

# Body-Worn Camera (BWC) Update

October 2015

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- Law enforcement agencies across the country have continued to adopt body-worn cameras at a rapid pace. Today, 16 of the country's 20 largest police departments<sup>1</sup> have begun to outfit their officers with cameras, and "one expert has estimated that between 4,000 and 6,000 [of the country's nearly 18,000] law enforcement agencies are planning to adopt or have already adopted BWCs."<sup>1</sup>
- So far this year, at least "46 states [have] introduced legislation or resolutions addressing body cameras."<sup>2</sup> New laws related to BWCs have been passed in several states, including California, Connecticut, Illinois, Texas, and South Carolina. This May, the ACLU published a model bill for state legislatures on body-worn cameras.<sup>3</sup>
- In April, the DOJ's Bureau of Justice Assistance released its National Body-Worn Camera Toolkit<sup>4</sup> – an online repository of BWC resources primarily aimed at law enforcement agencies looking to implement new BWC programs. The site republishes department BWC policies from across the country, research reports, and advocacy papers, among other resources.
- In May, a national coalition of 34 civil rights, privacy, and media groups released a set of Civil Rights Principles on Body Worn Cameras.<sup>5</sup> While noting that "police-operated cameras are no substitute for broader reforms of policing practices," the groups offer five principles to ensure that cameras will help to advance civil rights.
- In September, the DOJ's Office of Justice Programs awarded more than \$23 million in grants, spread across 73 departments, to purchase and implement body-worn cameras.<sup>6</sup> The largest grants, of \$1 million each, were awarded to six departments: Los Angeles, District of Columbia, Miami-Dade, Chicago, Detroit and San Antonio.
- Two highly contested BWC policy issues are:
  - **Who can access body camera footage and on what terms?**

One of the primary rationales for the adoption of BWCs is to provide transparency and accountability in law enforcement practices. However, in many jurisdictions, footage is largely withheld from the public, including those who are the subject of recordings. In California, for example, departments rely on a broad investigation exemption in the state's public records law to withhold footage.

Public access to footage must also be balanced with concerns about personal privacy. In Washington, the

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<sup>1</sup> The largest departments by full-time, sworn personnel count that have adopted or are in the process of adopting BWCs are: New York, Chicago, Los Angeles, Philadelphia, Houston, Washington (D.C.), Dallas, Phoenix, Baltimore, Miami-Dade, Las Vegas, Detroit, Memphis, Suffolk County (NY), Milwaukee, San Antonio (CA), Nassau County (NY), San Francisco, Boston, and Honolulu.

state's public records law has pushed Seattle PD to establish a YouTube channel to make footage available. But the footage is heavily redacted: the entire screen is heavily blurred, and the audio is muted – bringing into question how departments should appropriately balance legitimate privacy and transparency interests.

- **Whether officers are permitted to review footage of incidents before completing their initial incident reports or statements.**

Jay Stanley of the ACLU argues that officers should not be permitted to review footage before submitting their initial incident reports or statements for a number of reasons. For one, he believes that such a practice would enable lying, by allowing officers to conform their statements to what appears in the video.<sup>7</sup> He also believes that it “undermines the legitimacy of investigations,” by giving officers a special privilege that other witnesses don't have, making officer statements appear more truthful than those of other witnesses. Jim Bueermann of the Police Foundation disagrees and believes that “watching body camera footage should reduce dishonesty in incident reports. When the footage reveals unambiguous misconduct, officers would be foolish to file dishonest reports.”<sup>8</sup>

Today, most departments across the country do allow officers to review footage before completing their initial reports. But Oakland PD has a unique policy in place: for “Level 1 Use of Force” (*e.g.*, an officer involved shooting), officers may view footage only after completing their initial reports. After reviewing footage, officers may offer amendatory statements, to explain or reconcile any differences between their statement and the footage. This approach balances two competing needs: it preserves an officer's independent recollection of an incident, while maintaining the overall accuracy of reports with the help of footage review.

## General Concerns and Unintended Consequences of Body-Worn Cameras

### Surveillance

More surveillance could undermine community trust or police-community relations.

### Technical Connections

BWCs could drive other technological tools and features, like facial recognition, heat sensors, real-time database linkages, etc. Could BWCs usher in new technologies that further affect police-community relations?

### Evidence

Footage can be interrogated, and it only reveals part of what happens from a particular angle, but the belief in video as objective third-party truth is strong. How will video be used as evidence?

### Cost

BWCs and data management are expensive. What outcomes will make the cost worthwhile?  
How do we ensure that vendor contracts don't hinder responsible decision making?

### Privacy

BWCs will capture the activities of people who lack private spaces, and they might be used in hospitals, schools, and private homes. What are the privacy interests and challenges of BWCs in these spaces? Who determines acceptable trade-offs?

### Accountability

Accountability isn't produced by technology; it's achieved by people and systems using tools like technology as part of their bureaucratic processes. What other structures need to put in place for these tools to be used for accountability?

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<sup>1</sup> Bureau of Justice Assistance, U.S. Department of Justice, "National Landscape - BJA National Body-Worn Camera Toolkit," <https://www.bja.gov/bwc/Topics-NationalLandscape.html>

<sup>2</sup> Rebecca Brown, "Nearly all states considered police body cameras in 2015, few enacted laws," Fiscal Note (Aug. 6, 2015), <https://www.fiscalnote.com/2015/08/06/nearly-all-states-considered-police-body-cameras-in-2015-few-enacted-laws>

<sup>3</sup> Chad Marlow, "A Plug-and-Play Model Policy for Police Body Cameras," ACLU (May 21, 2015), <https://www.aclu.org/blog/speak-freely/plugin-and-play-model-policy-police-body-cameras>

<sup>4</sup> Bureau of Justice Assistance, U.S. Department of Justice, "National Body-Worn Camera Toolkit," <https://www.bja.gov/bwc>

<sup>5</sup> The Leadership Conference on Civil and Human Rights, "Civil Rights, Privacy, and Media Rights Groups Release Principles for Law Enforcement Body Worn Cameras" (May 15, 2015), <http://www.civilrights.org/press/2015/body-camera-principles.html>

<sup>6</sup> U.D. Department of Justice, "Justice Department Awards over \$23 Million in Funding for Body Worn Camera Pilot Program to Support Law Enforcement Agencies in 32 States" (Sep. 21, 2015), <http://www.justice.gov/opa/pr/justice-department-awards-over-23-million-funding-body-worn-camera-pilot-program-support-law>

<sup>7</sup> Jay Stanley & Peter Bibring, "Should Officers Be Permitted to View Body Camera Footage Before Writing Their Reports?," Free Future (Jan. 13, 2015), <https://www.aclu.org/blog/free-future/should-officers-be-permitted-view-body-camera-footage-writing-their-reports>

<sup>8</sup> Dan Simon & Jim Bueermann, "Op-Ed: What's the right police body camera policy?," Los Angeles Times (Aug. 24, 2015), <http://www.latimes.com/opinion/op-ed/la-oe-simonandbueerman-police-body-cam-20150824-story.html>