic eligibility may be difficult.\textsuperscript{89} Parents may need to implement a grading system based upon the system used by public schools.\textsuperscript{90} Parents would also need to submit docu-
mentation to verify their child’s academic progress in order for their child to be eligible to participate in public school athletics.\footnote{Id.}

In Pennsylvania, the latter requirement should not be difficult to meet, as current homeschoolers need to submit a portfolio.\footnote{PA. DEP’T OF EDUC., Overview of Homeschooling, http://www.portal.state.pa.us/portal/server.pt/community/overview_of_homeschooling/20312 (last visited Dec. 28, 2014).} The portfolio documents indicate that compulsory attendance laws have been observed and that the student had an appropriate education.\footnote{Id.} Evaluations are made based upon a portfolio review, an interview with the child, and accompanying documentation.\footnote{PA. DEP’T OF EDUC., Evaluators, http://www.portal.state.pa.us/portal/server.pt/community/home_education_and_private_tutoring/20311/evaluators/973998 (last visited Dec. 28, 2014).} The evaluation would certify whether or not an appropriate education is occurring and the report would include documentation submitted.\footnote{Id.} Factors that evaluators would consider are: “a program consisting of instruction in the required subjects[,] the time required in this act[,] and . . . the student demonstrates sustained progress in the overall program.”\footnote{24 PA. CONS. STAT. ANN. § 13-1327.1(a) (West 2015).}

E. MAINE

Maine home education laws allow homeschooled students to participate in both co-curricular and extracurricular activities.\footnote{ME. REV. STAT. tit. 20-A, § 5021-A (2015).} While the statute provides reimbursement to the public school if a homeschooled student enrolls in equivalent instruction problems, the statute does not provide reimbursements when a homeschooled student participates in athletics.\footnote{ME. REV. STAT. tit. 20-A, § 5021(8) (2015).} Should a homeschooled student wish to participate in public school athletics in Maine, they may enroll at the local school of their residence.\footnote{Id.} Although a homeschooled student needs a superintendent’s approval for co-curricular activities,\footnote{ME. REV. STAT. tit. 20-A, §§ 5021.1.A, .4.A (2015).} approval is not needed for extracurricular activities, this includes athletics.\footnote{ME. REV. STAT. tit. 20-A, § 5021.5.A (2015).} There are certain requirements that homeschoolers need to meet in order to qualify for participation at their local school. These requirements include applying to the local school in writing, abiding by the same eligibility rules as public school students, complying with the
same physical examinations and medical requirements as public school students, and abiding by the same transportation policy as public school students.\(^{102}\)

Maine also has a separate provision that allows homeschoolers to use public school facilities and equipment.\(^{103}\) Requirements include approval from the school’s principal, usage must not disrupt regular school activities or create additional expenses to the school, and usage of hazardous areas must be supervised by school administration.\(^{104}\) Although Maine has allowed homeschoolers to participate in public school athletics, a Maine federal court ruled that the state sports association could disqualify a private school team that a homeschooler plays on.\(^{105}\)

**F. MONTANA**

Montana does not have laws that address whether or not homeschoolers can access public school athletics. In states such as Montana, local schools and school districts are left to determine whether homeschoolers are eligible to participate.\(^{106}\) This is problematic because decisions can vary depending on the school district, and state athletic associations generally develop rules and regulations on student eligibility.\(^{107}\) However, there are private and independent athletic associations available for homeschooled students to join. Because these organizations are private, homeschoolers are allowed to participate because organizations are able to develop their own rules and regulations.\(^{108}\)

High school sports are an exception to the above. The Montana High School Association (MHSA) determines whether homeschooled students are eligible to participate or not.\(^{109}\) MHSA by-law states: “A home school student is not eligible to participate for an MHSA member school.”\(^{110}\) Un-

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\(^{102}\) Id.
\(^{104}\) Id.
\(^{105}\) Pelletier v. Maine Principals’ Ass’n, 261 F. Supp. 2d 10, 12 (D. Me. 2003) (“Maine statutes do not require that private schools admit home-schooled students to their athletic programs. The Maine Principals Association does not permit private schools (or, for that matter, other public schools outside the relevant attendance area) to field unenrolled homeschooled athletics except as exhibition participants.”).
\(^{106}\) HSLDA State Laws, supra note 12.
\(^{107}\) Id.
\(^{108}\) Id.
\(^{110}\) Id.
der MHSA rules, only full-time district students with a passing grade are
allowed to participate.\footnote{111}

Interestingly, the Supreme Court of Montana ruled that a school dis-
trict policy preventing non-public students from participating in athletic
programs was reasonable.\footnote{112} The Kapteins filed suit asking the court to en-
ter a judgment requiring that Conrad School District allow their seventh
grade daughter to participate in public school sports programs.\footnote{113} The
school district argued that the school’s educational interests in permitting
only students enrolled in the school district to participate in school-
sponsored extracurricular activities outweighed any right a non-public
school student had to participate.\footnote{114} The court reasoned that “in order
to effectively integrate academics and extracurricular activities [the school
district] need[ed] to restrict participation to those students who [were] en-
rolled in the public school system.”\footnote{115}

G. CALIFORNIA

California statutes do not distinguish between homeschoolers and stu-
dents who attend private school. Parents who intend to homeschool their
child must file a private school affidavit allowing their child exemption
from attendance in a public school.\footnote{116} Furthermore, records must be kept of
the child’s courses of study\footnote{117} and attendance.\footnote{118}

Because California does not have a law addressing whether home-
schooled students have access to public school athletics, deference is given
to individual schools and school districts that then defer to the California
Interscholastic Federation (CIF). Under section 35179 of the California
Education Code, CIF is the governing body of interscholastic athletic pro-
grams.\footnote{119} CIF By-law 301 prohibits homeschooled students from participating
in public school athletics.\footnote{120} In order for a homeschool student to be

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\begin{itemize}
\item \footnote{111}{Id. at art. II. § 2.}
\item \footnote{112}{Kaptein v. Conrad School Dist., 931 P.2d 1311, 1317 (Mont. 1997).}
\item \footnote{113}{Id. at 1312.}
\item \footnote{114}{Id. at 1313.}
\item \footnote{115}{Id. at 1317.}
\item \footnote{116}{CAL. EDUC. CODE §§ 33190, 48222 (West 2015).}
\item \footnote{117}{CAL. EDUC. CODE § 33190 (West 2015).}
\item \footnote{118}{CAL. EDUC. CODE § 48222 (West 2015).}
\item \footnote{119}{CAL. EDUC. CODE § 35179 (West 2015).}
\item \footnote{120}{CAL. INTERSCHOLASTIC FED’N, CONSTITUTION, BYLAWS, & STATE CHAMPIONSHIP REGULATIONS 2014-2015, BY-LAW § 301 (June 9, 2014), www.cifstate.org/governance/constitution/300_Series.pdf (“Students who are not enrolled in programs under the jurisdiction of a member school’s governing body are not eligible to participate in CIF competition. Such programs would include, but not be limited to, home schooling or home study.”).}
\end{itemize}
}
eligible to participate in CIF athletic programs, students must be enrolled in a public or private high school, independent study program, or charter school. Consequentially, organizations such as California Athletics for Home Schools (CAHS) and the California Home School Sports (CHSS) were created to meet the needs of home schooling families.

IV. ILLINOIS HOMESCHOOLING LAWS AND REGULATIONS

A. HOMESCHOOLING EDUCATIONAL RIGHTS IN ILLINOIS

Illinois does not require public schools to allow homeschooled students to participate in extracurricular activities, including interscholastic athletics. As such, schools defer to the athletic governing organizations, Illinois Elementary School Association (IESA) and Illinois High School Association (IHSA), to determine whether homeschoolers are allowed to participate in public school athletics.

1. Illinois Compulsory Attendance Law

Illinois law requires children between the ages of seven and seventeen years to attend public school for the entire time that school is in session. However, an exception is made for “[a]ny child attending a private or parochial school where children are taught the branches of education taught to children of corresponding age and grade in the public schools, and where the instruction of the child in the branches of education is in the English language.”

In landmark case Illinois v. Levisen, the Illinois Supreme Court held that “private school” included homeschooling, provided that instruction

121. Id. at By-LAW §§ 201, 302.
123. ILL. STATE BD. OF EDUC., Questions you may have on Illinois Home Schooling, (Jan. 2014), perma.cc/SK59-JFKB.
124. Id.
complied with compulsory attendance laws.\textsuperscript{128} To comply with the ruling, this requires having a competent teacher, teaching required subjects, and students receiving an education at least equivalent to public schooling.\textsuperscript{129} The Illinois Supreme Court’s opinion in \textit{Levisen} emphasized the recognition of the right of parents to control their children’s education. The court stated:

Compulsory education laws are enacted to enforce the natural obligation of parents to provide an education for their young, an obligation which corresponds to the parents’ right of control over the child. (\textit{citing} Meyer v. Nebraska, 262 U.S. 390, 400) The object is that all children shall be educated, not that they shall be educated in any particular manner or place.\textsuperscript{130}

However, the Illinois Supreme Court has also said that parents who prefer to teach their children at home “have the burden of showing that they have in good faith provided an adequate course of instruction in the prescribed branches of learning.”\textsuperscript{131}

Although Illinois law does not set a minimum amount of hours per day or days of instruction per year, Illinois does require homeschoolers to receive an education equivalent to public school standards.\textsuperscript{132} There are no academic requirements, only that classes are taught in the English language\textsuperscript{133} and include the subjects of: language arts, mathematics, biological and physical science, social sciences, fine arts, and physical development and health.\textsuperscript{134} Further, Illinois does not require that homeschooled students be tested.\textsuperscript{135} Even if the student were to be tested, they would not be required to submit his or her score to a school official.\textsuperscript{136} Additionally, parents may voluntarily register that their child is receiving homeschooled education to the Illinois State Board of Education, but they are not required to do so.\textsuperscript{137} Because homeschooling requirements in Illinois are minimal,

\begin{itemize}
\item \textsuperscript{128} \textit{See} \textit{Levisen}, 90 N.E.2d at 215.
\item \textsuperscript{129} \textit{ILL. STATE BD. OF EDUC.}, \textit{supra} note 123.
\item \textsuperscript{130} \textit{Levisen}, 90 N.E.2d at 215.
\item \textsuperscript{131} \textit{Id}.
\item \textsuperscript{132} \textit{See, e.g.,} Scoma v. Chicago Bd. of Educ., 391 F. Supp. 452 (N.D. Ill. 1974); \textit{Levisen}, 90 N.E.2d at 215.
\item \textsuperscript{133} 105 ILL. COMP. STAT. 5/26-1.1 (2015).
\item \textsuperscript{134} \textit{See} ILL. STATE BD. OF EDUC., \textit{supra} note 123.
\item \textsuperscript{135} \textit{Id}.
\item \textsuperscript{136} \textit{Id}.
\item \textsuperscript{137} \textit{Id}.
\end{itemize}
there is no record or proof that parents are actually educating their children unless the parents keep a portfolio of the child’s work.\footnote{138}

Illinois Legislature recognized the need for homeschooling registration in the 1980s when Illinois Senate Bill 1202\footnote{139} and Illinois House Bill 1265\footnote{140} were introduced. These bills would have required registration of homeschoolers, but did not pass due to lack of support\footnote{141} and the influence of homeschooling lobbyists.\footnote{142} Failure of the bills indicates the difficulty in passing any regulation for homeschoolers. Homeschooled students’ ability to participate in public school athletics needs to be addressed as homeschooling has grown in population.

As mentioned earlier, in Illinois, public schools have no obligation to allow homeschoolers access to public school activities.\footnote{143} Therefore, deference is given to the governing athletic organization: Illinois Elementary School Association (IEWSA) and Illinois High School Association (IHSA). The IESA and IHSA by-laws limit homeschooled students' participation in interscholastic athletics at public schools.\footnote{144}

2. Illinois Governing Athletic Organization By-Laws

i. Illinois Elementary School Association

The Illinois Elementary School Association (IEWSA) allows homeschooled students to participate in interscholastic athletics at the public school which the student would have regularly attended, provided that they also fulfill other requirements set by IESA.\footnote{145} Additional requirements include:

[A]ll eligibility By-Laws other than the attendance By-Law, the home schooled student's work must be accepted by the school district in which the student resides and be granted credit toward graduation by that school district, the school district shall establish a method to monitor the academic performance of the home schooled student on the same basis as

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138. Erica Mynarich, An Argument for the Adoption of an Illinois Homeschooling Statute, 20 DuPage County B. Ass’n (Oct. 2007), perma.cc/V8Y3-MYED.


141. S.B. 1202, at 51.

142. Mynarich, supra note 138.

143. Ill. State Bd. of Educ., supra note 123.

144. Id.

for students in regular attendance at the school, and the school certifies that the student is meeting the minimum academic eligibility standards for participation. The school at which the student will participate is required to keep all records to verify compliance with these requirements in the event the IESA is required to rule on the eligibility of the home schooled student.146

ii. Illinois High School Association

The Illinois High School Association (IHSA) also allows homeschooled students to participate in public school athletics; however, the “student must attend a member school.”147 IHSA defines “attend” as:

The student is enrolled at the member school, and is taking at, or under arrangements approved by the member school, a minimum of twenty five (25) credit hours of work for which credit toward high school graduation will be granted by the member school upon the student’s completing and passing the courses.148

Under By-law 3.011, the homeschooled “student must also pay applicable tuition and fees at the member high school.”149

Although the governing athletic organization has developed regulations that allow homeschooled students to participate in public school interscholastic athletics, the by-laws inadequately address enforcement of the requirements. Under IHSA By-law 3.010, “the school which enrolls the student shall be exclusively responsible [for] verify[ing] the student’s compliance with all of the eligibility requirements of all IHSA By-laws.”150 The IHSA handbook outlines what constitutes scholastic standing in order to be eligible to participate in public school athletics.151 A problem arises when homeschoolers use a grading system different than public schools. IHSA does not adequately account for this variation; instead, they defer to the public school.152

146. Id.
147. ILL. HIGH SCH. ASS’N HANDBOOK, ATHLETIC BY-LAW § 3.010 (effective July 1, 2014), perma.cc/R4J4-BJ3T.
148. Id.
149. Id. at Illustrations for § 3.010 of the By-laws.
150. Id. at BY-LAW § 3.010.
151. Id. at BY-LAW § 3.020 et seq.
152. See ILL. HIGH SCH. ASS’N HANDBOOK, ATHLETIC BY-LAW § 3.010.
When a homeschooled student enrolls (or re-enrolls) into a public school, evaluation of the child’s work would vary from school district to school district. In other words, some school districts may place the child with students of the same age, or may require competency testing and standardized test scores. Illinois homeschooling laws do not require homeschooled students to be tested. Even if a homeschooled student chose to participate in a state assessment test, it may not be appropriate as the assessment would reflect the curriculum taught at Illinois public schools. While “a reasonable policy for a district to adopt” would be using grade placements, such as competency tests, Illinois laws do not mandate school districts to adopt such a policy.

B. THE DEBATE ON HOMESCHOOLED STUDENTS PARTICIPATING IN PUBLIC SCHOOL ATHLETICS

1. Arguments Against Permitting Homeschoolers to Participate in Public School Athletics

There are several arguments that those who oppose giving homeschoolers access to public school classes and activities make. One of these arguments is that homeschooled students would be at an unfair advantage to public school students who work hard for their grades. Within the last several years, parents of homeschooled children in Virginia campaigned to gain public school athletic access for their children. The Executive Director of the Virginia High School League opposed this plan because homeschooled children would not meet the same academic standards as other schools.

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153. See ILL. STATE BD. OF EDUC., supra note 123 (“Your public school will determine grade placement for the student based on an evaluation of his work and pursuant to its policies.”).
154. See id. (“Given the wide variety of home-schooling curricula available in Illinois, public schools may prefer to focus on appropriate grade placement for the student rather than assigning individual course credits.”).
155. See ILL. STATE BD. OF EDUC., supra note 123.
156. See id.
157. See id.
160. Id.
While this may be an issue in Virginia, in Illinois, the IESA and IHSA have set requirements that homeschooled students need to abide by, prior to being eligible to participate in interscholastic athletics. Moreover, this would only become an issue if homeschooled students were given complete access to public school activities with no restrictions or regulations. Most states that have allowed homeschoolers to participate in public school athletics have requirements that the students must meet. These requirements generally include compliance with the state’s homeschooling laws, meeting eligibility requirements of the athletic organization, and documentation showing that the student is in good academic standing.

Other arguments made in opposition to allowing homeschoolers equal access to public school sports include homeschooled students forfeiting their privileges by virtue of opting to homeschool, and that homeschooled students would take spots away from public school students. Some view that parents opt-out of the privileges and benefits of attending public schools when parents choose to home school their child, as homeschoolers cannot have the best of both worlds. The worry is that parents of homeschooled students would be allowed to move and choose schools that have strong athletic programs. Opponents argue that public schools already have a limited amount of resources; allowing homeschooled students to participate in public school athletics would be an inconvenience and burden to the school or athletic administration. Opponents’ reasoning is that the funding public schools receive is allocated based upon the number of students who attend the school. As homeschooled students are not considered to be attending students, the school would not receive compensation for homeschoolers’ participation in athletic programs.

161. See, e.g., ILL. HIGH SCH. ASS’N HANDBOOK, supra note 147.
162. HSLDA Sports and Public School, supra note 158.
163. See id.; ILL. HIGH SCH. ASS’N HANDBOOK, supra note 147, at BY-LAW § 3.010 ("The student is enrolled at the member school, and is taking . . . a minimum of twenty give (25) credit hours of work . . . .").
164. HSLDA Sports and Public School, supra note 158.
165. See Chen, supra note 159.
168. See ILL. STATE BD. OF EDUC., GENERAL STATE AID (Nov. 2013), perma.cc/FFA4-T59D.
169. Id.
As to the latter argument, opponents argue that homeschooled students would have an unfair advantage. The nature of homeschooling allows flexibility for when a student receives academic instruction. As opposed to their public school counterpart, homeschooled students have the ability for more practice time to develop their skills. Unlike public school curriculum, homeschooling does not follow a strict schedule where extracurricular and athletic activities only occur after school. Homeschooled students are not required to spend a full day in the classroom nor are they required to adhere to a formal schedule, thereby being able to practice more than a student who attends public school. Thus, homeschooled students would outperform and over-crowd public school students.

Even among the homeschooling community, there are those who oppose homeschoolers accessing public school athletics. Their view is that accepting government services inherently subjects one to governmental requirements. Private athletic associations that can create their own rules and regulations that allow homeschoolers to participate in athletics have emerged as a result of homeschoolers being prohibited from public school athletics. The concern is that this option may be less likely to occur should public schools allow homeschoolers access.

Furthermore, if states required school districts to allow homeschoolers to participate in athletics, then school officials and legislators may want to extend their reach to regulating homeschooling itself. The argument is that those who accept government services will become more dependent and likely to “accept new regulation limiting their freedom.” Those who make this argument usually cite to the hardships of gaining the right to

170. Sentell, supra note 166.
171. See id.
172. Id.
173. See id.
174. See id.
175. HSLDA Sports and Public School, supra note 158.
176. Id.
177. See supra note 68 and accompanying notes.
179. See Klicka, supra note 178.
180. Id.
homeschool their children. By seeking access to public school, athletics for their child would negate the work done by predecessors.\(^{181}\)

Supporters of equal access to public school athletics respond to the opposition in a few ways. In addressing the opponents’ argument that parents who choose to homeschool their children have opted out of the privileges and benefits of attending public schools,\(^ {182}\) supporters argue that the parents are also taxpayers and should have the right to benefit from public school services.\(^ {183}\) The analogy is made to homeschooled students having access to publicly-funded areas such as libraries, hospitals, and parks.\(^ {184}\) As homeschooled students are able to access other publicly-funded areas, public school programs should not be excluded.\(^ {185}\)

Supporters of equal access to public school sports also argue that homeschooled families may just want the option and opportunity to public school athletics, but not actually use it.\(^ {186}\) According to HSLDA, it is estimated that only three to five percent of homeschoolers actually take advantage of public school services.\(^ {187}\) Furthermore, there are a limited number of players on a sport team. Allowing homeschoolers to participate in public school athletics would still require the student to try out for the team. Additionally, the governing public school organization requires that both homeschooled students and public school students meet the same academic eligibility requirements.\(^ {188}\)

2. Arguments Allowing Homeschoolers to Participate in Public School Athletics

On the other hand, one of the arguments that supporters of homeschoolers accessing public school sports makes is that, homeschoolers should not be denied the economic and career advantages available to public school students.\(^ {189}\) Students who attend public school are able to earn athletic scholarships.\(^ {190}\) Homeschoolers would be at a disadvantage because of the nature of homeschooling in smaller class sizes. Although there are

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181. *Id.*
182. *See Chen, supra note 159.*
183. *Id.*
184. HSLDA *Sports and Public School, supra note 158.*
185. *Id.*
186. Jack Witthaus, *Debate over home-school participation in public school sports could resurface*, MISSOURIAN (Nov. 7, 2014), perma.cc/ZPH7-D6XT.
187. HSLDA *Equal Access, supra note 10.*
188. *See ILLINOIS HIGH SCHL ASS’N HANDBOOK, supra note 147.*
189. HSLDA *Sports and Public School, supra note 158.*
private athletic organizations that allow homeschoolers to participate, athletic scouts may not pay attention to those who play in those leagues as they are not as established as the state governing athletic association. Denying homeschoolers access to public athletics excludes them from the opportunity of earning an athletic scholarship that they may have qualified for if they were public school students, especially considering the rising costs of college education.\footnote{191}

Furthermore, a student is a student regardless of attending a public school, private school, or homeschool.\footnote{192} Participating in interscholastic athletics is beneficial as it contributes to student development of social and intellectual skills necessary to become a well-rounded adult.\footnote{193} Because interscholastic activities occur outside of public school academic instruction, a homeschooled student should be able to participate.\footnote{194} Opponents of equal access to public school athletics argue that this would allow parents to research and relocate to areas with school districts that have the best athletic program for their children.\footnote{195} However, many states who allow homeschoolers to participate in public school athletics also include a provision that does not allow a homeschooled student to participate in sports after the student withdrew from a public school for a period of one year. This prevents parents from shopping around and enrolling their child into only the best public school athletic programs.

Proponents of equal access for homeschooled students who have litigated have made constitutional arguments, although they have not been successful.\footnote{196} Constitutional arguments made in support of equal access include: refusing non-public students from part-time activities are unjustifiably discriminated against and denying these students their right to equal protection under the law. If a student is not enrolled in public school because of a sincere religious belief, his right to the free exercise of his religious belief is burdened by the prohibition of access to public school activities.\footnote{197} Constitutional arguments have not been successful as most courts rule that school districts have the right to set eligibility requirements for participation in their activities.\footnote{198} As the standard of review is generally rational basis, courts usually allow school districts to deny homeschooled students on the basis of limited resources and fair competition.\footnote{199}

\footnote{191}{See id.}
\footnote{192}{HSLDA Equal Access, supra note 10.}
\footnote{193}{See Fla. Stat. § 1006.15(2) (2015).}
\footnote{194}{See id.}
\footnote{195}{Sentell, supra note 166.}
\footnote{196}{HSLDA Equal Access, supra note 10.}
\footnote{197}{Id.}
\footnote{198}{Id.}
\footnote{199}{Id.}
V. PROPOSED HOMESCHOOL STUDENT ATHLETIC REGULATION

States across the nation have addressed homeschoolers’ right to participate in public school athletics in a variety of ways. An optimal way to address the issue would be to consider and balance arguments made by those who are against equal access to public school athletics and those who are for it. For this reason, setting a minimum standard that school districts should follow may be the best way to address whether a homeschooled student is eligible to participate in public school athletics.

Illinois already allows homeschooled students to participate in public school athletics via governing athletic association by-laws; therefore, the Illinois Legislature should reinforce this sentiment. I would propose the following language for a statute that would allow homeschoolers to participate in public school athletics:

1. Participation in Extracurricular Activities. A student receiving home-school instruction is eligible to try out for extracurricular activities in his or her local school district; provided the student applies in writing before the beginning date of the season for the activity and the following requirements are satisfied.200

   A. The homeschooled student must comply with eligibility requirements of the governing athletic association. These same requirements are also applicable to public school students who are participating in the activity.201

      i. The homeschooled “student must meet the same residency requirements as other students” participating in the activity.202

      ii. The homeschooled student shall maintain satisfactory conduct, as established by district school board policy.203

   B. The homeschooled student’s participation must be approved by the principal providing the activity.204

      i. The homeschooled student shall participate in any try-outs for such activity at the same time and in the same manner as other students who want to participate in the same activity.205

   C. The homeschooled student must satisfy equivalent academic standards as established for regularly enrolled students participating in the activity.206

201. Id.
i. The homeschooled student shall submit a copy of the study complete or in progress, and the grades earned.\textsuperscript{207}

ii. The homeschooled student shall execute and “fulfill the requirements of an academic performance contract between the student, the district school board, the appropriate governing [athletic] association, and the student’s parents.”\textsuperscript{208}

iii. During the period of participation, the homeschooled “student must demonstrate educational progress as” agreed upon by his or her parents and the school principal which may include:

a. “[R]eview of the student’s work by a certified teacher chosen by student’s parent[s].”\textsuperscript{210}

b. “[S]tandardized test scores above the 35th percentile.”\textsuperscript{211}

D. The homeschooled student must comply with all physical and medical standards that are required of regularly enrolled students participating in the activity.\textsuperscript{212}

E. The homeschooled student is responsible for all costs that regularly enrolled students participating in the activity must pay, including fees for participation and transportation.\textsuperscript{213}

i. Any insurance provided by school districts shall cover the participating homeschool student. “If there is an additional premium for such coverage, the participating homeschool student shall pay the premium.”\textsuperscript{214}

2. Neither the school district nor public school may prescribe any regulations, rules, policies, procedures or requirements governing eligibility or participation of the homeschooled student that are more restrictive than the provisions governing the enrolled students participating in the activity.\textsuperscript{215}

The goal of the above proposed legislation is setting a minimal standard that would allow parents an ability to predict and prepare for applying for their homeschooled child to participate in public school athletics. Current regulations in Illinois allow too much variation from school district to school district.\textsuperscript{216} In proposing a minimum standard, regulation would not

\textsuperscript{207} See id.
\textsuperscript{208} See FLA. STAT. § 1006.15(5) (2015).
\textsuperscript{209} See id.
\textsuperscript{210} See FLA. STAT. § 1006.15(3)(c)(2) (2015).
\textsuperscript{211} Id.
\textsuperscript{213} See id.
\textsuperscript{214} See FLA. STAT. § 1006.15(7) (2015).
\textsuperscript{216} See ILL. STATE BD. OF EDUC., supra note 123.
be constraining upon parents who have chosen to invoke their right to educate their children.\footnote{217}{See HSLDA Equal Access, supra note 10.}

The above proposed legislation also provides that the school district cannot make eligibility or participation requirements more restrictive than those applicable to public school students. Homeschooled students would be held to the same eligibility and participation standards as that of public school students. Furthermore, the proposed legislation would require homeschooled students to try out for athletic teams. While it can be argued that homeschooled students may have more time to practice or that homeschooled students who do make the team would be taking spots away from public school students; under try-outs no student is guaranteed a spot on the team. Thus, all students who try out for athletics would be held to the same standards and in turn would equalize the field.

The proposed legislation also sought to address the issue of preventing parents from picking and choosing only those schools with the best sports programs to enroll their homeschooled child in. To resolve the issue of parents shopping around, the above legislation proposed that the student meet the same residency requirements. Homeschooled students would then be allowed to apply to participate in public school athletics at their local school.

Current Illinois regulations pose the problematic issue of how to resolve academic assessment of the child.\footnote{218}{See ILL. STATE BD. OF EDUC., supra note 123.} The proposed legislation seeks to resolve this issue by having the school district and parents come to an agreement on the best method to evaluate the homeschooled student’s work. The concept behind the proposed rule is to provide parents the autonomy of providing academic instruction according to the curricula they have chosen for their child.\footnote{219}{See HSLDA Sports and Public School, supra note 158.} Parents would also be able to create their own grading system and not follow the public school grading system, while still being able to satisfy public school academic standards. To reflect current Illinois homeschooling laws and regulations, the proposed legislation does not prescribe a minimal amount of hours per day or instruction per year that must be dedicated to academic instruction.\footnote{220}{See ILL. STATE BD. OF EDUC., supra note 123.}

During the course of my research, the issue of liability should the student be injured while participating in public school sports did not arise. The above proposed legislation sought to address any issue of injury by requiring the homeschooled child to meet the same standards that a public school student would. Additionally, should the insurance coverage cost more to cover a homeschooled student, his or her parents would have the burden of
paying the additional cost. In doing so, arguments regarding limited school resources would be addressed. The above proposed legislation also sought to address the issue of fees and funding. To resolve this, the homeschooled student would be responsible for any fees that may arise during the course of participation that a public school student would be responsible for.

VI. CONCLUSION

As the number of homeschoolers rise, recurring issues that face homeschooled parents and homeschooled students need to be addressed. One of the prevalent issues facing homeschooled students today is whether or not they can participate in public school athletics. There are numerous reasons for and against allowing homeschoolers to participate in public school sports.

Illinois has minimal homeschooling laws, allowing the parents to invoke their right to educate their children. As Illinois does not have a statute addressing whether or not homeschoolers can participate in public school athletics, deference is given to the school districts to decide. However, the school districts then defer to the governing athletic association to decide. Although the IESA and IHSA have provided eligibility guidelines and requirements for participation, they defer to the school districts to enforce them. This does not allow a standard system that would be predictable for homeschoolers across Illinois. A student may be allowed to participate in one school district, but be denied in another.

Furthermore, there is a wide range in homeschooling curricula that homeschoolers could follow. Instructing, grading, and assessment vary upon the curriculum the parent decides to follow. Providing some kind of academic minimal standard for parents to take into consideration as they plan their child’s curriculum may be helpful if they plan to apply to public school athletics.

The state governing athletic body already allows homeschoolers to participate in interscholastic athletics as long as they meet the requirements, and the Illinois Legislature should follow through. Illinois already allows students to take certain courses, such as driver’s education through their local public school, why are athletics any different?