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# Body Worn Cameras and Technology

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**DLG**  
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# Police Videos

## Future of Police Transparency



# Intro

- This is not a new issue to Police
- Multiple Departments Wearing cameras
- Estimated 80% of all cops will be wired for video in the next 3 years.
- Information being discussed every day across the Country.
- Why do I like the use of cameras?
- [DOJ/ PERF Report](#) – September 12, 2014
- IACP Model Policy/ Concept Paper – 9/14

# Survey

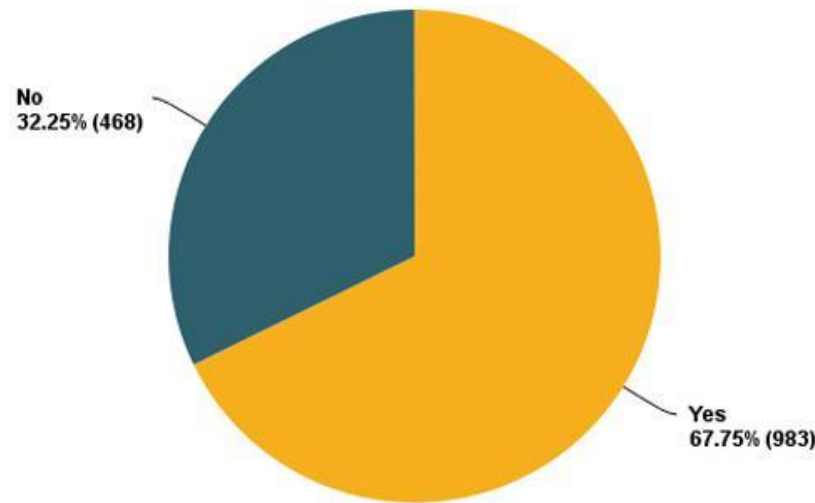
- 11/12/14 – Polled nearly 1,500 PoliceOne Facebook fans to find out what thoughts and concerns our law enforcement community has today about body cameras.
- Only 21.9 percent of those surveyed neither have body cameras nor have any plans of getting them in the future, meaning almost 80 percent of law enforcement officials polled either have body-worn cameras, are testing them currently or are looking into them.

# Survey

- When asked what the biggest concern is for officers regarding body cameras, 33.7 percent of those polled answered “A lack of privacy for the officers wearing them,” making it the most popular response.
- Another 28.7 percent believed body cameras pose a physical liability – making storage and maintenance costs the smallest concerns of officers.

# Survey

- 67.7 (983) percent of those polled said despite some of the drawbacks, they would equip their department with body cameras if the decision was up to them.



# Areas of Concern

- Starting with strict policy in place
- Law enforcement limiting its own actions
- Benefits v. Burdens
  - Use, storage, benefits, discipline
- Maintaining proper perspective
  - Not a “solve all problems” solution
- Awareness of Limitations
  - Force Science Article #265
  - Point of view recording

# Outline for Policy

- History and areas of concern
- Implementation
  - Goals, Benefits and Burdens
  - Benefits of Pilot Program
  - Storage Capacity and Costs
- Policy Development
- Legal and Privacy Issues
  - First and Fourth Amendment Implications






# Benefits v. Challenges




## BENEFITS

Body-worn cameras are useful for documenting evidence; officer training; preventing and resolving complaints brought by members of the public; and strengthening police transparency, performance, and accountability.

### Rialto PD Study

-  88% **decline** in the number of complaints filed against officers
-  Officers with cameras **used force** 60% less often
-  **Reduction in lawsuits** and related costs

### Mesa PD Study

-  **Citizens' complaints** declined by 50%
-  75% **fewer use of force** complaints for officers with cameras during pilot program
-  Wrote about 20% **more tickets**



## CHALLENGES

It is important to maintain the proper perspective. Cameras are not the silver bullet. They will not solve all of your citizen complaint or use of force problems. There are challenges that need to be outlined and discussed. Here are just a few:

-  **Catch officers** doing things wrong
-  **Cost** (estimated \$900 per camera)
-  **Storage/capacity** (data storage and software costs)
-  **Union** challenges
-  **Leadership** (need **top down** support)
-  **Point of view** recording (2D recording, dim light conditions)
-  1st & 4th amendment **privacy** rights

# Benefits

- Real-time evidence gathering
- Efficiency of prosecution in criminal cases and internal affairs cases
- Civil defense of officers and agencies
- Increased professionalism – officers act better with the camera on
- Impartial eye-witness
- Public Trust

# Concerns

- Public privacy issues – particularly when officers enter a home or when interacting with victims and bystanders
- Officer privacy issues – which includes the issue of when recorders may be turned off and on.
- The possibility of the equipment affecting the health and safety of the officer
- The cost associated with the program – including purchase of equipment, policy development, and training – as well as storage costs.

# Acceptance Cycle

# Implementing a Body-Worn Camera Program

Recommendations and Lessons Learned



**COPS**  
Community Oriented Policing Services  
U.S. Department of Justice



POLICE EXECUTIVE  
RESEARCH FORUM

# Benefits are Clear

- Body cameras can help to de-escalate encounters between officers and members of the public, because most people tend to behave better if they know they are being recorded.
- So police chiefs who have deployed cameras tell us that confrontational incidents and complaints against officers decline.
- Cameras sometimes uncover problems with officers' training that can be remedied. Cameras can provide officers with protection against false complaints, or they can provide important evidence if an officer's actions are improper.
- Cameras can give the community a sense that their police are accountable for their actions.

# Implementation

- When presenting officers with any new technology, program, or strategy, the best approach includes efforts by agency leaders to engage officers on the topic, explain the goals and benefits of the initiative, and address any concerns officers may have.
- PERF's recommendations call for a careful, thoughtful approach to body cameras, in which the community, your officers, and other stakeholders are consulted.
- Departments should consider piloting the program and evaluating the results before implementing it department-wide.

# ACLU

- The American Civil Liberties Union said last year that the cameras have the "potential to be a win-win, helping protect the public against police misconduct, and at the same time helping protect police against false accusations of abuse."



# ACLU

- “Policies and technology must be designed to ensure that police cannot edit on the fly (i.e., choose which encounters to record with limitless discretion). If police are free to turn the cameras on and off as they please, the cameras' role in providing a check and balance against police power will shrink and they will no longer become a net benefit.” [A Report on Body Worn Cameras, Eugene P. Ramirez]

# PERF/COPS Recommendation

- Officers should be required to activate their body-worn cameras when responding to all calls for service and during all law enforcement-related encounters and activities that occur while the officer is on duty. In order to protect relationships between the police and the community, officers have discretion whether to record informal, non-law enforcement-related interactions with the public.

# PERF/COPS Recommendation

- Officers should be required to inform subjects when they are being recorded unless doing so would be unsafe, impractical, or impossible.
- Many police executives have found that officers can avoid adversarial situations if they inform people that they are being recorded.

# PERF/COPS Recommendation

- Officers should be required to obtain consent prior to recording interviews with crime victims. Requiring officers to obtain consent prior to recording interviews with victims is the best way to balance privacy concerns with the need to accurately document events.

# PERF/COPS Recommendation

- Officers should have the discretion to keep their cameras turned off during conversations with crime witnesses and members of the community who wish to report or discuss criminal activity in their neighborhood. If an officer turns the camera off prior to obtaining information, the officer should document on camera the reason for doing so.

# PERF/COPS Recommendation

- Policies should provide clear guidance regarding the circumstances under which officers will be allowed to exercise discretion to record.
- Policies should include specific measures to prevent data tampering, deleting, and copying. Agencies should make retention times public by posting them on their websites.

# PERF/COPS Recommendation

- Written policies should clearly describe the circumstances in which supervisors will be authorized to review an officer's body-worn camera footage.
- Agencies should have clear and consistent protocols for releasing recorded data externally to the public and the news media. Each agency's policy must be in compliance with the state's public disclosure laws. Policies should state who is allowed to authorize the release of videos.

# PERF/COPS Recommendation

- Body-worn camera training should be required for all agency personnel who may use or otherwise be involved with body-worn cameras. Before agency personnel are equipped with body-worn cameras, they must receive all mandated training.
- Agencies should require refresher courses on body-worn camera usage and protocols at least once per year.



# Start with the Policy....



# POLICIES AND TRAINING GENERALLY

- Policies and procedures shall reflect and express the Department's core values and priorities, and provide clear direction to ensure that officers lawfully, effectively, and ethically carry out their law enforcement responsibilities.

# Purpose

- The purpose of this policy is to establish guidelines and limitations for the use and management of body worn audio/video camera systems.
- Important and valuable tool for law enforcement
- The use of on-officer video is expected to result in greater transparency, more effective prosecution, and improved protection against false allegations of excessive use of force, misconduct or racial profiling.

# Accomplish the following objectives

- To enhance officer safety.
- To accurately document statements and events during the course of an incident.
- To enhance the officer's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/testimony.
- To preserve visual and audio information for use in current and future investigations.
- To provide an impartial measurement for self-critique and field evaluation during officer training or coaching and mentoring sessions.
- To enhance the public trust by preserving factual representations of officer-citizen interactions in the form of video and audio recordings.

Once captured, these recordings cannot be altered in any way, and are protected with multiple layers of encryption.

# Administration

- Inspection to ensure charged and operational.
- Report problems obligation
- Not make repairs by officers
- Intentional disable or damage, fails to activate or deactivate leads to discipline.
- Lost, stolen or damaged equipment must be reported to supervisor.

# Use

- All Officers shall activate the camera as soon as practical once it has been determined in the officer's use of sound judgment that an incident is to be recorded in accordance with this order.
- This includes, but not limited to the following:
  - Any consensual encounter;
  - Any dispatched call where there is citizen contact;
  - Encounter initiated by a private person (flag down);
  - Any investigative encounter to confirm or dispel a suspicion that the person may be involved criminal activity. This includes detentions, vehicle stops, walking stops and consensual encounters (contacts);
  - Service of a search or arrest warrant; and
  - As deemed necessary.

# Use

- Officers who don't activate their camera in situations where they were required to may be subject to discipline.
- If a citizen complaint is made and the officer did not activate his camera as required that will be a factor examined when determining final resolution of the investigation.

# Operational Prohibitions

- Shall not modify, tamper, dismantle, or attempt to make repairs to the body-worn cameras
- Intentionally disables or damages/ or who fails to activate or deactivate the system subject to discipline
- Not use body-worn cameras to make surreptitious recordings of other department members
- **SHALL NOT** make copies of any recording for their personal use
- Use on any type of social media is prohibited.



# Supervisory Responsibilities

- Hold officers accountable
- Review and audit
  - Set standards
  - Time tables
  - Prevent fishing expedition
  - Ensure consistency
  - Develop review accountability

# Retention of Videos

- State Retention Laws
- Recommend Statute of Limitation
- A recent ACLU report recommended that data retention be limited to the length of time necessary to conduct investigations, suggesting that the time be “weeks not years.”
- We recommend that videos associated with allegations of misconduct, policy violations, criminal arrests, use of force incidents and detention, arrest and Training opportunities.

ACLU - National: [Police Body-Mounted Cameras: With Right Policies in Place, a Win for All](#), by Jay Stanley, American Civil Liberties Union Senior Policy Analyst (Oct. 2013)

# Issues Being Addressed

- Public Records Requests
- Redacting Videos – When and How
- Exemptions to disclosure
  - <http://www.rcfp.org/open-government-guide>
- New State Legislation

# Training Bulleting 265

- A camera doesn't follow your eyes or see as they see.
- Some important danger cues can't be recorded.
- Camera speed differs from the speed of life.
- A camera may see better than you do in low light.
- Your body may block the view.
- A camera only records in 2-D.
- The absence of sophisticated time stamping may prove critical.
- One camera may not be enough.
- A camera encourages second-guessing.
- A camera can never replace a thorough investigation.

# Watch the Videos



[CLICK HERE TO  
WATCH THE VIDEO](#)

# Video Review

- The question of the day is do you allow Officers to review a video before being Interviewed of providing a force report
- Two strong positions on the subject:
  - Yes- not allowing officers to review videos is a “Gottcha moment”
  - No- recollection of officer as to facts and circumstances
- Concern if video shows different- for who?

# Video—To View or Not To View

- Not enough “science” to definitively answer what viewing may do to memory.
- Circumstances may dictate an approach (evidence of misconduct) making a “one-size-fits-all” answer untenable.
- Defense of an officer is based upon application of *Graham* and a matching story is not necessary (and perhaps not desirable).
- Community standards and unions may necessarily inform a Chief’s approach.
- Factors such as camera angles/viewpoint are relevant and should be considered.
- Community expectations.
- Training to understand the psychological and physiological effects on officers and the limitations of video (i.e. neither is probably complete or definitive and may sometimes reflect differing but valid information. Never employ a “Gotcha” strategy!

# Worthy Mention—*Graham v. Connor*

- A law enforcement officer's actions when using force are analyzed under a standard of whether it was “objectively reasonable, in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.”
- The Court cautions against applying 20-20 hindsight to the analysis of whether a use of force was reasonable from the officer's perspective.

OFFICER PERCEPTION AT THE TIME THE FORCE WAS USED IS THE KEY ISSUE IN WHETHER THE FORCE WAS REASONABLE.



# View Video

- “Officers should not view video of an incident prior to being interviewed. Allowing officers to view video prior to an interview allows them to either subconsciously fill in the blanks where there are no memories of the incident or preplan for alibis for substandard conduct. Either way, allowing officers to view video of the event prior to the interview erodes the public’s faith in the process and unnecessarily impacts the investigation.”
- *Review of BART PD Policies, Practices and Procedures re: New Year’s Day 2009, page 5.*
- Report posted at [http://www.bart.gov/docs/Meyers\\_Nave\\_Public\\_Report.pdf](http://www.bart.gov/docs/Meyers_Nave_Public_Report.pdf)

# Watch the Video

- In incidents involving an officers use of force (defined in Use of Force Order) from resisted handcuffing to Officer Involved shootings officers shall not review their video of the incident until such time as the officer has completed his force investigation report.
- Once the officer has completed his use of force report he/she may view the video with the Supervisor conducting the force investigation.
- Any discrepancies or additional information determined by the review of the video will be documented and explained by the Supervisor in his evaluation of force report.

# Privacy Issues

- Many organizations are conflicted-
- For the ACLU, the challenge of on-officer cameras is the tension between their potential to invade privacy and their strong benefit in promoting police accountability.
  - Notice to Citizens
  - Recording in the Home – 4<sup>th</sup> Amendment
  - Retention
  - Public Disclosure



# *Glik v Cunniffe*

- 1st Circuit's ruling (665 F.3d 78 (2011))
- But its persuasive reasoning has been cited by courts and lawyers nationwide
- Charges (All Dismissed)
  - 1. Unlawful audio recording in violation of MA wiretap law
  - 2. Disturbing the peace
  - 3. Aiding in the escape of a prisoner
- In May 2012, the City of Boston settled the case with Glik for an amount of \$170,000

# *Glik*

- “The First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw.”
- “It is . . . well established that the Constitution protects the right to receive information and ideas.”
- “There is an undoubted right to gather news ‘from any source by means within the law.’”

# *Glik v Cunniffe*

- Gathering information about government officials in a form that can readily be disseminated to others serves a cardinal First Amendment interest in protecting and promoting "the free discussion of governmental affairs."
- Public's right of access to information is **coextensive** with that of the press.
  - Almost everyone has a cellphone
  - Almost every cellphone has a camera
  - Just as we treat every weapon as being loaded
  - Treat every camera as if it were recording

# *Glik v Cunniffe*

- “In our society, police officers are expected to endure significant burdens caused by citizens’ exercise of their First Amendment rights”
- “The First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.”
- “the same restraint demanded of law enforcement officers in the face of ‘provocative and challenging’ speech must be expected when they are merely the subject of videotaping that memorializes, without impairing, their work in public spaces.”

# ***Glik v Cunniffe***

- “Such peaceful recording of an arrest in a public space that does not interfere with the police officers’ performance of their duties is not reasonably subject to limitation.”
- Court also recognized:
  - “the fundamental and virtually self-evident nature of the 1st Amendment’s protections” of the “right to film government officials or matters of public interest in public space.”



# Final Thoughts

- Providing adequate policies, training and supervision regarding constitutional policing
- Provide Officers First Amendment Training
- Don't go beyond the Law
- Always consider the reason for the requirements? Chief, Union, Prosecutor, ACLU, etc.

# The End....



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