

# BRENNAN CENTER FOR JUSTICE

*at New York University School of Law*

## Accountability

The body camera policies address several aspects of a department's ability to enforce the rules of its policy.

**“Explanation required for failure to record?” and “Consequences for violating policy”:** Regardless of how one views the purpose of a BWC program, it only works if the camera is turned on. Many departments require a written reason when there should be video of an incident but there is not. However, only a few specify consequences for not following their BWC policy. This should not be read to say there are no consequences — police departments have general disciplinary rules for not following any policy — but some policies give more specifics.

**“Audit,” “Can supervisors see video?,” and “Discipline exception for minor misconduct caught on BWC video?”:** Some police officers have expressed concern that wearing body cameras will be like having their supervisors watching over their shoulder all day, looking for minor misconduct. Accordingly, certain policies, especially during the pilot phase, have an explicit discipline exemption for minor misconduct caught by BWCs. Others limit the situations when a supervisor can view the video. However, there is some tension between officers' concerns and the need for supervisors to ensure that officers are using the BWCs appropriately and to monitor their conduct more generally to catch patterns of problematic behavior. Some departments require supervisors to conduct random reviews of the videos in service to these goals. Others compromise by having auditors in a separate unit review the videos to ensure the functioning of the program.

**“Can Officer View Video Before Making Report or Statement?”:** There is another, more controversial, viewing question that gets to the heart of the debate over the purpose of the cameras: Should officers be allowed to view videos before writing their reports? What about in a use-of-force situation, such as when an officer kills someone in the course of duty?

Many departments allow officers to view the video before making a report or statement in any circumstance, with the goal of the most accurate report possible. Moreover, the ability to view the footage can make police officers more comfortable wearing the cameras. Others suggest that this goal would be better served by writing a report first. From a police accountability perspective, in a case where an officer did use force inappropriately or where there is a discrepancy between accounts, permitting an officer to view the video before making a statement might be problematic since it would allow him to tailor his statement to fit the evidence. Some policies allow viewing in all cases, some in none, and some separate out routine reports from serious incidents, allowing pre-report viewing in the former but not the latter.

City	Explanation Required for Failure to Record?	Consequences for Violating Policy	Audit	Can Supervisors See Video?	Discipline Exemption for Minor Misconduct Caught on BWC Video?	Can Officer View Video Before Making Report or Statement?
<a href="#"><u>Atlanta (pilot)</u></a>	Not specified	Not specified	Not specified	Not specified	Not specified	Not specified
<a href="#"><u>Austin</u></a>	Not specified	Not specified	Not specified	Supervisors can view to investigate a specific act of employee conduct.	Not specified	Yes for reports, not specified for statements.
<a href="#"><u>Baltimore (pilot)</u></a>	Must document early termination of recording.	Not specified	Not specified	Yes, to review a subordinate’s performance “for the purpose of conducting an investigation; monitoring professional conduct; training;” or “when deemed to be in the best interest of the public, the BPD, or the officer.” Supervisors must view the video if an officer is injured, there is a use of force or a fatality, or the officer has reason to believe	No exemption, but recordings cannot be routinely or randomly viewed for the purpose of finding policy violations.	Yes for reports and administrative investigations. If an officer is involved in a use of force or in-custody death or is the subject of a criminal investigation, the officer can view before completing a report or being interviewed as long as 1) prosecutor has declined to prosecute or “the member has been compelled to make a statement” and been advised of his or her rights, and 2) the recording is viewed at a location approved by internal affairs.

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				the event may result in a complaint.		
<a href="#"><u>Charlotte, NC</u></a>	Yes	Any violation of the policy is considered a violation of a rule of conduct and will be investigated.	Supervisors and Agency Compliance Administrators conduct random reviews of videos for compliance. Lieutenants view to document best practices and compliance.	Yes, Sergeants can view video for all officers in their division. They audit selected video for officer performance and compliance with policy. Lieutenants and above, Internal Affairs, and Police Attorneys can view all files.	No	Yes
<a href="#"><u>Chicago (pilot)</u></a>	Yes	Not specified	Random review by Watch Operations Lieutenants.	Yes, at any time.	Yes	Yes
<a href="#"><u>Dallas</u></a>	Yes	Not specified	Supervisors are responsible for ensuring BWCs are used in accordance with policy; process is not specified.	Yes, explicitly allowed to resolve complaints, as well as if an officer states the video may contain evidence or be useful for training purposes. No limits specified on viewing.	Minor infractions should be handled as a training issue.	Yes

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<a href="#">Denver</a>	Generally no, but if a supervisor must investigate incident and there is no video, supervisors must document why.	1 <sup>st</sup> violation in 12-month period: written reprimand; 2 <sup>nd</sup> : 1 fined day; 3 <sup>rd</sup> : formal disciplinary case; “purposeful, flagrant, or repeated violations”: “more severe disciplinary action.”	Audits required of monthly usage, video storage, viewing, and others as requested; method not specified.	Yes, for reports on use of force, injury while in custody or prior to arrest, and forced entry; to investigate specific acts of officer conduct; if officer is on Performance Improvement Plan; and for “commending and counseling officers.” Otherwise requires permission of commander.	No	Yes for reports in general. After use of force incident, requires permission from investigator.
<a href="#">Ferguson</a>	Not specified	“Failing to record incidents or any early termination of any recording may cast doubt on the actions of the officer.”	Not specified	Yes, commanders watch recordings that officers say contain confrontations and decide whether to retain for evidence or a potential complaint.	Not specified	Not specified

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<a href="#">Las Vegas</a>	Yes, officer must document reason for failure to activate BWC.	Not specified	The Body Camera Detail is responsible for ensuring that audits are conducted, but method is not specified.	No direct access to video once uploaded. Can review to resolve a citizen complaint on scene or in presence of involved officer(s) “following the application of reportable force (except use of deadly force).” Can request video for internal investigations or addressing a documented performance issue.	No exemption, but Internal Affairs can only access recordings pursuant to an official complaint, so no one can view to look for policy violations.	Yes
<a href="#">Los Angeles</a>	Yes	Unauthorized use or release of footage and copying, erasing, or modifying recordings is serious misconduct subject to disciplinary	No regular random review. The Audit Division can decide to conduct an audit or inspection.	Yes, supervisors are required to review relevant recordings before submitting any administrative reports. In Use of Force incidents, supervisors are required to take possession of the camera, but not view without investigator	No	Officers are required to view recordings before making reports or statements. When there is a Use of Force, officer may not view footage until authorized by investigator, but shall review it before being interviewed.

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		actions.		authorization.		
<a href="#"><u>Mesa, AZ (pilot)</u></a>	Not specified	Not specified	Evaluation done at end of year-long pilot.	During pilot period, supervisors conducted random reviews of recordings.	Not specified	Yes, for reports, officer involved shootings, and internal investigations.
<a href="#"><u>Minneapolis (pilot)</u></a>	Not specified	Not specified	Supervisors are responsible for ensuring BWCs are used in accordance with policy; process is not specified.	Supervisors shall view videos as part of force reviews, and shall respond “to the scene of an incident that requires immediate retrieval of recordings” and monitor downloading.	Videos are not to be used to initiate an investigation against an officer, but can be accessed as evidence for a complaint, or when misconduct is discovered during other review of the video.	Yes

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<a href="#"><u>New Orleans</u></a>	Must document early termination of recording.	Not specified	Random review by supervisors for proper use and categorization.	Yes, for “training, performance review, critique, early intervention inquiries, civil claims, administrative inquiry, or other articulable reason.”	No	Yes
<a href="#"><u>New York (pilot)</u></a>	Yes, and report to desk officer.	Not specified	A desk officer must review every instance where an incident that should have been recorded was not and prepare a written report.	Not specified	Not specified	Yes, officer must request to review video before giving testimony or being interviewed in any criminal, civil, or administrative case.
<a href="#"><u>Oakland, CA</u></a>	Yes, officers must document and explain any delayed or missing recording.	Not specified	Random review by supervisors. Auditors may view to investigate misconduct or evaluate performance.	Yes, permitted in general and required to do random reviews and to investigate use of force. Supervisors also should determine if non-activation was reasonable.	Supervisors have discretion to use non-disciplinary correction for minor misconduct; violation must be	Yes for reports. In Level 1 use of force cases or when being investigated for a criminal or administrative offense, officers must be interviewed before viewing.

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					documented.	
<a href="#"><u>Orlando</u></a>	Not specified	Not specified	Not specified	Not specified, but it is prohibited to use the system for “[m]onitoring officer performance through random review.”	Not specified	Yes
<a href="#"><u>Phoenix, AZ (pilot)</u></a>	Not specified	Not specified	The Precinct Inspections Lieutenant will randomly inspect one video from each participating squad each month.	Yes, with no limitations specified. Department can also review “video at any time to ensure compliance with policy, to investigate personnel complaints, for training purposes, etc.”	Not specified	Yes for reports. After a serious incident, officers cannot view video until investigator arrives and it can be done in conjunction with <a href="#"><u>serious incident protocols</u></a> (which does not mention body camera video but does require separation of involved employees to prevent discussion).
<a href="#"><u>Rialto, CA</u></a>	Not specified	Not specified	System Administrator is in charge of evaluation; process is not specified.	Only as directed by the Chief of Police. No reviewing to search for violations of department policy not related to a specific complaint or incident.	No	Yes



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<a href="#"><u>San Diego</u></a>	Not specified	Not specified	Supervisors conduct monthly inspections, including checking videos against reports for two random dates per month. Supervisor reports are reviewed by Lieutenants and Captains.	Yes, to resolve complaints, when there was a use of force, or for other investigations and listed administrative purposes.	No, but recordings cannot be reviewed for general performance reviews or to discover policy violations.	Yes. Report should note any discrepancies between officer's memory and the video.
<a href="#"><u>San Jose (pilot)</u></a>	Yes	Not specified	Supervisors are responsible for compliance.	Yes, for specific complaints or to ensure that the equipment is functioning and officers are following policy.	Cannot review videos to look for policy violations. Supervisors may resolve minor violations with training.	Yes for reports. After an officer-involved incident, an officer must give a statement before viewing footage.
<a href="#"><u>Seattle (pilot)</u></a>	Yes	No discipline for not recording a particular	Videos can be viewed for auditing, but details are not	Not specified	Yes	Not specified. Listed permitted viewing reasons include criminal investigations and citizen complaints, but it is not

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		<p>incident. However, officers may be removed from participation in the pilot for failure to record.</p>	<p>specified.</p>			<p>specified which officer can view which video or how this applies to daily reports or statements after an officer-involved incident.</p>
<p><a href="#"><u>Tampa</u></a></p>	<p>Yes</p>	<p>Failure to record, store recordings, or misuse of the system “may result in disciplinary action.” In addition, “[i]ntentionally turning off the system in anticipation of a use of force incident or other confrontational citizen contact is absolutely</p>	<p>Professional Standards Quality Assurance will conduct periodic checks on recorded video.</p>	<p>Not specified</p>	<p>Not specified</p>	<p>Yes for reports. Not specified for statements.</p>

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		forbidden, and will result in discipline up to and including termination.”				
<a href="#"><u>Tucson</u></a>	Not specified	Not specified	Supervisors “shall conduct periodic audits” of equipment and policy compliance; method not specified.	Not specified	Not specified	Yes for reports. Not specified for statements, though a procedure is outlined for supervisors to stop and secure the recording after serious incidents.
<a href="#"><u>Washington, D.C.</u></a>	Yes	Not specified	BWC Unit Coordinators will do periodic reviews to make sure officers are recording mandatory events. DC law requires audits of compliance, privacy protection, security, and the impact of the program on	Officers must tag videos for supervisory review if: an officer is injured; there is a use of force; an officer records or arrests a person as a result of First Amendment activity; an incident results in a fatality; or the event may result in a complaint or be of use in a future court proceeding.	When viewing recordings officers shall notify officials if they see a policy violation. However, no random review is allowed for purpose of	Yes, for reports or when under a criminal or administrative investigation. In a criminal investigation or after a serious use of force, officer must have a letter declining to prosecute from the prosecuting authority and must view the recording via the Internal Affairs Division.

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			reports, complaints, and uses of force.	Supervisors must view these within 24 hours.	finding policy violations.	

**Model Policies**

Org	Explanation required for failure to record?	Consequences for Violating Policy	Audit	Can Supervisors See Video?	Discipline Exemption for Minor Misconduct	Can Officer View Video Before Making Report or Statement?
<a href="#"><u>ACLU Model Statute</u></a>	Not specified	For failure to record or interference with video: discipline against the officer and evidentiary presumption in favor of criminal defendant or civil plaintiffs suing based on police misconduct.	Not specified	Superior officer prohibited from viewing footage not marked for retention absent a specific allegation of misconduct.	Not specified	Review of video prohibited before completing initial reports, statements, and interviews.
<a href="#"><u>International Association of Chiefs of Police</u></a>	Yes	Not specified	Random review by supervisors.	Yes, randomly review at least monthly to ensure officers are using devices correctly.	Not specified	Yes for reports in general. If an officer is suspected of wrongdoing or involved in a use of force, the department can limit or restrict viewing.
<a href="#"><u>Police Executive Research Forum</u></a>	Yes	Not specified	Random review by auditors.	Only when investigating specific complaints or patterns of misconduct, during an officer's probationary period, or to identify training videos.	Not specified	Yes