

# CITY OF HOUSTON

**Houston Police Department**

Bill White, Mayor

1200 Travis Houston, Texas 77002-6000 713/247-1000

CITY COUNCIL MEMBERS: Toni Lawrence Jarvis Johnson Anne Clutterbuck Wanda Adams Michael Sullivan M.J. Khan, P.E. Pam Holm Adrian Garcia  
James Rodriguez Peter Brown Sue Lovell Melissa Noriega Ronald C. Green Jolanda Jones CITY CONTROLLER: Annise O. Parker

March 13, 2008

Harold L. Hurtt  
Chief of Police



W. Troy McKinney  
Schneider & McKinney, P.C.  
440 Louisiana, Ste. 800  
Houston, Texas 77002


Dear W. Troy McKinney:

On December 3, 2007, you submitted a Public Information request for copy of all documents including letters and emails, whether sent or received, concerning or regarding; any policy regarding the videotaping or non-videotaping of DWI suspect at the station and documents, which may include correspondence from the district attorney's office or else where, advising, instructing, or encouraging officers not to videotape DWI arrestees or suspects at the station. As you are aware from your copy of the Attorney General Memorandum Opinion OR2008-02719, we must release the responsive documents to you.

We will provide you with documents; attached is your documents and invoice. Please submit your payment by check or money order made payable to the **City of Houston, reference with OR07-4987a** and mail to the **Houston Police Department, Records Division, 1200 Travis, Houston, Texas 77002**. Your documents will be sent to you by return mail. If you wish, you may bring your payment and pick up your documents in person at the Houston Police Department, Records Division located on the 1st floor at 1200 Travis.

If you have any questions about the enclosed material, please contact the Public Affairs Division, Open Records at 713 308-3200.

Sincerely,

  
Jeffrey C. Monk, Administration Manager  
Public Affairs Division

JCM/mp  
Enclosures  
OR07-4987a



**Paul Lassalle - RE: Video requirements**

**From:** Paul Lassalle  
**To:** DIEPRAAM\_WARREN@DAO.HCTX.NET; Kugler\_Eric@DAO.HCTX.NET  
**Date:** 5/25/2007 9:29 AM  
**Subject:** RE: Video requirements

---

YOU ARE THE MAN!!! Now, it states that we have to purchase and maintain the equipment of video taping a person charged with certain crimes but there is no requirement to actually do so, correct?  
 Paul

>>> Eric Kugler 05/25/07 8:29 AM >>>

Is this what you are talking about?

In 1983, the Legislature required each Texas county with a population of 25,000 or more to **purchase** and **maintain** equipment capable of visually recording persons arrested for driving while intoxicated. *See State v. Lyons, 812 S.W.2d 336, 339 (Tex.Crim.App.1991); see generally* 40 GEORGE E. DIX & ROBERT O. DAWSON, TEXAS PRACTICE: CRIMINAL PRACTICE & PROCEDURE § 11.63 (2001).

TEX.REV.CIV.STAT.ANN. art. 6701 /-1 provides:

Section 24. (a) Each county with a population of 25,000 or more according to the most recent federal census shall purchase and maintain electronic devices capable of visually recording a person arrested within the county (emphasis supplied) for an offense under Article 6701L-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05, Penal Code.<sup>FN9</sup>

" "This provision has never been codified or otherwise included in the published statutes, but it remains effective." "40 GEORGE E. DIX & ROBERT O. DAWSON, TEXAS PRACTICE: CRIMINAL PRACTICE & PROCEDURE § 11.63 (2001).

-----Original Message-----

**From:** Paul Lassalle [mailto:Paul.Lassalle@cityofhouston.net]  
**Sent:** Thursday, May 24, 2007 5:39 PM  
**To:** Diepraam, Warren; Kugler, Eric  
**Subject:** Video requirements

Could one of you please locate the law that requires counties of 100K or more to purchase and maintain video equipment?

Thanks,

Paul

F. Paul Lassalle, Officer  
 Traffic Division  
 DWI Task Force  
 SFST/DRE/DITEP Instructor  
 Desk - 713-247-5911  
 Fax - 713-247-4035  
 Cell - 713-376-0877  
[Paul.Lassalle@cityofhouston.net](mailto:Paul.Lassalle@cityofhouston.net)

**From:** Warren Diepraam  
**To:** Paul Lassalle;Eric Kugler  
**Date:** 5/25/2007 9:38:57 AM  
**Subject:** RE: Video requirements

On another note, there was some concern that a faxed warrant tendered to the defendant will not be valid (suggesting it should be original which would require the judge to be at the station). I have checked with others and done some research and I can't find anything that would prohibit a faxed warrant from the judge. I will keep looking though.

-----Original Message-----

**From:** Paul Lassalle [mailto:Paul.Lassalle@cityofhouston.net]  
**Sent:** Friday, May 25, 2007 9:29 AM  
**To:** Diepraam, Warren; Kugler, Eric  
**Subject:** RE: Video requirements

YOU ARE THE MAN!!! Now, it states that we have to purchase and maintain the equipment of video taping a person charged with certain crimes but there is no requirement to actually do so, correct?

Paul

>>> Eric Kugler 05/25/07 8:29 AM >>>

Is this what you are talking about?

In 1983, the Legislature required each Texas county with a population of 25,000 or more to **purchase** and **maintain** equipment capable of visually recording persons arrested for driving while intoxicated. See State v. Lyons, 812 S.W.2d 336, 339 (Tex.Crim.App.1991); see generally 40 George E. Dix & Robert O. Dawson, Texas Practice: Criminal Practice & Procedure § 11.63 (2001).

TEX.REV.CIV.STAT.ANN. art. 6701 / - 1 provides:

Section 24. (a) Each county with a population of 25,000 or more according to the most recent federal census shall purchase and maintain electronic devices capable of visually recording a person arrested within the county (emphasis supplied) for an offense under Article 6701L-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05, Penal Code. FN9

" "This provision has never been codified or otherwise included in the published statutes, but it remains effective." "40 George E. Dix & Robert O. Dawson, Texas Practice: Criminal Practice & Procedure § 11.63 (2001).

-----Original Message-----

**From:** Paul Lassalle [mailto:Paul.Lassalle@cityofhouston.net]  
**Sent:** Thursday, May 24, 2007 5:39 PM  
**To:** Diepraam, Warren; Kugler, Eric  
**Subject:** Video requirements

Could one of you please locate the law that requires counties of 100K or more to purchase and maintain video equipment?

Thanks,

Paul

F. Paul Lassalle, Officer  
Traffic Division  
DWI Task Force  
SFST/DRE/DITEP Instructor  
Desk - 713-247-5911  
Fax - 713-247-4035  
Cell - 713-376-0877  
[Paul.Lassalle@cityofhouston.net](mailto:Paul.Lassalle@cityofhouston.net)

**From:** Eric Kugler  
**To:** Paul Lassalle; Warren Diepraam  
**Date:** 5/25/2007 9:43:11 AM  
**Subject:** RE: Video requirements

Yes, with the following proviso, as quoted from Lyons (if you want to good stuff, just page down to the bold):

A careful reading of TEX.REV.CIV.STAT.ANN. art. 6701 / - 1 is necessary to address the State's contentions. The Act shows a clear legislative intent for counties with a population of 25,000 or more to purchase and maintain video equipment. There is also a clear legislative intent that the State's failure to videotape a DWI arrestee is admissible at trial. That is the only sanction intended by the legislature for failure to videotape. Pertinent portions of the "videotape" statute read as follows:

Section 24. (a) *Each county with a population of 25,000 or more (emphasis supplied) according to the most recent federal census shall purchase and maintain electronic devices capable of visually recording a person arrested \*340 within the county (emphasis supplied) for an offense under Article 6701L-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05, Penal Code. FN9*

(c) *The fact that an arresting officer or other person acting on behalf of the State failed to visually record a person arrested for an offense listed in Subsection (a) of this section is admissible at trial of the offense if the offense occurred in a county required to purchase and maintain electronic equipment and devices under this section.*

Driving While Intoxicated Act, ch. 303, § 24, 1983 Tex. Gen. Laws 1568, 1605 (hereinafter referred to as "the statute") TEX.REV.CIV.STAT.ANN. art. 6701 / - 1 note and V.T.C.A., Penal Code, § 19.05.

During the Senate Committee Hearings on SB1 § 24 (the videotape statute) of the 68th Legislative Session on March 3, 1983, Senator Bill Sarpalius from Randall County stated:

"When we heard this bill from the State Affairs Committee, a question was brought up involving video cameras. I think it is very important if this State is going to have a strong DWI bill that we get the tools for peace officers to get convictions. We have found through our studies that those states that allow for video cameras their conviction rate is very high."

Several times Sarpalius reemphasized the fact that the goal of § 24 was to give peace officers tools to get convictions. A direct comment by the Senator of whether an officer was required to videotape follows:

"I don't see anything wrong with requiring a county to spend roughly about \$3500.00 to crack down on the problem of drunk driving. *You're giving that county the tools to get convictions, and whether or not they use them or not, or how they use it, that's up to their option (emphasis supplied).*"

Nowhere in the legislative history or in the statute itself did the legislature mandate that an officer "use" the video equipment but only that counties with a population of 25,000 or more are required to "purchase and maintain" video equipment.

Based upon an examination of the legislative intent of the statute, we do not agree with the reasoning of the Court of Appeals in this instance. If the sanction in the statute proves ineffective to carry out the intent of the statute, it is the legislature's prerogative, not the courts' prerogative, to add further sanctions. See Green v. State, 745 S.W.2d at 478. The legislative history of the DWI videotape statute indicates that the videotape procedure was created to be used at the discretion of the arresting officer, guided only by his judgment as to its necessity for building an effective case against a DWI arrestee. To bring this goal to fruition, the Legislature mandated the availability of videotape equipment in counties with a population of 25,000 or more. This mandatory language confirms the Legislature's intent to make it possible to convict and punish more DWI defendants, not to give an opportunity to defendants, at county expense, to prove

their sobriety. If a defendant feels that an arresting officer abused his discretion by deciding not to videotape him, the Legislature created a means of relief by having this fact admissible at trial. Since the Legislature provided only for this sanction, it would contravene their intent to add the sanction of vitiating a DWI arrest.

[1] [Link to KeyCite Notes](#) [2] [Link to KeyCite Notes](#) The analysis of the legislative intent of the videotape statute makes clear that the only sanction available for failure to make a videotape recording of a DWI arrestee is the fact that the failure itself may be admitted into evidence at trial. See TEX.REV.CIV.STAT.ANN. art. 6701 I - 1 note (Vernon Supp.1990). The granting of a new trial, or dismissal of a prosecution, is not a legislative sanctioned remedy for an officer's decision not to make a videotape. The statutory provisions do not make visual recordings an absolute prerequisite to a DWI prosecution. See *Fox*, 772 S.W.2d at 456. The statute simply mandates that, if a visual recording is not made, then that fact is admissible at trial. See \*341 *Maddox v. State*, 705 S.W.2d 739, 741 (Tex.App. [dist. 1] 1986), pet. dismiss'd, abatement, 770 S.W.2d 780 (Tex.Cr.App.1988). In the instant case the State's failure to videotape appellee was introduced before the jury. After considering and weighing all the evidence, the jury returned a guilty verdict.

[3] [Link to KeyCite Notes](#) We hold that the statute did not mandate the peace officer to videotape appellee. We find a reasonable interpretation to be that the statute does not contemplate and require visual recordings of DWI suspects be made. We further hold that the trial court has abused its discretion in granting appellee a new trial because of the officer's decision to not videotape him. Therefore, we reverse the judgment of the Court of Appeals and remand this case to that Court to resolve the points of error unanswered on original submission.

-----Original Message-----

**From:** Paul Lassalle [mailto:Paul.Lassalle@cityofhouston.net]  
**Sent:** Friday, May 25, 2007 9:29 AM  
**To:** Diepraam, Warren; Kugler, Eric  
**Subject:** RE: Video requirements

YOU ARE THE MAN!!! Now, it states that we have to purchase and maintain the equipment of video taping a person charged with certain crimes but there is no requirement to actually do so, correct?

Paul

>>> Eric Kugler 05/25/07 8:29 AM >>>

Is this what you are talking about?

In 1983, the Legislature required each Texas county with a population of 25,000 or more to purchase and maintain equipment capable of visually recording persons arrested for driving while intoxicated. See *State v. Lyons*, 812 S.W.2d 336, 339 (Tex.Crim.App.1991); see generally 40 George E. Dix & Robert O. Dawson, Texas Practice: Criminal Practice & Procedure § 11.63 (2001).

TEX.REV.CIV.STAT.ANN. art. 6701 I - 1 provides:

Section 24. (a) Each county with a population of 25,000 or more according to the most recent federal census shall purchase and maintain electronic devices capable of visually recording a person arrested within the county (emphasis supplied) for an offense under Article 6701L-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05, Penal Code. FN9

" "This provision has never been codified or otherwise included in the published statutes, but it remains effective." "40 George E. Dix & Robert O. Dawson, Texas Practice: Criminal Practice & Procedure § 11.63 (2001).

-----Original Message-----

**From:** Paul Lassalle [mailto:Paul.Lassalle@cityofhouston.net]

**Sent:** Thursday, May 24, 2007 5:39 PM

**To:** Diepraam, Warren; Kugler, Eric

**Subject:** Video requirements

Could one of you please locate the law that requires counties of 100K or more to purchase and maintain video equipment?

Thanks,

Paul

F. Paul Lassalle, Officer

Traffic Division

DWI Task Force

SFST/DRE/DITEP Instructor

Desk - 713-247-5911

Fax - 713-247-4035

Cell - 713-376-0877

[Paul.Lassalle@cityofhouston.net](mailto:Paul.Lassalle@cityofhouston.net)

## Paul Lassalle - RE: Video requirements

---

**From:** Paul Lassalle  
**To:** DIEPRAAM\_WARREN@DAO.HCTX.NET; Kugler\_Eric@DAO.HCTX.NET  
**Date:** 5/25/2007 10:38 AM  
**Subject:** RE: Video requirements

---

Wooooo Hoooooo

Thanks.

## Paul Lassalle - Video requirements

---

**From:** Paul Lassalle  
**To:** Diepraam, Warren; Kugler, Eric  
**Date:** 5/24/2007 5:39 PM  
**Subject:** Video requirements

---

Could one of you please locate the law that requires counties of 100K or more to purchase and maintain video equipment?

Thanks,

Paul

F. Paul Lassalle, Officer  
Traffic Division  
DWI Task Force  
SFST/DRE/DITEP Instructor  
Desk - 713-247-5911  
Fax - 713-247-4035  
Cell - 713-376-0877  
[Paul.Lassalle@cityofhouston.net](mailto:Paul.Lassalle@cityofhouston.net)

**From:** Eric Kugler  
**To:** Paul Lassalle; Warren Diepraam  
**Date:** 5/25/2007 8:30:07 AM  
**Subject:** RE: Video requirements

Is this what you are talking about?

In 1983, the Legislature required each Texas county with a population of 25,000 or more to **purchase and maintain** equipment capable of visually recording persons arrested for driving while intoxicated. See *State v. Lyons*, 812 S.W.2d 336, 339 (Tex.Crim.App.1991); see generally 40 George E. Dix & Robert O. Dawson, Texas Practice: Criminal Practice & Procedure § 11.63 (2001).

TEX.REV.CIV.STAT.ANN. art. 6701 / - 1 provides:

Section 24. (a) Each county with a population of 25,000 or more according to the most recent federal census shall purchase and maintain electronic devices capable of visually recording a person arrested within the county (emphasis supplied) for an offense under Article 6701L-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05, Penal Code. FN9

"This provision has never been codified or otherwise included in the published statutes, but it remains effective." 40 George E. Dix & Robert O. Dawson, Texas Practice: Criminal Practice & Procedure § 11.63 (2001).

—Original Message—

**From:** Paul Lassalle [mailto:Paul.Lassalle@cityofhouston.net]  
**Sent:** Thursday, May 24, 2007 5:39 PM  
**To:** Diepraam, Warren; Kugler, Eric  
**Subject:** Video requirements

Could one of you please locate the law that requires counties of 100K or more to purchase and maintain video equipment?

Thanks,

Paul

F. Paul Lassalle, Officer  
Traffic Division  
DWI Task Force  
SFST/DRE/DITEP Instructor  
Desk - 713-247-5911  
Fax - 713-247-4035  
Cell - 713-376-0877  
[Paul.Lassalle@cityofhouston.net](mailto:Paul.Lassalle@cityofhouston.net)

**From:** Warren Diepraam  
**To:** Eric Kugler; Paul Lassalle  
**Date:** 5/25/2007 9:26:46 AM  
**Subject:** RE: Video requirements

Tha's it. Thanks Eric (as usual)

-----Original Message-----

**From:** Kugler, Eric  
**Sent:** Friday, May 25, 2007 8:30 AM  
**To:** 'Paul Lassalle'; Diepraam, Warren  
**Subject:** RE: Video requirements

Is this what you are talking about?

In 1983, the Legislature required each Texas county with a population of 25,000 or more to **purchase** and **maintain** equipment capable of visually recording persons arrested for driving while intoxicated. See State v. Lyons, 812 S.W.2d 336, 339 (Tex.Crim.App.1991); see generally 40 George E. Dix & Robert O. Dawson, Texas Practice: Criminal Practice & Procedure § 11.63 (2001).

TEX.REV.CIV.STAT.ANN. art. 6701 / - 1 provides:

Section 24. (a) Each county with a population of 25,000 or more according to the most recent federal census shall purchase and maintain electronic devices capable of visually recording a person arrested within the county (emphasis supplied) for an offense under Article 6701L-1, Revised Statutes, or Subdivision (2), Subsection (a), Section 19.05, Penal Code. FN9

"This provision has never been codified or otherwise included in the published statutes, but it remains effective." 40 George E. Dix & Robert O. Dawson, Texas Practice: Criminal Practice & Procedure § 11.63 (2001).

-----Original Message-----

**From:** Paul Lassalle [mailto:Paul.Lassalle@cityofhouston.net]  
**Sent:** Thursday, May 24, 2007 5:39 PM  
**To:** Diepraam, Warren; Kugler, Eric  
**Subject:** Video requirements

Could one of you please locate the law that requires counties of 100K or more to purchase and maintain video equipment?

Thanks,

Paul

F. Paul Lassalle, Officer  
Traffic Division  
DWI Task Force  
SFST/DRE/DITEP Instructor  
Desk - 713-247-5911  
Fax - 713-247-4035  
Cell - 713-376-0877  
[Paul.Lassalle@cityofhouston.net](mailto:Paul.Lassalle@cityofhouston.net)



MAKE CHECK/ MONEY ORDER PAYABLE TO:  
*City of Houston*

SEND PAYMENT TO:  
*HPD Records Division  
1200 TRAVIS, 1ST FLOOR  
Houston, TX 77002*

Reference payment with:  
*OR 07-4987a*

mp

---

## INVOICE

---

**Billing Information:**  
W. Troy McKinney  
Schneider & McKinney, P.C.  
440 Louisiana, Ste. 800  
Houston, Texas 77002

Date: March 13, 2008

Qty	Description	Unit Price	TOTAL
10	8.5" x 11" standard pages	\$0.10	\$1.000

SubTotal	\$1.00
Deposit Made	
<b>Total</b>	<b>1.00</b>

If you have any questions regarding this invoice, please contact the Open Records Unit at 713 308-3200 during normal business hours between 8am - 4pm, Monday - Friday.

Open Records Email address: [hpdc.openrecs@cityofhouston.net](mailto:hpdc.openrecs@cityofhouston.net)