

Body-Worn Cameras

Concepts and Issues Paper

April 2014

I. INTRODUCTION

A. Purpose of the Document

This paper is designed to accompany the *Model Policy on Body-Worn Cameras* published by the IACP National Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide a greater understanding of the developmental philosophy and implementation requirements for the model policy. This material will be of value to law enforcement executives in their efforts to tailor the model to the requirements and circumstances of their communities and their law enforcement agencies.

B. Background

Video recorders and digital cameras have been useful tools in the law enforcement profession for some years. Advances in technology have improved camera equipment and enhanced the development of the body-worn camera (BWC). While many police agencies have taken advantage of these advancements even more have overlooked or are unaware of their usefulness, or have chosen not to deploy them.

The concept of recording police-citizen encounters for law enforcement use first developed with the implementation of in-car cameras. Initially, these devices were installed to document interactions with individuals suspected of driving under the influence, with the recordings providing supporting evidence needed for conviction.¹ Over time, agencies discovered that in-car cameras had numerous additional benefits, such as “increased officer safety; documentation of traffic violations, citizen behavior, and other events; reduced court time and prosecutor burden; video evidence for use in internal investigations; reduced frivolous lawsuits; and increased likelihood of successful prosecution.”² All of these advantages also apply to the BWC, as will be discussed further in this document.

C. Uses for Body-Worn Cameras

Many police officers now use BWCs to document interactions with victims, witnesses, and others during police-citizen encounters, at crime and incident scenes, and during traffic stops. In many instances police agencies have found the BWC useful for officers in the favorable resolution of both administrative and

criminal complaints and as a defense resource in cases of civil liability. Officers using these recorders have a clearly documented, firsthand, completely objective account of what was said during an incident in question. The utilization of BWC video and audio recordings at trial can provide the court with the actual statements of officers, suspects, and others that might not otherwise be admissible in court based upon hearsay concerns, or might not get sufficient consideration if there are conflicting memories of the statements. In addition, recordings made at crime and incident scenes are a tangible benefit of BWCs and can provide investigators, prosecutors, and juries with far more detailed, accurate, and compelling evidence.

The use of BWCs gives officers, their agencies, administrators, and employing jurisdictions an additional means of defending themselves in civil litigation. This is extremely useful in resolving citizen complaints and potential civil actions. During many police-citizen contacts there are no objective witnesses to corroborate either allegations of misfeasance or explanations of the interaction and so many jurisdictions are more willing to resolve these matters by paying minor damages rather than spend time and money in litigation. However, an officer utilizing a BWC typically has all the comments and actions of both parties on record and thus has a built-in “impartial witness” on his or her person—a factor that has often resulted in civil suits before they would otherwise have been formally lodged. In one study of in-car camera recordings, “in cases where video evidence was available, the officer was exonerated 93% of the time; in 5% of the cases the complaint was sustained.”³ In addition, the same study showed that in a large number of instances, the individual decided against filing a complaint once he or she was notified that there was a video recording of the incident.⁴

The BWC has also proven to be effective in helping police agencies evaluate police officer performance in a more complete and fair manner. Supervisory personnel are able to review officer conduct and performance on a random or systematic basis by reviewing BWC recordings. This allows the supervisor to ensure that the BWC is being used in accordance with department policy and to identify any areas in which additional officer training, guidance, or discipline may be required.

Introduction and subsequent broad acceptance of in-car mobile video recording equipment has played a significant role in proving the effectiveness and utility of recording equipment in

law enforcement. However, vehicle-mounted video recorders are limited in their field of vision and are not of assistance to officers on foot patrol or who are engaged in investigations or interactions beyond transmission range of their vehicles. The BWC is a convenient and relatively inexpensive means of more fully documenting contacts and interactions with citizens, suspects, and others in a wide variety of situations. It gives them a reliable and compact tool to systematically and automatically record their field observations and encounters.

However, in most cases BWCs should not be viewed as a low-cost alternative to in-car video recorders, but rather a complementary technology. In-car camera systems can provide important information that is currently unavailable with BWCs. For instance, most in-car camera systems can be linked to vehicle systems and record vehicle location, speed, application of brakes; indicate activation of lights and siren; and capture other data that could be vitally important if an accident or other unanticipated event should occur. For example, recording of an officer's activity from the patrol car often includes accidents that occur during a traffic stop that would not necessarily be seen by the BWC while the officer interacts with the motorist. Most in-car systems also provide the option of installing a secondary camera to record any activity in the back seat of the patrol car.

Police officers are aware that contact with citizens during routine traffic stops or in other types of police-public interactions can result in confrontational situations. It has been the experience of many officers who have been in potentially hostile or confrontational situations and who are equipped with audio or video recording devices that inform the subject that he or she is being recorded by one or both of these means often serves to de-escalate or defuse the situation. The subject realizes in these situations that his or her statements cannot be denied or refuted later because there is a recording documenting every aspect of the encounter. The same concept can be applied to officer behavior. In a one-year study conducted by the Rialto, California, Police Department, citizen complaints of officer misconduct fell by 87.5 percent for officers using BWCs, while uses of force by such officers fell by 59 percent.⁵

Finally, the availability of video and audio recordings as evidence is critically important and can be the key to successful prosecution. For example, there is often nothing more compelling to a judge or jury than actually seeing the actions and hearing the words uttered by a suspect, including statements of hostility and anger.

Throughout the United States, courts are backlogged with cases waiting to be heard and officers who are spending time in court that could be used more productively in enforcement activities. The availability of audio and/or video recorded evidence increases the ability of prosecutors to obtain guilty verdicts more easily and quickly at trial or to more effectively plea-bargain cases, avoiding lengthy trial proceedings. In jurisdictions that employ audio and visual evidence, officers normally submit their recordings along with a written report, which is later reviewed by the prosecuting attorney. When the accused and his or her attorney are confronted with this evidence, guilty pleas are more often obtained without the need for a trial or the pressure to accept a plea to lesser charges. This substantially reduces the amount of time an officer must spend in court and utilizes prosecutorial and judicial resources more efficiently.

II. ADMINISTRATIVE RESTRICTIONS ON BODY-WORN CAMERA RECORDINGS

The usefulness of BWCs has been clearly demonstrated; however, their utility is realized only when they are recording. Agency policy should require that officers activate their BWC whenever they make contact with a citizen in the course of conducting official police business. Once activated, the entire conversation should be recorded without interruption. If such interruption occurs, the officer should be required to document the reason for the interruption in a report. If an officer feels it is necessary to stop recording (e.g., while speaking to another officer, or a confidential informant) within constraints of policy, he or she may also be permitted to verbally indicate his or her intent to stop the recording before stopping the device, and upon reactivation, state that he or she has restarted the recording. This will help avoid accusations of editing the recording after the fact.

Some agencies issue BWCs to select officers rather than to all patrol officers. This approach can be used as part of an effort to more closely monitor individual officers who are suspected of having difficulty in certain areas of operation. Or it may simply be that a department cannot afford to provide cameras for all personnel. However, issuing cameras for the sole purpose of monitoring specific employees can have several negative consequences. For example, officers who know they are under close scrutiny may tend to modify their behavior only while the BWC is deployed. Selective use of BWCs can also be stigmatizing, since the officer's colleagues may interpret that he or she is being singled out as a potential problem. This can have negative short- and long-term consequences for the subject officer in dealing effectively and professionally thereafter with fellow officers. Such selective use can also be a considerable impediment to creating "buy in" from employees regarding the use and utility of video recorders. If officers regard these devices primarily as monitors for identifying problem behavior, they will be less likely to use them for the purpose they are intended. Therefore, it is strongly recommended that agencies using BWCs for patrol personnel should provide them to all such officers for use in accordance with agency policy.

In spite of their utility, the BWCs can be used for improper purposes that are counter to or inconsistent with the law enforcement mission, or in ways that are contrary to federal, state, or local law. For example, BWCs are not meant to serve personal uses whether on or off duty unless permission is granted by the department. This is a simple matter of concern over private use of governmental equipment in most cases, but it can also involve concerns over the potential of mixing personal recordings with those involving official police business. In the latter circumstances, the evidentiary integrity of recordings could be called into question, as could issues surrounding the chain of custody of evidence contained on devices that may have been involved in personal use. Personal use of BWC equipment and comingling of recordings raise concerns about inappropriate viewing, sharing, and release of videos and associated issues of invasion of privacy and other similar types of liability.

In general, BWCs should be used for investigative purposes or field use only and should not be activated in administrative settings. Another potential for improper use that should be prohibited by the police department is surreptitious recording of communications with or between any other officers without the explicit permission of the agency chief executive or his or her designee. The purposeful activation of BWCs during personal

conversations involving counseling, guidance sessions, or personnel evaluations should be prohibited unless all parties present agree to be recorded. It is important to note the dysfunction and disharmony created by surreptitious recordings in a police work environment. A cloud of suspicion and distrust exists where officers and their supervisors believe that they cannot enter into candid personal discussions without the risk of their statements being recorded and used inappropriately or harmfully against them or others. The result can undermine both the willingness of supervisors and administrators to provide candid guidance about officer performance, and the willingness of employees to provide open, truthful information.

Similarly, officers' conversations on the radio and among each other at a scene will frequently occur. Officers should inform other officers or emergency responders arriving on a scene when their recorder is active to help avoid recording inappropriate or immaterial statements. In addition, the BWC should not be activated when the officer is on break or otherwise engaged in personal activities or when the officer is in a location where there is a reasonable expectation of privacy, such as a restroom or locker room. For safety and confidentiality reasons, encounters with undercover officers or confidential informants should not be recorded.

The policy should clearly state that BWC activation is limited to situations involving official police activities authorized by law or court order, including consensual citizen encounters and investigation of law violations. Failure to follow this policy could subject an officer to disciplinary action up to and including dismissal.

A. Legal Restrictions on Recordings

As noted in the foregoing section, the availability and use of BWCs can create the basis for legal challenges lodged by suspects or other persons. This policy applies only to the use of BWCs attached to an officer's person, and any use of the camera in a surreptitious manner by removing it and using it to monitor a situation remotely should be strictly controlled. Such surreptitious recording has constitutional implications and may be governed by state and federal wiretap laws not applicable to or addressed by this policy. It is important for officers who are equipped with BWCs to have an understanding of the restrictions on surreptitious recording of persons and to make sure their use of the BWCs is consistent with the restrictions.

This policy is intended to cover use of BWCs in situations where a person has either a reduced or no expectation of privacy and that occurs in a place where the officer is legally entitled to be present. Whether there is a reasonable expectation of privacy in a given situation is determined using a traditional Fourth Amendment analysis involving whether the person in question exhibited "an actual or subjective expectation of privacy" in the communication and whether that expectation is "one that society is prepared to recognize as reasonable." The landmark U.S. Supreme Court decision in *Katz v. United States*⁶ that outlined these principles also made it clear that a reasonable expectation of privacy is not determined so much by the place in which the individual is located (e.g., a telephone booth, business office, or taxicab) but by what a person "seeks to preserve as private even in an area accessible to the public." The decision emphasized that the Fourth Amendment protects people, not places.

When an individual is in custody, whether in a patrol car, interrogation room, or lockup, for example, there is generally no reasonable expectation of privacy, unless the suspect is speaking

in confidence with an attorney, clergyman or other individual with privilege of communication. Recording may be done in these settings unless officers have given the individual a sign or indication that the location is private, that their conversation is not being recorded, and/or if the individual is speaking with someone with privilege. Individuals who are in these settings, but who are not in custody may refuse to be recorded.

In a residence, there is a heightened degree and expectation of privacy. Officers should normally inform the resident that he or she is being recorded. If the resident wishes not to be recorded, this request should be documented by recording the request before the device is turned off. However, if an officer may enter a dwelling without the consent of the resident, such as when serving a warrant, or when the officer is there based on an exception to the warrant requirement, recordings should be made of the incident until its conclusion. As a general rule, if the officer must legally ask permission to enter a premises, he or she should also ask if the resident will allow recording.

Notwithstanding any legal limitations, as a courtesy and so as not to create the impression of trickery or subterfuge, some police agencies require their officers to inform all persons who are being recorded by BWCs. This includes all motor vehicle stops and related citizen contacts where official police functions are being pursued.

Recording arrests and the events leading up to an arrest is an excellent means of documenting the circumstances establishing probable cause for arrest. In circumstances where *Miranda* rights are appropriate, use of BWCs is a good way to demonstrate the clear and accurate reading of *Miranda* rights to the suspect—and an invocation or waiver of those rights by the suspect. If the suspect invokes his or her rights to silence and representation by an attorney, recording is still permissible. Officers should take great care not to direct questions to the suspect regarding involvement in any crime. However, any spontaneous statements made by the suspect to officers would likely be admissible as evidence so long as the statements or comments were not elicited by officer questioning.

Finally, there may be times when officers should be given a degree of discretion to discontinue recording in sensitive situations as long as they record the reason for deactivating the recorded. For instance, when talking to a sexual assault victim, or on the scene of a particularly violent crime or accident scene. This is especially true if the recording may be subject to Freedom of Information Act requests. Under such circumstances, recordings could be posted on media sites that could cause unnecessary distress for families and relatives. Whenever reasonably possible, officers should also avoid recording children who are not involved in an incident as well as innocent bystanders.

B. Procedures for Using Body-Worn Cameras

BWC equipment is intended primarily for the use of uniformed officers although plainclothes officers may be issued such equipment. Officers who are assigned such equipment should be required to use it in accordance with agency policy unless otherwise directed or authorized by supervisory personnel.

Personnel who are authorized to use BWCs should use only equipment provided by the department. The chances of loss, destruction, or recording over materials belonging to official police investigations may be greater when these devices are used for both official and personal business.

BWC equipment should be the responsibility of individual officers assigned such equipment and should be used with rea-

sonable care to ensure proper functioning. Equipment malfunctions should be brought to the attention of the officer's supervisor as soon as possible so that a replacement unit may be obtained. Officers should test this equipment prior to each shift in order to verify that it is functioning properly and should notify their supervisor if any problems are detected.

Officers should never erase or in any manner alter recordings. The agency must maintain strict managerial control over all devices and recorded content so that it can ensure the integrity of recordings made by officers. Failure of officers to assist in this effort or the agency to take managerial control over recordings can risk the credibility of the program and threaten its continuation as a source of credible information and evidence.

Where officers have recorded unusual and/or operational situations or incidents that may have potential value in training, they should inform their supervisor so that the recordings can be identified and evaluated. Unusual or even routine events recorded on tape can be used in basic academy and in-service training to reinforce appropriate behavior and procedures, to demonstrate inappropriate practices and procedures, to enhance interpersonal skills and officer safety habits, and to augment the instructional routines of field training officers and supervisory personnel.

Officers should also note in their incident, arrest, or related reports when recordings were made during the events in question. However, BWC recordings should not serve as a replacement for written reports.

C. Recording Control and Management

Reference has been made previously to the need for control and management of BWC recordings to ensure the integrity of the recordings, secure the chain of custody where information of evidentiary value is obtained, and use recordings to their fullest advantage for training and other purposes. In order to accomplish these ends, officers and their supervisors should adhere to a number of procedural controls and requirements.

At the end of each shift, all files from the BWC should be securely downloaded. In order for a recording to be admissible in court, the officer must be able to authenticate the recording as a true and accurate depiction of the events in question. In an effort to prevent the recording from becoming evidence, the defense may question the chain of custody. Therefore, departments may wish to utilize secure downloading software or programs, or have an individual other than the officer be responsible for downloading the data in an effort to minimize any chain-of-custody issues.⁷

Each file should contain identifying information, such as the date, time, BWC device used, and assigned officer. These recordings should be stored in a secure manner and are the exclusive property of the department. Accessing, copying, or releasing files for non-criminal justice purposes should be strictly prohibited.

Many states have laws specifying how long evidence and other records must be maintained. Recordings should be maintained in a secure manner for the period of time required by state law or as otherwise designated by the law enforcement agency. Retention schedules for recordings should take into consideration the possibility of a civilian complaint against an officer sometime after the encounter. Recordings in these situations can prove invaluable in resolution of the complaint. However, storage costs can become prohibitive, so agencies must balance the need for retaining unspecified recordings with the desire to have this information available.

According to the *Model Policy*, supervisory officers should ensure that officers equipped with BWCs use them in accordance with agency policy and procedures. One means of accomplishing this end is for first-line supervisors to review recordings of officers on their shift. This can be done on a random selection basis or on a systematic basis and should be performed routinely at least monthly. Recordings submitted by specific officers may need to be reviewed more often or more closely should there be indications that the officer's performance is substandard, if there have been internal or external complaints lodged against the officer, or if there is reason to believe that the officer may need additional guidance or training in certain operational areas.

Officers assigned a BWC should have access, and be encouraged to review their own recordings in order to assess their performance and potentially correct unsafe or questionable behaviors. The question of whether an officer should be allowed to review recordings before writing a report, especially following an officer-involved shooting or accident, is a matter that should be examined closely by administrators.

Inevitably, recordings will occur in circumstances where recording is not appropriate. By way of examples, an officer may forget to stop a recording when entering a victim's residence after being asked not to record inside, or may accidentally activate it in the locker room. In these situations, the officer should be afforded an opportunity to request that these portions of the recording be erased. Requests for deletions should be made in writing and must be submitted to the chief executive officer or his or her designee for approval. All requests should be maintained for historical reference.

Endnotes

¹ *The Impact of Video Evidence on Modern Policing*, IACP pg. 5, http://www.cops.usdoj.gov/Publications/video_evidence.pdf (accessed February 12, 2014).

² *Ibid.*, pg. 11.

³ *Ibid.* pg. 15.

⁴ *Ibid.*

⁵ As cited in Mesa Arizona Police, *End of Program Evaluation and Recommendations: On-Officer Body Camera System*, Axon Flex Program Evaluation and Recommendations, December 2, 2013, pg. 2.

⁶ A touchstone case in this matter is that of *Katz v. United States*, 389 U.S. 347 (1967).

⁷ For additional discussion of the use of videotape evidence, please see Jonathan Hak, "Forensic Video Analysis and the Law" appendix v in *The Impact of Video Evidence on Modern Policing*.

Every effort has been made by the IACP National Law Enforcement Policy Center staff and advisory board to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors.

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