



KEY TRENDS IN BODY-WORN CAMERA POLICY AND PRACTICE: A POLICY ANALYSIS OF US DEPARTMENT OF JUSTICE- FUNDED LAW ENFORCEMENT AGENCIES

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Executive Summary

The CNA Corporation, Arizona State University (ASU), and Justice and Security Strategies (JSS) provide training and technical assistance (TTA) to law enforcement agencies who have received funding for body-worn cameras (BWCs) through the US Department of Justice, Bureau of Justice Assistance (BJA) BWC Policy and Implementation Program (PIP). Administrative policy review is a central feature of TTA. The TTA team has developed a BWC Policy Review Scorecard to assess the comprehensiveness of BWC policies, and this report examines agency variation on five areas of BWC policy and practice. The analysis includes all policies that had been approved by BJA from January 1, 2016 (the inception of the PIP program) through September 10, 2016 (n=54). Through review of 54 agency policies, we have identified ten key BWC policy trends emerging across the United States.

Activation

- (1) All law enforcement agencies both mandate and prohibit activation for certain types of encounters. No agency allows full officer discretion on BWC activation.
- (2) Most law enforcement agencies allow for discretionary activation under certain circumstances.

Deactivation

- (3) All agencies provide definitive guidance for BWC deactivation, both for encounters that have ended and for encounters where BWC recording is no longer permitted. However, officer discretion is a more prominent feature of deactivation than activation.

Citizen Notification

- (4) Less than one-quarter of agencies mandate citizen notification of the BWC, though a larger percentage mandate citizen notification under specific circumstances. The most common circumstance is if a citizen specifically asks about the BWC.
- (5) About half of agencies recommend citizen notification of the BWC.

Officer Authority to Review

- (6) The vast majority of agencies allow officers to review their own BWC footage for routine report writing and court preparation.
- (7) Most agencies do not allow an officer unrestricted access to BWC footage during an administrative investigation (e.g., complaint, use of force, critical incident). Common stipulations include first completing an interview or report, or requiring additional personnel be present (union representative, investigator, etc.).

Supervisor Authority to Review

- (8) Nearly all agencies permit supervisors to review BWC footage for administrative purposes, such as investigation of citizen complaints and use of force.
- (9) About half of agencies allow for supervisors to review line officers' BWC footage to determine compliance with BWC policy and procedures.
- (10) Most agencies allow supervisors to review BWC footage of line officers to assess their performance independent of compliance with BWC policy and procedures.

Introduction

Over the last three years there has been widespread scrutiny of police use of deadly force against citizens, frequently resulting in public (and sometimes violent) protest. In response to these events, in December 2014 President Obama formed the President's Task Force on 21st Century Policing to identify mechanisms for enhancing trust between police and minority communities and improving police accountability. The Task Force issued a final report in May 2015 that includes nearly 60 recommendations for change, and body-worn cameras (BWCs) are prominently featured as a tool that can potentially alleviate the current crisis in policing (Hudson, 2014). In fact, the President pledged up to \$75 million to support the deployment of more than 50,000 BWCs nationwide.

The President's pledge led to the creation of a US Department of Justice (DOJ) funding stream called the Body-Worn Camera (BWC) Policy and Implementation Program (PIP). The BWC PIP is managed by the Bureau of Justice Assistance (BJA), and in October 2015, BJA awarded more than \$19 million to seventy-three agencies to support the development and implementation of BWC programs. In September 2016, BJA announced a second round of awards to 106 agencies, totaling more than \$20 million.

As part of the BWC PIP, DOJ created a Training and Technical Assistance (TTA) support system that is available to all grantees (as well as non-funded agencies). The TTA team is led by the CNA Corporation, Arizona State University (ASU), and Justice and Security Strategies (JSS). The TTA team provides a wide range of services and support to PIP grantees, such as webinars, national and regional meetings, on-site support, a speakers bureau, best practices technical assistance guides, and access to national experts.

One of the core features of the TTA is a BWC administrative policy review process. Four decades of research clearly demonstrates the importance of administrative policy in controlling and guiding police officer discretion across a wide range of field activities, including use of force (deadly and less-lethal), automobile pursuits, and arrest activity (Fyfe, 1988; Walker and Katz, 2013; White and Fradella, 2016). BJA and the TTA team recognize the importance of administrative policy for effective planning, deployment, and management of a BWC program. As a result, the policy review is a critical element of the BWC PIP program.

The BWC PIP Policy Review Process

As part of the PIP grant award process, agencies must submit a BWC administrative policy to the TTA team for review. The TTA team –CNA, ASU, and JSS- developed the BWC Policy Review Scorecard to assess the comprehensiveness of BWC policies (<http://www.bwctta.com/resources/bwc-resources/body-worn-camera-policy-review-scorecard>). The scorecard rates the comprehensiveness of an agency's BWC policy across eleven categories (e.g., activation, data storage, training), including mandatory (n=17) and non-mandatory (n=28) items (see Table 1). Each policy must address the seventeen mandatory items, in addition to receiving an overall score of 36/45, or 80 percent. Once a

policy is approved by BJA, the agency is able to proceed with their BWC program planning and implementation.

The BWC Policy Review Scorecard rates comprehensiveness, but it is not prescriptive. That is, the Scorecard is not designed to impose policy prescriptions on an agency; BJA and the TTA team believe the specific content of the policy should be determined locally by the law enforcement agency in consultation with relevant internal and external stakeholders. For example, the Scorecard requires that a policy provide officers with guidance on citizen notification or advisement of the BWC, but it does not dictate the nature of that guidance. A policy may mandate officers to advise citizens of the BWC. Or the policy could recommend (but not require) citizen advisement. Alternatively, the policy may simply state that officers are not required to notify citizens of the BWC. In each of these three examples, the policy would receive credit on the scorecard because guidance on citizen advisement is provided.

Table 1 Policy Areas Addressed in the BWC Policy Review Scorecard

1. Policy Development
 2. General Issues
 3. Video Capture – Activation
 4. Video Capture – Deactivation
 5. Data Transfer/Download
 6. Data Storage/Retention
 7. BWC Viewing
 8. BWC Training
 9. Public Release
 10. Policy and Program Evaluation
 11. BWCs and Use of Force
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The Policy Analysis

The non-directional approach employed in the scorecard review process allows for variation in how BWC PIP sites design their policies and creates an opportunity for a BWC policy analysis (e.g., what guidance do agencies provide their officers on citizen advisement, and on other key policy aspects?). Arizona State University's Center for Violence Prevention and Community Safety evaluated all BWC policies for PIP sites that have been approved by BJA between January 1, 2016 and September 10, 2016 (n=54). The purpose of the policy analysis is to identify common themes in BWC policy, with an eye toward identifying trends that could serve as a guide for law enforcement agencies nationwide.

This report provides an analysis of five mandatory items on the BWC Policy Review Scorecard, including activation, deactivation, citizen notification, officer authority to review their BWC footage, and supervisory review authority. The BWC Policy Review Scorecard rates administrative policy on many different issues, but for the purposes of

this report, we selected issues that we believe are some of the most widely discussed and controversial topics related to BWCs. Based on the policy analysis, we have identified 10 key policy trends related to the five “hot button” issues. The 10 policy trends provide important insights into emerging BWC policy and practice.

Issue #1: Officer Activation

One of the most important features of a BWC policy is the guidance given to officers regarding when to activate the camera. Our review of PIP grantee policies uncovered a significant amount of variation in how departments address the activation issue. The source of variation is the degree of discretion departments given their officers on the activation decision. We classified the degree of discretion permitted in activation on a three-level scale: mandatory (no discretion), discretionary, and restricted.

Nearly all policies detail specific circumstances in which an officer shall activate (i.e., mandatory activation) a BWC. Some departments include a general statement mandating that officers shall record all formal encounters with citizens (e.g., Officers will activate the BWC to record all contacts with citizens in the performance of calls for service). Alternatively, some departments actually provide a discrete list of incident types in which recording is mandated (e.g., pedestrian stops, car stops, arrests, etc.).

Similarly, nearly all policies also identify circumstances where activation is NOT to occur (restricted). Examples include privileged conversations (e.g., attorney, spouse, confidential sources), and places where there is an expectation of privacy; for example e.g., locker rooms).

Just under 60% of policies allow officer discretion in activation if mandatory or restricted criteria are not met (e.g., The BWC may also be activated whenever the deputy feels its use would be beneficial to his/her sheriff's office duties).

Key BWC Policy Trends

1. All law enforcement agencies both mandate and prohibit activation for certain types of encounters. No agency allows full officer discretion on BWC activation.
2. Most law enforcement agencies allow for discretionary activation under certain circumstances.

Issue #2: Officer Deactivation

It is equally important that BWC policy give officers clear guidance on when to deactivate the camera. Similar to activation, guidance on deactivation varies based on the degree of officer discretion permitted. For example, 83% of policies mandate deactivation when the event has concluded (e.g., BWCs shall remain activated for the entire duration of an event/encounter/episode and shall not be de-activated until it is concluded.) The remaining 17% of policies are discretionary and avoid the “shall” or “must” language (e.g., Department personnel may cease recording when he/she reasonably determines that the incident has concluded).

In addition to a general statement on deactivation, many policies (67%) also identify specific circumstances where officers have discretion to deactivate. Discretionary deactivation clauses address the need to protect persons (e.g., privacy of a crime victim), places (e.g., hospital locations) and information (e.g., tactical or operational discussions) during a police-citizen encounter. In these circumstances, officers may weigh the value of the video over the evidentiary value of collecting information from persons related to a criminal event. A smaller percentage of policies restrict deactivation (e.g., identify circumstances when the BWC must not be turned off – 9%), or mandate deactivation under specific circumstances (e.g., when interviewing confidential informants – 19%).

Key BWC Policy Trend

1. All agencies provide definitive guidance for BWC deactivation, both for encounters that have ended and for encounters where BWC recording is no longer permitted. However, officer discretion is a more prominent feature of deactivation than activation.

Issue #3 Citizen Notification

There are persuasive arguments in favor of notifying a citizen that he or she is being recorded by a BWC. Many of the perceived benefits of BWCs (e.g., transparency, enhanced legitimacy, civilizing effect on behavior) are short-circuited when citizens are unaware or not notified of the technology.

Our review indicates that 12 policies (22 percent) have a mandatory statement on notification (e.g., Member shall inform all individuals identifiably present as soon as reasonably practical, that their oral/video communications will be or have been intercepted and recorded.). All 12 of these policies prioritize officer safety and/or the practicality of the notification, but advisement of the BWC is mandatory (“shall”). An additional one-third of policies mandate notification under certain circumstances, such as if a citizens asks or if dealing with an arrestee.

Twenty-two policies (41%) recommend notification but do not require it (e.g., Officers should inform subjects when they are being recorded, unless doing so would be unsafe, impractical, or impossible.). Twenty policies (37%) do not mandate or recommend notification; rather the policy simply states that officers are not required to notify (e.g., Officers are not required to advise citizens they are being recorded.).

Key BWC Policy Trends

1. Less than one-quarter of agencies mandate citizen notification of the BWC, though a larger percentage mandate citizen notification under specific circumstances. The most common circumstance is if a citizen specifically asks about the BWC.
2. About half of agencies recommend citizen notification of the BWC.

Issue #4 Officer Review of BWC Footage

The degree to which officers are permitted to review their own BWC footage is a controversial topic. Advocates of officer review point to the fact that BWC footage will

increase the accuracy of reports and court testimony, as officers can use video and audio to support or refresh their memory of what has transpired. Critics argue that the BWC footage can color or alter an officer's memory of an event. This debate is especially contentious in the wake of a critical incident, such as an officer-involved shooting.

Our policy review indicates that nearly all agencies allow routine officer review of BWC footage for report writing (98%) and court preparation (31%) (e.g., Officers assigned a BWC are encouraged to review BWC media prior to completing any investigative reports).

Following a use of force incident, a complaint against an officer, or a critical incident (e.g., police shooting of a civilian, or a vehicle pursuit), there is significantly less consensus across departments. Approximately one-third (31%) allow officers unrestricted access to their BWC footage during an administrative investigation (e.g., An officer is permitted to review video footage of an incident in which she/he was involved, prior to making a statement regarding the incident. This can occur, for example, if an officer is involved in a shooting and has to give a statement about the shooting that may be used in an administrative review or a criminal or civil court proceeding).

More commonly (approximately 66%), agencies allow officers to access their BWC footage, but only after certain stipulations have been met. The most common stipulations are: a union representative is present, a command staff or investigator is present, or an officer must make a statement or complete an interview prior to viewing. (e.g., If the officer is involved in (or witness to) a critical incident such as a police shooting, an in custody injury resulting in death or other critical incident, the officer is authorized to view their BWC recording only after the approval of the commander of the Investigations Division or his/her designee).

Key BWC Policy Trend

1. The vast majority of agencies allow officers to review BWC footage for routine report writing and court preparation.
2. Most agencies do not allow an officer unrestricted access to BWC footage during an administrative investigation (e.g., complaint, use of force, critical incident). Common stipulations include first completing an interview or report, or requiring additional personnel be present (union representative, investigator, etc.).

Issue #5: Supervisor Review of BWC

Two of the most commonly cited benefits of BWCs involve evidentiary value and increased accountability (White, 2014). Both of these benefits hinge on supervisor access to line officers' BWC footage. Supervisor review of BWC footage from line officers can occur for a variety of reasons. Our policy review identified three mechanisms of supervisor review: 1) Administrative Review (e.g., citizen complaints, use of force incidents), 2) Compliance Review (e.g., compliance with policy regarding use of BWC) and 3) Performance Review.

Nearly all agencies (94%) allow first line supervisors to access and review the BWC footage of their officers as part of administrative investigations, such as in response to a citizen complaint or use of force (e.g., Supervisors may review all captured media related to a complaint or incident resulting in a supervisory investigation). The few policies that do not allow for supervisory review under these circumstances specifically assign the task to other personnel (e.g., internal affairs).

About half of agencies allow supervisors to review BWC footage, usually on a random or periodic basis, to insure compliance with BWC policy and procedures (e.g., The Inspections Division will conduct random audits to ensure compliance with the policy and procedures of this directive).

Nearly two-thirds of agencies allow supervisors to access BWC footage of line officers for the purposes of performance review, independent of BWC compliance and policy. In some cases, supervisors are given full authority to review for performance (e.g., BWC digital recordings shall be reviewed by supervisory staff for purposes of performance review and performance management), and in other cases, the review is periodic or random (e.g., Conduct random weekly reviews of selected recordings in order to assess deputy performance as well as identify videos that may be appropriate for training). A handful of agencies limit the performance review to specific officers such as those who are probationary or who have been flagged by an early intervention/warning system (e.g., Supervisors are permitted to review a deputy's BWC recordings under the following circumstances... C. When Department members are probationary police officers).

Key BWC Policy Trends

1. Nearly all agencies permit supervisors to review BWC footage for administrative purposes, such as investigation of citizen complaints and use of force.
2. About half of agencies allow for supervisors to review line officers' BWC footage to determine compliance with BWC policy and procedures.
3. Most agencies allow supervisors to review BWC footage of line officers to assess their performance independent of compliance with BWC policy and procedures.

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About the Authors

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BJA sponsored SMART policing initiative. It was the first federally sponsored evaluation of the effectiveness of police body worn camera's (BWC) on complaints, use of force, and arrest and prosecution of domestic violence. The report can be found at:

<http://cvpcs.asu.edu/products/evaluating-impact-officer-worn-body-cameras-phoenix-police-department>. He recently served as one of two primary authors of the US Department of Justice Body-Worn Camera Toolkit (<https://www.bja.gov/bwc/>) and currently serves as a senior advisor to the Bureau of Justice Assistance on its Body-Worn Camera Training and Technical Assistance Team.