Recommendations Regarding Body-Worn Camera Policies in Colorado: *Pursuant to House Bill 15-1285*

Prepared for the Judiciary Committees of the Senate and House of Representatives

February 2016

Colorado Department of Public Safety
Division of Criminal Justice
Office of Research and Statistics

700 Kipling St., Denver, Colorado 80215
https://www.colorado.gov/pacific/dcj-ors

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Prepared on behalf of the H.B. 15-1285 Body Worn Camera Study Group

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Department of Public Safety

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Colorado Body Worn Camera Study Group members

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Executive Summary

In 2015 the Colorado General Assembly passed House Bill 1285 which mandated that the Colorado Department of Public Safety (CDPS) empanel a Body Worn Camera (BWC) Study Group that would undertake a study of, and identification of, best practices regarding the use of body-worn cameras by law enforcement officers. Specifically, the bill directed the Study Group to collect and review policies and studies concerning BWCs by law enforcement officers and make recommendations regarding the following:

1. When cameras are required to be turned on;
2. When cameras must be turned off;
3. When cameras may be turned off;
4. When notification must be given that a camera is in use; and
5. When consent of another person is required for the continued use of a camera.
6. Consider enforcement mechanisms and legal remedies available to the public when a policy adopted by a law enforcement agency is not followed or when an agency that uses body-worn cameras fails to adopt a policy on the use of body-worn cameras by its officers.

The General Assembly, in its legislative declaration for H.B. 15-1285, recognized that issues such as public access to BWC recordings, the timing of the disclosure of recordings, whether there should be limits on the use of publicly disclosed recordings, and data retention and security are important policy topics that must be addressed. These were not among the questions delineated in the bill, and the Study Group prioritized its work by focusing on the six specific questions.

The Study Group recognizes that law enforcement agencies vary considerably in terms of their capacity to implement a BWC program. The Study Group is not recommending the adoption of BWCs by law enforcement agencies because this decision should be left to local law enforcement officials. However, when agency administrators choose to develop and implement a BWC program, these recommendations should be followed.

A brief summary of the recommendations from the Study Group is provided below; however, readers are encouraged to review the full recommendations in the body of this report.

1. **When cameras are required to be turned on:** The Study Group recommends that BWC devices should be manually activated at the initiation of any law enforcement encounter between a law enforcement officer and a member(s) of the public where there is potential for enforcement and/or criminal investigation, and any other encounter that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

2. **When cameras must be turned off:** The Study Group recommends that once the BWC device is activated it shall remain on and shall not be turned off until an investigative or enforcement contact or incident has concluded. The Study Group also identified the following special circumstances to provide clarification about when cameras should be turned off: When interacting with c*rime victims,* in situations where *medical/patient privacy* is warranted*,* in s*chools,* when an individual wants to *anonymously report a crime,* or when interacting with a *confidential informant.* In addition, the illegal clandestine audio recording of a private conversation is prohibited by law as described by state wiretapping and eavesdropping statutes.

3. **When cameras may be turned off:** In addition to the discretionary de-activation of a BWC device discussed above, the Study Group recommends a BWC device may be turned off for the following reasons: To avoid recording *personal information that is not case related, work on an unrelated assignment, when there is a long break in the incident/contact that is not related to the initial incident,* and in *administrative, tactical and management discussions.*

4. **When notification must be given that a camera is in use:** The Study Group recommends that a law enforcement officer who is wearing a body camera is not required to notify the subject(s) of the recording that the subject(s) is/are being recorded by a body camera unless the officer determines it is safe to do so for the officer and members of the public. Officers have the discretion to advise citizens they are being recorded, but if asked, officers shall advise citizens they are being recorded. As previously addressed in the "*When cameras must be turned off*" above, crime victims, persons wanting to anonymously report a crime, and confidential informants are an exception to the above statement and should be notified when they are being recorded as soon as it is safe to do so.

5. **When consent of another person is required for the continued use of the camera:** As previously addressed in "*When cameras must be turned off*" above, crime victims, persons wanting to anonymously report a crime, and confidential informants should be notified that they are being recorded as soon as it is safe to do so. Otherwise, consent is not required. Recording of these individuals should cease upon their request unless those individuals consent to continued recording, or if the officer determines that a legitimate law enforcement reason requires recording is required.

6. **Enforcement mechanisms and legal remedies available to the public when a policy adopted by a law enforcement agency is not followed or when an agency fails to adopt a policy on the use of body-worn cameras by its officers:** If a law enforcement agency adopts a policy on the use of BWCs by its officers, compliance or any failure to comply with the policy of the respective law enforcement agency is considered relevant evidence, as long as such evidence is otherwise admissible. Similarly, if the agency is required to adopt a policy on BWCs and fails to do so, compliance or failure to comply is

admissible in any criminal proceeding. All civil and criminal sanctions that are currently available to the public may be used.

The Study Group believes that officer safety and the safety of the public is of paramount importance when developing policies for the use of BWCs. In addition, the Study Group believes that crime victims must be treated with fairness, dignity and respect. To this end, the Study Group recommends that law enforcement agencies develop a BWC policy prior to implementation and that, at a minimum, these policies should address the issues discussed in this report. The Study Group believes that the use of BWCs be at the discretion of law enforcement agency administrators and not mandated by the General Assembly.

Time constraints precluded the Study Group from addressing the myriad of additional policy areas important to the successful implementation of a BWC program. There are policy issues in the Legislative Declaration of H.B. 15-1285 that the Study Group was not mandated to address but Study Group members recognize these issues are important and must be addressed in a comprehensive BWC policy.

Introduction

The use of body worn cameras[1] (BWC) among law enforcement agencies is growing rapidly. A January 2015 survey conducted by Colorado POST[2] found that nearly 28% of the state's law enforcement agencies that responded to the inquiry are using BWCs, and many more are contemplating future use.[3] Law enforcement agencies are using BWCs for a variety of reasons, including improving evidence collection, evaluating and strengthening officer performance and accountability, enhancing transparency, documenting police-public encounters, and investigating and resolving complaints. However, it is important to note that the deployment of BWC systems is in its infancy and much remains unknown about their operational and total cost of ownership impacts.

A few studies have documented the positive impacts of BWCs in reducing complaints and resolving officer-involved incidents. In 2012, the Rialto (California) Police Department, in partnership with the University of Cambridge-Institute of Criminology, studied the use of randomly assigned BWCs to front-line officers across 988 shifts. The study found a 60% reduction in officer use of force incidents and an 88% reduction in the number of citizen complaints.[4] Mesa (Arizona) Police Department implemented a one-year pilot program and compared 50 officers assigned to wear BWCs with 50 officers assigned to a control group without cameras. Arizona State University's study of the pilot program found 40% fewer complaints for officers with cameras, and 75% fewer use of force complaints for officers with cameras, compared to the control group.[5] A 2014 study of the Phoenix Police Department found that the number of arrests increased by approximately 17% among the BWC group compared to the group not assigned BWCs; complaints against officers who wore the cameras declined by 23%; and officers who wore the cameras and received a complaint were significantly less likely to have the complaint sustained than the comparison group.[6] A study of

[1] Body-worn cameras are small video cameras—typically attached to an officer's clothing, helmet, or sunglasses—that can capture, from an officer's point of view, video and audio recordings of activities, including traffic stops, arrests, searches, interrogations, and critical incidents.
[2] The Colorado Peace Officer Standards and Training Board, POST, is a law enforcement training program operated by the Colorado Attorney General's Office.
[3] Colorado Best Practices Committee for Prosecutors. (2015). *Body-Worn Cameras: A Report for Law Enforcement.* Colorado District Attorneys' Council. Denver, CO. Report prepared by Antonia Merzon. Available at https://www.bja.gov/bwc/pdfs/ColoradoProsecutorBP-Body-Cam-Report-Merzon.pdf.
[4] Farrar, W. (2014) Operation Candid Camera: Rialto Police Department's Body-Worn Camera Experiment. *The Police Chief, Vol. 81*, pp. 20-25.
[5] Rankin, H. (2013). *End of Program Evaluation and Recommendations: On-Officer Body Camera System.* Mesa Police Department, Mesa, AZ.
[6] Katz, C.M., Choate, D. E., Ready, J.R., & Nuño, L. (2014). *Evaluating the Impact of Officer Worn Body Cameras in the Phoenix Police Department.* Phoenix, AZ: Center for Violence Prevention & Community Safety, Arizona State University.

the Orlando (Florida) Police Department also found a reduction in complaints following implementation of BWCs.[7]

However, BWCs present important privacy concerns. Citizens may be less willing to provide information to law enforcement when the officer is recording the interaction. BWCs capture in real time the potentially traumatic experiences of citizens who are victims of a crime, those who are involved in medical emergencies and accidents, or those who are being detained or arrested. As such, according to Professor Michael White, writing for the U.S. Department of Justice COPS Office, "citizens' emotional trauma could be exacerbated when they realize the event has been captured on video. Moreover, the potential for body-worn cameras to be coupled with other technologies, such as facial recognition software, may present additional concerns for citizen privacy."[8]

These concerns highlight the importance of developing detailed policies governing when the body-worn cameras should be turned on and off. Hence, in a joint publication, the Police Executive Research Forum (PERF) and the U.S. Department of Justice's Office of Community Oriented Police Services (COPS) recommend that, when launching a BWC program, law enforcement agencies "should convey that their goal is to foster transparency and accountability while protecting civil liberties and privacy interests."[9] The implementation of a body camera program must address a range of issues, including transparency, privacy, officer safety, and the cost of body cameras as well as the cost of storing and redacting footage.[10]

It should be noted that while BWCs offer potential benefits, these come at a considerable financial cost. In addition to the initial purchasing cost of $200 to $1200 per device,[11] agencies must devote funding and staffing resources toward storing recorded data, redacting images, managing videos, disclosing copies of videos to the public, providing training to officers, and administering the program. One of the most significant administrative costs involves the process of reviewing and categorizing videos, which is done by the officer and usually occurs at the end of each shift.[12] A study by the Arvada Police Department in February 2015 estimated that the average patrol officer recording all citizen contacts during his/her shift would generate 1.5 terabytes of video footage per year, such that if all Arvada patrol officers were equipped

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[7] Jennings, W.G., Lynch, M.D., Fridell, L.A. (2015). *Evaluating the Impact of Police Officer Body-Worn Cameras (BWCs): The Orlando Police Department Experience.* Available at https://www.bja.gov/bwc/pdfs/OPD-Final-Report-Executive-Summary-10-6-15.pdf.

[8] White, M.D. 2014. *Police Officer Body-Worn Cameras: Assessing the Evidence*. Office of Community Oriented Policing Services, Washington, DC.

[9] Miller, L., Toliver, J., and Police Executive Research Forum. (2014). *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Office of Community Oriented Policing Services, Washington, DC.

[10] Feeney, M. (2015). *Watching the Watchmen: Best Practices for Police Body Cameras*. Policy Analysis No. 782. CATO Institute. Available at http://www.cato.org/publications/policy-analysis/watching-watchmen-best-practices-police-body-cameras.

[11] As technology advances, the cost of cameras is declining. Many vendors discount the purchase price of cameras when the agency agrees to a long term BWC data storage contract.

[12] Miller, L., Toliver, J., and Police Executive Research Forum. (2014). *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Office of Community Oriented Policing Services, Washington, DC.

with cameras, the recordings would require one terabyte of storage every two weeks.[13] Managing and storing data from a BWC program will likely cost more than the initial purchase of cameras.[14] Law enforcement agencies should analyze the anticipated costs associated with the full implementation of a BWC program, along with the potential for cost savings, including legal fees and other costs associated with defending lawsuits and complaints against officers.

An excellent report recently published by the Colorado District Attorneys' Council's (CDAC) *Best Practices Committee for Prosecutors*[15] summarizes some of the advantages and disadvantages of implementing a law enforcement BWC system. Drawing from the CDAC report, the Study Group agrees that the following are important potential benefits and negative consequences of implementing a BWC program:

Potential Benefits of BWCs

- Provide important evidence in criminal prosecutions by recording events, statements, searches and other key moments in the early stages of a case
- Promote accountability and transparency about law enforcement agencies and the work of their officers, thereby enhancing community relations
- Improve the behavior of both citizens and officers when they know their conduct is being recorded, thereby increasing safety and reducing "use of force" incidents
- Clarify complaints about officer misconduct, saving police departments time and money
- Allow police departments to monitor the work of their officers, both for training purposes and in situations where an officer's performance requires review

Potential Negative Implications of BWCs

- The large financial investment needed for hardware, software, storage, personnel, and training
- The onerous job of managing, storing and providing discovery of any video recordings generated - particularly for medium to large departments handling thousands of hours of footage
- Intrusions into the privacy rights of people being recorded – especially when incidents occur inside homes or involve non-investigatory or non-enforcement situations
- Intrusions into the privacy rights of law enforcement officers wearing the cameras

[13] Arvada Police Department (February 2015). *Body Worn Camera Video Technology.* As cited by Colorado Best Practices Committee for Prosecutors (2015), *Body-Worn Cameras: A Report for Law Enforcement,* Colorado District Attorneys' Council, Denver, CO. Report prepared by Antonia Merzon. Page 5. Available at https://www.bja.gov/bwc/pdfs/ColoradoProsecutorBP-Body-Cam-Report-Merzon.pdf.

[14] Miller, L., Toliver, J., and Police Executive Research Forum. (2014). *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Office of Community Oriented Policing Services, Washington, DC.

[15] Colorado Best Practices Committee for Prosecutors (2015). *Body-Worn Cameras: A Report for Law Enforcement.* Colorado District Attorneys' Council. Denver, CO. Report prepared by Antonia Merzon. Pages 2-3. Available at https://www.bja.gov/bwc/pdfs/ColoradoProsecutorBP-Body-Cam-Report-Merzon.pdf.

- The potential chilling effect on interviews with sensitive witnesses and informants
- The complexities of handling encounters involving privileged information (such as medical, mental health, attorney-client, religious or marital communications)
- Public misconceptions, potentially carried into the jury pool, that video will always be present and/or will always resolve factual disputes

In sum, BWC technology is evolving at a rapid pace because of the significant increase in law enforcement agencies deploying these systems. Technology companies are responding to the demand for new functionality, features, and system security. The Police Executive Research Forum (PERF) recommends that law enforcement agencies conduct regular reviews of their BWC policies and protocols regarding recording, data storage/retention/disclosure procedures, training programs, community feedback, and officer feedback.[16] PERF offers the following caution:

> Body-worn camera technology is new and evolving. In addition, the policy issues associated with body-worn cameras are just recently being fully considered and understood. Agencies must continue to examine whether their policies and protocols take into account new technologies, are in compliance with new laws, and reflect the most up-to-date research and best practices.[17]

Background of this report

In 2015 the Colorado General Assembly passed House Bill 1285 which mandated that the Colorado Department of Public Safety (CDPS) appoint a Body Worn Camera (BWC) Study Group that would undertake a study of, and identification of, best practices regarding the use of body-worn cameras by law enforcement officers. Regarding the formation of the Body Worn Camera (BWC) study group, the legislative summary of H.B. 1285 states:

> *The bill establishes a study group appointed by the executive director of the department of public safety to study policies and best practices on the use of body-worn cameras by law enforcement officers and to recommend policies to be adopted by law enforcement agencies on the use of such cameras. The group will also recommend enforcement mechanisms for the public when a policy is not followed. The group is to submit its recommendations in a report to specified committees of the general assembly by March 1, 2016.*

[16] Miller, L., Toliver, J., and Police Executive Research Forum. (2014). *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Office of Community Oriented Policing Services, Washington, DC. Page 49.
[17] Ibid, page 49.

Specifically, the bill directed the Study Group to collect and review policies and studies concerning BWCs by law enforcement officers and make recommendations regarding the following:

1. When cameras must be turned on;
2. When cameras must be turned off;
3. When cameras may be turned off;
4. When notification must be given that a camera is in use; and
5. When consent of another person is required for the continued use of a camera.
6. Consider enforcement mechanisms and legal remedies available to the public when a policy adopted by a law enforcement agency is not followed or when an agency that uses body-worn cameras fails to adopt a policy on the use of body-worn cameras by its officers.

The General Assembly, in its legislative declaration for H.B. 15-1285, recognized that issues such as public access to BWC recordings, the timing of the disclosure of recordings, whether there should be limits on the use of publicly disclosed recordings, and data retention and security are important policy topics that must be addressed. These were not among the questions delineated in the bill, and the Study Group prioritized its work by focusing on the six specific questions. Nevertheless, the Study Group recognizes that the concerns identified in the legislative declaration are important and must be included in an agency's comprehensive BWC policy.

The membership of the Study Group was designated in statute as follows: Two representatives of Chiefs of Police; two representatives of County Sheriffs; a representative of a statewide organization of police officers; a representative of the Department of Corrections; a representative of District Attorneys; the Attorney General or his or her designee; the State Public Defender or his or her designee; a representative of the private criminal defense bar; two representatives of interested community groups; a representative of an organization that advocates for government transparency; a representative of a legal organization supporting privacy concerns; and up to three other interested citizens at the discretion of the Executive Director.

The BWC Study Group met monthly between August, 2015 and January, 2016. Meeting minutes were documented and unanimously approved by the BWC Study Group at the beginning of each subsequent meeting. Communication with BWC Study Group members was maintained in-between the monthly meetings via email and telephone conference calls. Meetings included educational presentations and discussions of the following issues:

- Pros and cons of BWC systems
- Types of BWC system devices
- BWC devices and system considerations

- Required level of effort – design, configuration, training, implementation, system administration/support and maintenance
- Operational aspects – activating, uploading data, tagging information
- Technical aspects – network infrastructure requirements, data storage, redaction
- Total cost of ownership – initial and recurring costs
- Current BWC system national issues
- BWC system decision implications

During the Study Group meetings, the members shared their interests and concerns about the work of the Study Group. Many members expressed interest in promoting respect, trust and transparency between law enforcement agencies and the communities they serve. The group discussed the need for local control regarding the implementation of BWC programs given the significant cost, the management of vast amounts of data, training and personnel requirements, and the need for clear protocols on the preservation of that data, and the access to such data, along with privacy concerns.

The following polices, reports and research papers were reviewed by Study Group members.

BWC System Policies

1. American Civil Liberties Union - *A Model Act for Regulating the Use of Wearable Body Cameras by Law Enforcement* (2015)
2. Chicago Police Department - *Body Worn Camera Pilot Program (Phase 1) Policy* (2015)
3. Denver Police Department – *Body Worn Camera Pilot Program* Policy (2014)
4. Fort Collins, Colorado, Police Department - *Mobile Audio/Video Recorder Policy* (2014)
5. Fraternal Order of Police – *Body Worn Camera Model Policy and Recommended Best Practices* (2015)
6. International Municipal Lawyers Association - *A Model Act for Regulating the Use of Body Worn Cameras by Law Enforcement* (2014)
7. International Association of Chiefs of Police - *Body Worn Camera Model Policy* (2015)
8. Kentucky League of Cities - *Body Worn Video Recording Model Policy* (2015)
9. Law Enforcement Consortium - *Body Worn Camera Model Policy* (2014)
10. Los Angeles Police Department - *Body Worn Video Procedures* (2015)
11. Media Law Resource Center – *Model Policy on Police Body Worn Camera Footage and Supporting Memorandum* (2015)
12. Parker, Colorado Police Department - *Recording Devices and Imaging Equipment Policy* (2015)
13. San Diego Police Department - *Body Worn Camera Policy and Procedures* (2014)

BWC System White Papers and Research Studies

1. Abrams Institute/Media Freedom and Information Access - *Police Body Camera Footage: Just Another Public Record* (2015)

2. Baltimore Police Department - *Baltimore Mayor's Working Group on the Use and Implementation of Body-Worn Cameras Final Recommendations* (2015)
3. Colorado District Attorneys' Association, Colorado Best Practices Committee for Prosecutors - *Body Worn Cameras - A Report for Law Enforcement* (2015)
4. *Denver Office of Independent Monitor 2014 Annual* Report - Chapter 2 Denver Police BWC Pilot Project Assessment (2015)
5. International Association of Chiefs of Police - *Concepts and Issues Paper Body Worn Cameras* (2014)
6. New York Police Department - *Inspector General and Department of Investigation Report on NYPD BWC Policy and Procedures* (2015)
7. Office of Justice Program - *Police Officer Body-Worn Cameras Assessing the Evidence* (2014)
8. Phoenix Police Department - *Evaluating the Impact of Officer Body Worn Cameras* (February 2015)
9. Police Executive Research Forum/Department of Justice/Community Oriented Policing Office (PERF/DOJ/COPS) – *Implementing a BWC System/Lessons Learned* (2014)
10. International Association of Chiefs of Police – *Guiding Principles on Cloud Computing in Law Enforcement* (2015)

The Study Group engaged in significant discussions about the purposes of a BWC system, privacy concerns--especially as these pertain to crime victims and witnesses, access to the video, police-community relationships, the Colorado Open Records Act (CORA), the Colorado Criminal Justice Records Act (CCJRA), and case law including *Harris v. Denver Post Corporation* (2005) and *Husperi v. El Paso County Sheriff's Department* (2008). The Study Group reviewed case law, recommendations by professional associations, and existing agency policies and, from this process, members developed language for recommendations concerning each of the six questions. Recommendation language was then voted on for approval or disapproval. All of the recommendations presented in this report received unanimous or nearly unanimous approval. It should be noted that there was clear consensus from all of the group members that BWC use is best decided by local municipalities and agencies, as opposed to being addressed through the legislative process.

Recommendations

General Recommendations

The Study Group believes that the use of BWCs should be at the discretion of law enforcement agency administrators and not mandated by the General Assembly. Additionally, the Study Group believes that officer safety and the safety of the public is of paramount importance when developing policies for the use of BWCs. The Study Group also believes that crime victims must be treated with fairness, dignity and respect. To this end, the Study Group recommends that

law enforcement agencies that choose to implement a BWC program develop a BWC policy prior to implementation and that, at a minimum, these policies should address the issues discussed below.

The Study Group recommends that law enforcement agencies that choose to adopt policies do so in consultation with the local prosecutors' offices (district and municipal) regarding retention of data and the process of transmitting the information between agencies. Law enforcement agencies should understand how local prosecutors will meet the legal requirements to provide the information to the defense counsel.

Additionally, the Study Group recommends that any agency that chooses to adopt BWC policies do so with the benefit of input from the public, local policymakers and other stakeholders. PERF also recommends this approach since it can increase support for the BWC program, and clarify how cameras will be used and how their use will affect stakeholders.[18] This approach also allows law enforcement executives the opportunity to educate stakeholders about the benefits and limitations of a BWC program.

The Study Group recommends that any agency receiving funding related to the BWC grant program described in H.B. 15-1285[19] adopt the recommendations delineated in this report. In addition, agencies should seek to implement standards consistent with the requirements for professional accreditation, such as those developed by the Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA).

Finally, the Study Group recommends that law enforcement administrators considering the implementation of a BWC program consult the growing number of resources available on this topic, in particular the U.S. Department of Justice Community Oriented Policing Services/PERF publication on BWC implementation, available at http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf, and the 2015 Colorado District Attorneys' Council report from the Best Practices Committee for Prosecutors, available at https://www.bja.gov/bwc/pdfs/ColoradoProsecutorBP-Body-Cam-Report-Merzon.pdf. A checklist for implementation developed by the U.S. Bureau of Justice Assistance is included as Appendix A. Administrators should be aware that the field is evolving and many important resources will become available in the future.

[18] Miller, L., Toliver, J., and Police Executive Research Forum. (2014). *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Office of Community Oriented Policing Services, Washington, DC. Page 24.

[19] In addition to empaneling the BWC Study Group, H.B. 15-1285 established a law enforcement BWC grant program in the Division of Criminal Justice and a fund in the State Treasury consisting of any moneys DCJ obtains through gifts, grants, or donations.

Recommendations pursuant to H.B. 15-1285

1. When cameras are required to be turned on

The Study Group recommends that BWC devices should be manually activated at the initiation of any encounter between a law enforcement officer and a member(s) of the public where there is potential for enforcement and/or criminal investigation and any other encounter that becomes adversarial after the initial contact in a situation that would not otherwise require recording. The Study Group defines "enforcement" as any action or statement made by a law enforcement officer that utilizes their sworn authority to instruct, order, detain, frisk, arrest, search and/or use any type of force against an individual(s).

The Study Group recommends that, in addition to the above BWC device activation requirements, an officer should have discretion to manually activate the BWC device any time the officer believes it would be appropriate or valuable to document an incident. The BWC shall only be activated for legitimate law enforcement purposes.
The Study Group recommends that a department BWC system policy should include an officer safety and dangerous situation exception as officer safety and the safety of the public are of paramount importance. If there are circumstances that would normally be subject to recording requirements, and where activation of the BWC would jeopardize officer safety or the safety of the public, the officer should not be required to activate the camera. The camera shall be activated at the first available opportunity after any safety issues are resolved.

Discussion

To answer the above question, the Study Group considered three primary positions: (1) Full time non-stop audio/video recording from the beginning of a law enforcement officer's tour of duty to the end of the tour; (2) manual activation of a BWC device to record an incident; and (3) some combination of (1) and (2). The Study Group discussed the goals and objectives of a BWC system, the requirement to record specific types of incidents, citizen expectations of privacy and legal interpretations of actual privacy rights, and the impact and total cost of ownership of non-stop recordings given the requirements for redaction and storage.

Few law enforcement agencies have adopted a policy of recording all encounters with the public.[20] The ACLU initially suggested this approach[21] but, in an example of how quickly the field is changing and how complex the issues are, the ACLU later reconsidered and now

[20] Miller, L., Toliver, J., and Police Executive Research Forum. (2014). *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Office of Community Oriented Policing Services, Washington, DC.
[21] Stanley, J. (2013). Police *Body-Mounted Cameras: With Right Policies in Place, A Win for All*. American Civil Liberties Union. Washington, DC. Available at https://www.aclu.org/files/assets/police_body-mounted_cameras.pdf.

endorses a policy similar to the Study Group recommendation. In a March 2015 update to its BWC policy recommendations, the ACLU clarified its position:

> Purely from an accountability perspective, the ideal policy for body-worn cameras would be for continuous recording throughout a police officer's shift, eliminating any possibility that an officer could evade the recording of abuses committed on duty. The problem is that continuous recording raises many thorny privacy issues, for the public as well as for officers…. For example, as the Police Executive Research Forum (PERF) pointed out in their September 2014 report body cameras, crime victims (especially victims of rape, abuse, and other sensitive crimes), as well as witnesses who are concerned about retaliation if seen cooperating with police, may have very good reasons for not wanting police to record their interactions. We agree, and support body camera policies designed to offer special privacy protections for these individuals.[22]

The Study Group recommends that once the BWC device is activated it shall remain on and shall not be turned off until an investigative or enforcement contact or incident has concluded.

For purposes of this recommendation, conclusion of an incident has occurred when an officer has terminated contact with an individual, cleared the scene of a reported incident, or has completed transport of a civilian or an arrestee. If there is a break in the recording during an incident, the officer shall provide a written explanation of why that break occurred, or document the reason for the break on the recording itself.

2. When cameras must be turned off

The Study Group identified the following circumstances about when cameras shall be turned off.

A. *General preclusions.* BWC devices shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, nor to record activity unrelated to a response to a call for service, or a law enforcement or investigative encounter between a law enforcement officer and a member of the public.

B. *Crime Victims.* When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, ask if the apparent crime victim wants the officer to discontinue use of the officer's body camera. If the apparent crime victim requests the recording stop, the law enforcement officer shall immediately discontinue use of the BWC unless the law enforcement officer believes it is necessary to continue taping the

[22] Stanley, J. (March 2015). *Police Body-Mounted Cameras: With Right Policies in Place, A Win for All. Version 2.* American Civil Liberties Union. Washington, DC. Available at https://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all?redirect=technology-and-liberty/police-body-mounted-cameras-right-policies-place-win-all.

event for the officer's safety, the safety of others, or to insure an accurate account of the event, and the officer acknowledges the need for respect, dignity and fairness toward the victim as provided in the Colorado Victim's Rights Act.

C. *Medical/Patient Privacy.* Officers shall not record patients during medical or psychological evaluations by a clinician or similar professional, or during treatment. Officers shall be aware of patients' rights to privacy when in hospital settings. When recording in hospitals and other medical facilities, officers shall be careful to avoid recording persons other than the individual of interest.

D. *Juvenile School Location.* Law enforcement officers shall not activate a body camera while on the grounds of any public, private or parochial elementary, middle or high or secondary school, except when responding to an imminent threat to life or health where there is a potential for enforcement and/or criminal investigation.

E. *Anonymously Reporting a Crime/Confidential Informant.* When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a law enforcement officer shall, as soon as practicable, ask the person seeking to remain anonymous, if the person seeking to remain anonymous wants the officer to discontinue use of the officer's body camera. If the person seeking to remain anonymous responds affirmatively, the law enforcement officer shall immediately discontinue use of the body camera unless the law enforcement officer believes it is necessary to continue taping the event for the officer's safety, the safety of others, or to insure an accurate account of the event. Law enforcement agencies using BWCs must adopt policies for protecting the anonymity of persons recorded who have asked to remain anonymous.

F. *Illegal Audio Recording.* The illegal clandestine audio recording of a private conversation is prohibited by law as described by state wiretapping and eavesdropping statutes.

Discussion

The Study Group discussed citizen expectations of privacy versus the need for law enforcement officers to capture information on a BWC device. In each of the categories above, the Study Group balanced important interests of privacy, encouraging cooperation with law enforcement to report crimes, and obtaining information to solve crimes. Several agency policies as well as the ACLU recommendations were central to the discussions.

3. When cameras may be turned off

In addition to the mandatory de-activation of a BWC device discussed above, the Study Group recommends a BWC device may be turned off for the following reasons:

A. *Personal/Sensitive Information.* There is personal information being shared that is not case sensitive, such as victim family information/discussion, protected personal information, or personal medical information.

B. *Unrelated Assignment.* The officer is placed on an unrelated assignment that has no investigative purpose such as a scene security post, traffic post, etc. Recording may cease if an officer is simply waiting for the arrival of a tow truck, taxi, family member, or other similar non-confrontation, non-evidentiary situation.

C. *Break in Incident Investigation/Action.* There is a long break in the incident/contact such as an interruption related to routine police action that is not evidentiary in nature or is unrelated to the initial incident.

D. *Administrative, Tactical and Management Discussions.* If it is necessary to discuss issues surrounding the investigation with a supervisor or another officer in private, officers may turn off the camera. The officer shall break contact with any citizen if they plan on intentionally turning off the BWC device, provided the officer is about to engage in a private discussion with the supervisor or other officer. This exception includes discussions between officers, supervisors or Field Training Officers.

Discussion

The Study Group reviewed practical situations that officers encounter regularly in their duties. Receiving personal information that could be misused and is not critical to an investigation was one example. Additionally, the internal conversations that occur as part of supervisory duties, training, and tactics were determined to be unnecessary to record for public review.

Allowing an officer to make the decision not to record activities unrelated to an investigative assignment or for long breaks in an incident recognizes the reality that significant amounts of time can be spent on activities that are unnecessary to record, such as sitting in a patrol car waiting for a tow truck. The Study Group balanced the cost of continuing to record those hours against the minimal benefit to be gained, and recommends that an officer have the discretion not to record those passive activities.

4. When notification must be given that a camera is in use

The Study Group recommends that a law enforcement officer who is wearing a body camera is not required to notify the subject(s) that they are being recorded. Officers have the discretion to advise citizens they are being recorded. If asked, officers shall advise citizens they are being recorded.

As previously addressed in the "*When cameras must be turned off*" section, crime victims, persons wanting to anonymously report a crime, and confidential informants are an exception to the above statement and should be notified that they are being recorded as soon as it is safe to do so.

Discussion

In some states, officers are legally required to inform citizens when they are recording, and they must obtain the person's consent to record. This is the result of "two-party consent" laws that require the knowledge and consent of the person being recorded. Colorado is a one-party consent state, so only the officer needs to know that the camera is activated. It is common in one-party consent states, according to police executives interviewed by PERF, that agency policies do not explicitly instruct officers to inform people that they are recording.[23] The Study Group believes that privacy concerns can be addressed through data storage, retention, and disclosure policies that balance privacy considerations with concerns about transparency, data storage capacity and cost.

5. When consent of another person is required for the continued use of a camera

As previously addressed in the "*When cameras must be turned off*" section above, crime victims, persons wanting to anonymously report a crime, and confidential informants should be notified that they are being recorded as soon as it is safe to do so. Otherwise, consent is not required. Recording should cease unless the individual in these situations requests or consents to its continuation, or if the officer determines a legitimate law enforcement reason requires continued recording.

Discussion

The Study Group considered information from multiple sources relating to the issue of whether a person being recorded should have the right to demand that the recording cease. The Study Group's recommendation that notification should be given does not go as far as allowing another party to require that the camera be turned off. The Study Group believes that this decision needs to be left to the discretion of the officer.

[23] Miller, L., Toliver, J., and Police Executive Research Forum. (2014). *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Office of Community Oriented Policing Services, Washington, DC. Page 14.

6. Enforcement mechanisms and legal remedies

House Bill 15-1285 directs the Study Group to "*consider enforcement mechanisms and legal remedies available to the public when a policy adopted by a law enforcement agency is not followed or when an agency that uses body-worn cameras fails to adopt a policy on the use of the body-worn cameras by its officers."* To this end, the Study Group determined that if a law enforcement agency adopts a policy on the use of BWCs by its officers, compliance or any failure to comply with the policy of the respective law enforcement agency is considered relevant evidence, as long as such evidence is otherwise admissible. Similarly, if the agency is required to adopt a policy on BWCs and fails to do so, such failure is admissible in any criminal proceeding. All civil and criminal sanctions that are currently available to the public may be used.

Discussion

There are multiple options for enforcing the policies of a public agency, including law enforcement. Within their supervisory structures, agencies have procedures and sanctions in place that may result in anything from a reprimand to suspension to dismissal, depending on the severity of the transgression. Law enforcement agencies frequently have formal internal affairs procedures for investigating violations.

More serious actions can result in criminal charges such as first or second degree official misconduct covering a violation of "any statute or lawfully adopted rule or regulation relating to his office," according to C.R.S. 18-8-404 and 405. First degree official misconduct is a class 2 misdemeanor while second degree is a class 1 petty offense.

Limitations of this report

Time restrictions permitted the Study Group to focus primarily on the six questions identified in H.B. 15-1285. The General Assembly, in its legislative declaration for H.B. 15-1285, identified important policy concerns in addition to the six questions, including public access to recordings, when recordings should be disclosed, whether there should be limits on the use of publicly disclosed recordings, and data retention and storage. The Study Group discussed these topics but time limitations precluded the development of recommendations on these critically important BWC policy areas.

The public release of BWC recordings, under other states' records statutes, is a developing area of the law. The Study Group did not attempt to decide this important question.

As BWC records would likely constitute "criminal justice records" under Colorado Criminal Justice Records Act, C.R.S. 24-72-301 et. seq., judicial opinions applying that statute provide guidance to law enforcement agencies in individual cases. In particular, in *Freedom Colorado*

Information, Inc. v. El Paso County Sheriff's Department, 196 P.3d 892,200 n.3 (Colo. 2008), the Colorado Supreme Court set forth a non-exhaustive set of factors that a records custodian should consider when exercising discretion whether to disclose criminal justice records.

The recommendations presented here reflect only the minimum of policies that must be developed in the process of implementing a BWC program. In addition, the role of supervisors in approving and reviewing deviations from policy should be made clear in an agency's BWC policy, along with other methods of quality control. Also, because BWC may be used in correctional facilities, jails, and detention facilities, the Study Group believes that these agency administrators should develop policies governing the use of BWCs, ensuring that a minimum of one supervisor or designated first-responder per shift be equipped with a BWC.

PERF recommends that law enforcement agencies consult with frontline officers, prosecutors, local stakeholders, and the general public when developing policies for a BWC program.[24] Additionally, PERF recommends that each agency develop its own comprehensive written policy to govern BWC use, and that the policies should address the following topics:

- Basic camera usage, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed
- The designated staff member(s) responsible for ensuring cameras are charged and in proper working order, for reporting and documenting problems with cameras, and for reissuing working cameras to avert malfunction claims if critical footage is not captured
- Recording protocols, including when to activate the camera, when to turn it off, and the types of circumstances in which recording is required, allowed, or prohibited
- The process for downloading recorded data from the camera, including who is responsible for downloading, when data must be downloaded, where data will be stored, and how to safeguard against data tampering or deletion
- The method for documenting chain of custody
- The length of time recorded data will be retained by the agency in various circumstances
- The process and policies for accessing and reviewing recorded data, including the persons authorized to access data and the circumstances in which recorded data can be reviewed
- Policies for releasing recorded data to the public, including protocols regarding redactions and responding to public disclosure requests
- Policies requiring that any contracts with a third-party vendor for cloud storage explicitly state that the videos are owned by the police agency and that its use and access are governed by agency policy[25]

[24] Ibid, page 37.
[25] Ibid, pages 37-38.

Additionally, the total cost of ownership, including initial and recurring costs to procure (design, configure, train, implement, administrate, and support) should be carefully analyzed prior to the development of a BWC system. These costs include the following:

- BWC system functionality, features and capabilities required by a law enforcement agency
- Department personnel who will be assigned a BWC device – patrol, canine, foot/bike patrol, SWAT, fugitive unit, criminal investigations
- Number of primary and spare BWC devices that will need to be procured and maintained
- Potential for data center and network infrastructure upgrade
- Space requirement for BWC docking stations and desktop computers
- Need for new desktop computers to connect to BWC docking stations
- Personnel time consumption – Full Time Employee (FTE) hours required to implement and maintain a BWC system including the following:
    - Initial BWC system project management
    - Assignment of BWC system administrators
    - Training hours required for all personnel who interact with the BWC system
    - Total personnel time required to tag every incident and upload data per policy – potential for increase in overtime
    - Quality Assurance to ensure all personnel are utilizing the BWC system per policy
    - Timely and accurate responses to BWC information requests for the following:
        - Criminal justice system discovery process
        - Court orders and subpoenas
        - Freedom of Information Act (FOIA) requests
        - Department administrative requests
        - Redaction of private and sensitive information
        - Time required to save and purge BWC data per policy

A strategic plan that includes all cost factors should be completed in advance of a BWC system procurement decision to ensure all stakeholders have sufficient knowledge regarding the total cost of ownership of a BWC system.

Finally, many professional organizations recommend engaging community stakeholders in the development of BWC policies to help secure support for the program and to increase the perceived legitimacy of the program within the community. This approach also allows law enforcement executives the opportunity to educate stakeholders about the benefits and limitations of a BWC program. Appendix A includes a checklist, developed by the U.S. Bureau of Justice Assistance, to assist law enforcement agency administrators with the process of implementing a BWC program.

Appendix A

U.S. Bureau of Justice Assistance
Law Enforcement BWC Implementation Checklist

Step 1: Learn the Fundamentals		
	1.1. Become familiar with available materials	
		Review *Why Trust this Toolkit* and the "Implementation" toolkit page
		Review the "National Landscape" materials to access the most up-to-date shared resources from across the country
	1.2. Build a basic understanding of body-worn cameras and related considerations	
		Read through the background and essential reading materials on the "Getting Started" toolkit page
		Identify key links, available templates, and other resources available on the "Research" toolkit page
Step 2: Develop a Plan		
	2.1. Define program goals, objectives, and desired outcomes	
		Review materials available on the "Implementation" toolkit page
	2.2. Understand program costs and identify potential funding sources	
		Perform a search on "cost" in the toolkit and read the "Implementation" toolkit page materials about cost
		Seek out information about regional resource and partnership opportunities
	2.3. Identify stakeholders and define a stakeholder engagement/communication plan	
		Engage law enforcement stakeholders and discover/seek champions for each community - Union, patrol, training, supervisors, legal, internal affairs, records, technology, research/planning
		Engage broader justice stakeholders and discover/seek champions for each community - City and county prosecutor, public defender, courts
		Engage external (non-justice) stakeholders and discover any obvious champions - City leadership, privacy/advocacy groups, community leaders, residents, media
	2.4. Build project plan and identify a project sponsor, project manager, and stakeholder leads	
		Review the "Implementation" toolkit page materials and templates related to planning
	2.5. Develop a plan and identify research partner to document process and image of BWC program	
		Implementation process, officer outcomes, departmental outcomes, case outcomes, citizen outcomes
Step 3: Form Working Group(s) and Identify Collaboration Opportunities		
	3.1. Identify any regional opportunities that offer economy of scale, program sponsorship, or governance	
		Seek out whether any existing regional procurements, data storage capabilities, multi-disciplinary working groups, and/or community oversight/relation groups could offer opportunities for reduced cost or overhead

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	3.2. Collaboratively build working groups and decision making process with stakeholders identified in 2.3	
		Define groups, group charters, decision making protocols, and communication guidelines
		Name working group leaders and administrators and assign leads for each stakeholder community
Step 4: Define Policies and Key Protocols		
	4.1. Understand local and state laws affecting video capture, use, and sharing	
		Understand laws or desired protocols around consent, audio/video recording, wiretapping
		Understand laws or desired protocols around public release of information, FOIA, etc.
	4.2. Review available policies	
		Review resources (association policies and sample state/local policies) on the "Policy" toolkit page.
	4.3. Develop written policy for all six policy areas	
		Review "Policy FAQs" on the "Policy" toolkit page and engage BWC Working Group(s) in policy discussions
		Define policy for **(1) Video Capture** *(activation, deactivation, consent)*
		Define policy for **(2) Video Viewing** *(superior, officer, and critical incident review)*
		Define policy for **(3) Video Use** *(evidence, custodial interviews, intelligence)*
		Define policy for **(4) Video Release** *(public release, FOIA inclusion)*
		Define policy for **(5) Video Storage** *(downloading, chain of custody, retention)*
		Define policy for **(6) Process/Data Audits & Controls** *(compliance monitoring, security, violations)*
	4.4. Gain buy-in and support for policies from directly impacted stakeholders	
		Engage key law enforcement units and labor organizations for final policy reviews
		Identify a BWC champion and early adopters within law enforcement unit(s)
Step 5: Define Technology Solution		
	5.1. Define general hardware and software requirements	
		Before reviewing specific products, define desired equipment specifications and features
		Collect key information about data storage requirements such as number of officers, retention guidelines, and state laws on retention and public release
		Decide how existing CAD, RMS, or CMS applications will be involved/impacted
	5.2. Assess current technical capabilities and regional opportunities	
		Understand and document current data storage capabilities, capacity, and scope (across judicial entities and law enforcement units) including time and effort to redact video material
		Understand court and prosecution technology capabilities and capacity
		Make decisions between on premise or cloud storage solution (understanding regional capabilities)

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	5.3. Investigate BWC vendors and products	
		Review information about available commercial market product features and capabilities including redaction procedures
		Contact agencies with similar profile/legal environment to gain information about lessons learned
	5.4. Develop procurement strategy and select solution and vendor (consistent with local procedure)	
		Identify budget availability and limits (don't forget to include full life-cycle costs)
		Review RFPs and associated materials on the "Technology" toolkit page
	5.5. Select BWC hardware	
		Issue RFP and create an associated weighted/ranked scoring model for response evaluation
		Evaluate responses using a peer review process, interview short-listed vendors, and select solution
	5.6. Select data storage solution	
		Issue RFP and create an associated weighted/ranked scoring model for response evaluation
		Evaluate responses using a peer review process, interview short-listed vendors, and select solution
Step 6: Communicate and Educate Stakeholders		
	6.1. Disseminate policy to justice stakeholders	
		Work with law enforcement labor representatives and organizations to share and institute new policies
	6.2. Review and collect available education and training materials	
		Review training materials on the "Training" toolkit page and seek out information from other agencies
	6.3. Develop line officer and supervisor training plan and materials	
	6.4. Develop training plan and materials for prosecutor, court, and public defense personnel	
	6.5. Share information with community/media (e.g. consent and retention guidelines, equipment capabilities, demonstration, etc.)	
Step 7: Execute Phase Rollout/Implementation		
	7.1. Deliver training to line officers	
	7.2. Outline detailed rollout plan and launch messaging campaign	
		Revisit the original plan and the "Implementation" toolkit page materials
	7.3. Implement focused pilot to assess protocols, training, and outcomes	
		Develop phased approach and assess early adopter outcomes and experiences making adjustments to protocols, processes, training, and messages as appropriate
	7.4. Continuously monitor program, outcomes, and compliance	
		Conduct monthly compliance reports, conduct three month post-implementation assessments, and continuously monitor for problems and challenges with periodic reviews of policy and training to incorporate lessons learned