



## WHITEPAPER

A Legal Framework for Court-Appointed Counsel | July 2026

# Video Analysis as a Reimbursable Indigent Defense Expense

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How defense attorneys can seek reimbursement for bodycam analysis technology under *Ake v. Oklahoma*, the Criminal Justice Act, and state indigent defense statutes

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## Executive Summary

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The cost of BodyCam Defense — \$125 per month for 5 hours of video — is a fraction of what courts routinely authorize for DNA analysts (\$300–\$600/hour), forensic accountants (\$300–\$500/hour), accident reconstructionists (\$350/hour), and other expert witnesses. This guide demonstrates that bodycam video analysis software is a constitutionally grounded, statutorily authorized, and practically necessary expense for court-appointed counsel in indigent defendant cases.

In an era where more than 80% of criminal cases involve bodycam or other audiovisual evidence, defense counsel who lack video analysis tools cannot fulfill their constitutional obligations under *Ake v. Oklahoma* (expert assistance), *Strickland v. Washington* (reasonable investigation), or *Brady v. Maryland* (identifying exculpatory evidence). Meanwhile, prosecutors routinely deploy AI-powered video analysis platforms, forensic enhancement tools, and digital evidence management systems — creating a growing technology gap that undermines the right to effective counsel.

This guide provides the legal framework, case citations, and statutory authority that court-appointed attorneys need to seek — and courts need to authorize — reimbursement for video analysis technology as a reasonably necessary defense expense.

# The Constitutional Foundation

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## ***Ake v. Oklahoma: The Right to Expert Assistance***

In *Ake v. Oklahoma*, 470 U.S. 68 (1985), the Supreme Court held that when an indigent defendant demonstrates that expert assistance may be crucial to the defense, the Constitution requires the state to provide access to that expert. While *Ake* involved a psychiatric expert, courts have consistently expanded its reach to DNA analysts, ballistics experts, toxicologists, forensic pathologists, fingerprint experts, and other forensic specialists.

The three-factor due process test: (1) the private interest in accuracy of criminal proceedings (which the Court called “almost uniquely compelling”), (2) the government’s financial burden (deemed “not substantial” for competent expert assistance), and (3) the risk of error without expert assistance (found “extremely high” when expert knowledge is at issue).

As Professor Paul C. Giannelli argued in “*Ake v. Oklahoma: The Right to Expert Assistance in a Post-Daubert, Post-DNA World*” (89 Cornell Law Review 6, 2004), the scope of *Ake* necessarily expands as forensic technology evolves. In 2026, when bodycam footage dominates criminal discovery, video analysis capability is as essential to mounting a defense as DNA expertise was in the 1990s.

## ***Strickland v. Washington: The Duty to Investigate***

Under *Strickland v. Washington*, 466 U.S. 668 (1984), defense counsel must conduct a “reasonable investigation” before making strategic decisions. In cases involving bodycam evidence — which now means most criminal cases — reasonable investigation requires thorough analysis of all footage. Manual scrubbing of hours of video is neither thorough nor reasonable when software tools exist that can transcribe, search, and flag critical moments automatically.

Failure to use available investigative tools, particularly when the prosecution uses equivalent technology, falls below *Strickland*’s performance standard and exposes counsel to ineffective assistance claims.

## ***Brady v. Maryland and Kyles v. Whitley: Verifying Disclosure***

Under *Brady v. Maryland*, 373 U.S. 83 (1963), the prosecution must disclose all material exculpatory evidence. Under *Kyles v. Whitley*, 514 U.S. 419 (1995), materiality is assessed cumulatively — individual moments may seem insignificant, but together they can undermine the prosecution’s case.

Bodycam footage regularly contains multiple exculpatory moments: uses of force not in the police report, witness statements officers didn’t mention, Miranda warnings delivered late or not at all. Without video analysis tools, defense counsel cannot efficiently identify these moments, cannot verify Brady compliance, and cannot assess the cumulative materiality of what may have been withheld.

## Statutory Authority

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### Federal: Criminal Justice Act (18 U.S.C. § 3006A)

The Criminal Justice Act authorizes “investigative, expert, and other services necessary for adequate representation.” Services up to \$800 may be obtained without prior authorization; with court approval, compensation can reach \$2,400 or more in cases of “unusual character or duration.” The statute uses the flexible standard “necessary for adequate representation” — language that encompasses video analysis software when bodycam footage is central to the case.

### Ohio: O.R.C. §§ 120.04, 120.33, and 2929.024

Ohio Revised Code § 120.04 authorizes the public defender to “conduct investigations, obtain expert testimony... and make all other preparations which are appropriate and necessary to an adequate defense.” Section 120.33 provides for reimbursement of expert and investigative services that are “reasonably necessary.”

Critically, neither statute contains language excluding technology or software expenses. The Ohio Public Defender’s 2024 Standards and Guidelines require expert expenses to be submitted on an Expert Fee Form with supporting documentation — a process that readily accommodates software subscriptions when authorized by the court.

For capital cases, O.R.C. § 2929.024 specifically requires trial judges to grant funds for investigative services when “reasonably necessary for the proper representation” of indigent defendants.

### Other States

Texas Code of Criminal Procedure Article 26.05 authorizes reimbursement for “expenses for investigation and for mental health and other experts.” The Texas Indigent Defense Commission explicitly recognizes technology grants as a reimbursable expense category in its guidelines.

California’s AB 690 addresses indigent defense expenses including experts and investigators, and courts authorize funding through the AOC-G-309 form.

These frameworks demonstrate a national trend toward recognizing technology as a necessary component of effective indigent defense.

## The Parity Problem

### Prosecutors Have Video Analysis Technology. Defense Counsel Don't.

Prosecution offices nationwide deploy AI-powered video analysis, forensic enhancement tools, and digital evidence management platforms as standard infrastructure. These tools are funded by public budgets and available on every case.

Indigent defense counsel, by contrast, typically lack access to any video analysis technology. The result is a structural asymmetry: prosecutors can efficiently search, transcribe, and analyze hours of footage, while defense attorneys must manually scrub timelines — hoping they don't miss the three seconds that matter.

This asymmetry undermines *Ake's* foundational principle that indigent defendants must have “meaningful access to justice.” When prosecutors deploy sophisticated analytical tools and defense counsel cannot afford a \$125/month subscription, the playing field is not level — it is tilted.

### The Cost Comparison

Courts routinely authorize expert witness fees that dwarf the cost of video analysis software:

| Service                                 | Typical Cost         |
|-----------------------------------------|----------------------|
| DNA Expert Witness                      | \$300–\$600 / hour   |
| Forensic Accountant                     | \$300–\$500 / hour   |
| Accident Reconstructionist              | ~\$350 / hour        |
| Medical Expert                          | \$400–\$800 / hour   |
| Private Investigator                    | \$50–\$75 / hour     |
| <b>BodyCam Defense (5 hrs of video)</b> | <b>\$125 / month</b> |

At \$125 per month, BodyCam Defense costs less than a single hour of most expert witness testimony. For defense attorneys handling multiple indigent cases, the per-case cost is often under \$30 — making budget objections untenable when courts routinely authorize expert expenses 10 to 50 times larger.

# Practical Guide for Court-Appointed Counsel

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## How to Request Reimbursement: A Step-by-Step Guide

- 1. Document the need.** Note the volume of bodycam evidence disclosed, the number of hours of footage, and the specific investigative questions the software will address.
- 2. File an ex parte motion.** Request authorization for investigative/expert services under the applicable statute (18 U.S.C. § 3006A for federal cases; O.R.C. § 120.33 for Ohio state cases). Frame the request as “investigative services necessary for adequate representation.”
- 3. Cite the legal framework.** Reference *Ake v. Oklahoma* (right to expert assistance), *Strickland v. Washington* (duty to investigate), and *Brady v. Maryland* (need to identify exculpatory evidence).
- 4. Emphasize cost-effectiveness.** Compare the \$125/month subscription to standard expert witness fees. Note that the software replaces hours of manual review time that would otherwise be billed at attorney rates.
- 5. Describe what the software does.** AI-generated audio and visual transcripts, searchable evidence, automated detection of 19 events of interest, custom review questions, cross-examination preparation tools — all on HIPAA-compliant infrastructure.
- 6. Submit documentation after case disposition.** Include the BodyCam Defense invoice with your expert expense submission per your jurisdiction’s indigent defense guidelines.

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## Sample Language for Ex Parte Motion

The following template paragraph may be adapted for use in an ex parte motion for authorization of investigative services:

“Counsel respectfully requests authorization for investigative services pursuant to [18 U.S.C. § 3006A / O.R.C. § 120.33]. The State has disclosed [X] hours of bodycam footage. BodyCam Defense is a HIPAA-compliant video analysis platform that generates searchable AI transcripts, identifies events of interest, and enables systematic review of audiovisual evidence. The monthly cost of \$125.00 is a fraction of standard expert witness fees and is reasonably necessary for adequate representation. See *Ake v. Oklahoma*, 470 U.S. 68 (1985); *Strickland v. Washington*, 466 U.S. 668 (1984).”

## About BodyCam Defense

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BodyCam Defense is a HIPAA-compliant video analysis platform built for criminal defense attorneys. Upload bodycam, dashcam, surveillance, or interview footage and receive searchable AI transcripts — audio and visual — with every key moment flagged. Add up to five custom review questions per upload, detect 19 events of interest automatically, and build courtroom-ready work product without re-watching the same footage.

All data is encrypted at rest and in transit on Google Cloud infrastructure under a signed Business Associate Agreement. Files are stored in private buckets with no public access.

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### Pricing

\$125/month includes 5 hours of video. Additional footage at \$20/hour, billed by the minute.

**Try the live demo**

[bodycamdefense.com/demo](https://bodycamdefense.com/demo)

**Book a walkthrough**

[calendar.app.google/rfpa681VBmJsNvRD9](https://calendar.app.google/rfpa681VBmJsNvRD9)

**Contact**

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