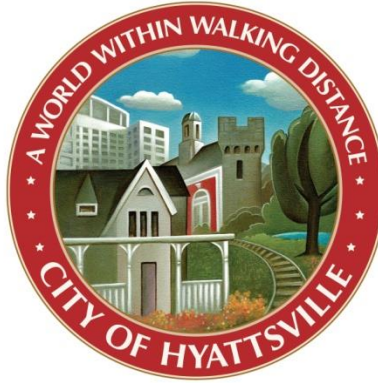




## **Hyattsville City Council Regular Meeting**

Monday, October 5, 2015

**8:00 PM**

### **Agenda**

- 1. Call to Order and Council Roll Call**
- 2. Pledge of Allegiance to the Flag**
- 3. Approval of Agenda**
- 4. Public Comment (8:10 p.m. – 8:20 p.m.)**
- 5. Presentations (8:20 p.m. – 9:00 p.m.)**
  - (1) City Administrator Update to Council (5 minutes)
  - (2) FY-2013 Close-Out FY-2014 Audit Update (5 minutes)
  - (3) 5334 Baltimore Avenue Redevelopment Presentation (20 minutes)
  - (4) Police CAD/RMS Transition (10 minutes)
- 6. Consent Items (9:00 p.m. – 9:05 p.m.)**
  - (1) **124-10-15 Proclamation in Recognition of Domestic Violence Awareness Month** I move that the Mayor & Council adopt the following proclamation of celebration for October 2015 as Domestic Violence Awareness Month. – **At the Request of the City Administrator**
  - (2) **125-10-15 Proclamation for Breast Cancer Awareness Month** I move that the Mayor & Council adopt the following proclamation of celebration for October 2015 as Breast Cancer Awareness Month. – **At the Request of the City Administrator**
  - (3) **126-10-15 Proclamation for National Disability Employment Awareness Month** I move that the Mayor & Council adopt the following proclamation of celebration for October 2015 as National Disability Employment Awareness Month. – **At the Request of the City Administrator**
  - (4) **127-10-15 ArtSpin, Ward 2 Discretionary Funding Allocation Request** I move that the Mayor & Council approve a \$300.00 donation from the Ward 2 allotment for picture hangers to be used to hang artwork on the walls of the City Building during the ArtSpin event on October 24. – **Croslin, Warner**

- (5) **128-10-15 Community Day, Ward 5 Discretionary Funding Allocation Request** I move that the Mayor & Council authorize the reimbursement of up to \$250.00 to members of the Ward 5 Community Day Planning Committee from the Ward 5 Council Budget. – **Solomon, Frazier**
- (6) **129-10-15 FY16 Grant from MNCPPC** I move that the Mayor & Council accept and appropriate into the FY16 budget the attached grant contract from the Maryland National Capital Park and Planning Commission in the amount of \$19,000 and authorize the City Administrator to sign the contract, upon the review and approval by the City Attorney for legal sufficiency. – **At the Request of the City Administrator**

**7. Action Items (9:05 p.m. – 10:15 p.m.)**

- (1) **130-10-15 Residential Parking Zone Committee** I move that the Mayor appoint, with Council approval, a seven-person Residential Parking Zone Committee, to review and make recommendations on City policies related to the City's residential parking zone program. The Mayor and Council shall strive to include at least one member on the committee from each Ward of the City. The committee shall conduct a review of the City's current residential parking zone program, exploring gaps in service, needs, and best practices, with the intent of developing a set of recommendations for modifying the program in order to better serve parking needs in neighborhoods throughout the City. The committee shall make its recommendations to the Council within 120 days of its inception, after which the committee's charter shall end. – **Lawrence**
- (2) **131-10-15 2016 Legislative Priority: Structured Parking Facility** I move that the Mayor and Council adopt structured parking facility, funding, and construction as a priority request for the legislative breakfast to be held on November 4, 2015. – **Hollingsworth**
- (3) **132-10-15 2016 Legislative Priority: PG County Public Schools (PGCPS) School Infrastructure Funding** I move that the Mayor and Council adopt "PGCPS School Infrastructure Funding" as a 2016 legislative priority. – **Hollingsworth, Lawrence, Ward**
- (4) **133-10-15 2016 Legislative Priority: Completing the Trolley Trail to Armentrout Dr.** I move that the Mayor and Council adopt "Completing the Trolley Trail to Armentrout Dr." as a 2016 legislative priority. – **Lawrence, Ward**
- (5) **134-10-15 2016 Legislative Priority: County Paid Sick Leave Legislation** I move that the Mayor and Council adopt County Paid Sick Leave Legislation as a 2016 Legislative Priority. – **Paschall**
- (6) **135-10-15 2016 Legislative Priority: West Hyattsville Metro Development** I move that the Mayor and Council accept the prioritization of West Hyattsville Metro Development as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast. – **Solomon**
- (7) **136-10-15 2016 Legislative Priority: Nicholson Street Traffic Lights** I move that the Mayor and Council accept the request for traffic lights at the intersections Nicholson Street and Ager Road, and Nicholson Street and Queens Chapel Road as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast. – **Solomon**

- (8) **137-10-15 2016 Legislative Priority: Local Regulation of Tobacco Products** I move that the Mayor and Council support the abrogation of the Altadis U.S.A. INC v Prince George's County Maryland court decision by accepting the local regulation of tobacco products as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast. – **Solomon, Croslin**
- (9) **138-10-15 2016 Legislative Priority: Statewide Racial Profiling Bill** I move that the Mayor and Council affirm that it must be illegal for a police officer to profile a person on the basis race, religion, ethnicity or national origin by adopting the support and encouragement for a statewide racial profiling ban as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast. – **Solomon**
- (10) **139-10-15 2016 Legislative Priority: Federal and State Marriage Equality Holiday** I move that the Mayor and Council adopt the establishment of both a statewide and federal holiday recognizing the struggle for marriage equity as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast. – **Solomon**
- (11) **140-10-15 2016 Legislative Priority: Statewide Ban on Grand Juries in Police Shooting Cases** I move that the Mayor and Council affirm that it must be illegal for a police officer to profile a person on the basis race, religion, ethnicity or national origin by adopting the support and encouragement for a statewide racial profiling ban as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast. – **Solomon**
- (12) **141-10-15 2016 Legislative Priority: Statewide Body Cameras for Police Officers** I move that the Mayor and Council add the request for a statewide mandate body cameras for all police organizations in the State of Maryland with implementation requirements consistent with standards defined by: The American Civil Liberties Union, The Harvard Law Review, and The United States Department of Justice Community Oriented Police Services (COPS) Division as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast. – **Solomon**
- (13) **142-10-15 2016 Legislative Priority: Statewide Voting Reforms** I move that the Mayor and Council add the request for a statewide voting reforms as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast. – **Solomon**
- (14) **143-10-15 2016 Legislative Priority: Collective Bargaining for College Athletes** I move that the Mayor and Council adopt collective bargaining for college athletes as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast. – **Solomon**
- (15) **144-10-15 2016 Legislative Priority: Local Complementary Education Funding** I move that the Mayor and Council adopt local education funding as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast. – **Solomon**

## **8. Discussion Items (10:15 p.m. – 10:55 p.m.)**

- (1) Preliminary Prince George's Plaza TDDP: Recommendations (20 minutes)

(2) Employee Health Care Insurance Premium Rates for 2016 (20 minutes)

**9. Council Dialogue (10:55 p.m. – 11:05 p.m.)**

**10. Community Notices and Meetings**

(1) Main City Calendar: October 5 - 25, 2015

**11. Motion to Adjourn**





Hyattsville City Council  
4310 Gallatin Street, 3<sup>rd</sup> floor  
Hyattsville, MD 20781

Meeting: 10/5/2015 8:00 PM  
Department: City Administration  
Prepared by: Tracey Nicholson  
Sponsors: At the Request of the City Administrator  
DOC ID: (ID # 1271)

5.1

**Presentations: City Administrator Update to Council**

**SUBJECT: City Administrator Update to Council**

**SECTION: Presentations**

**BACKGROUND:**

The City Administrator will provide an update on the Domestic Violence Purple Lights Campaign and Breast Cancer Awareness Month. She will also introduce new members of the Hyattsville City Staff.

**NEXT STEPS:**

NA

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

**STRATEGIC GOALS**

**Goal:** Goal 1 – Ensure Transparent and Accessible Governance

  
Tracey Nicholson, City Administrator 10/1/2015



**Presentations: FY-2013 Close-Out FY-2014 Audit Update**

**SUBJECT: FY-2013 Close-Out FY-2014 Audit Update**

**SECTION: Presentations**

**BACKGROUND:**

The FY-2013 audit close-out documents were submitted to the Mayor and Council and the FY-2013 audit with the required Uniform Financial Report (UFR) has been filed with the State. The FY-2014 audit is underway. We are currently setting up files for review and analysis in the areas of accounts payables, revenues, expenditures and fixed assets. The FY-2014 audit is expected to be completed at the end of December of this year. The City Treasurer has filed the first extension request for the FY-2015 audit with the State Department of Administrative Services.

**NEXT STEPS:**

Schedule CohnReznick for a presentation to the Mayor and Council on the FY-2013 audit findings and management recommendations.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

The City Treasurer will continue to work with the CohnReznick and Lindsey & Associates to complete all past due audits.

**STRATEGIC GOALS**

**Goal:** Goal 4 – Foster Excellence in all City Operations

  
Tracey Nicholson, City Administrator 10/1/2015



**Presentations: 5334 Baltimore Avenue Redevelopment Presentation**

**SUBJECT: 5334 Baltimore Avenue Redevelopment Presentation**

**SECTION: Presentations**

**BACKGROUND:**

Please see attached memo.

**NEXT STEPS:**

City Staff will be meeting with the applicant over the next several weeks to discuss the proposed project and will provide the City Council when this item is brought back on the City Council agenda for discussion.

Staff recommends that the Mayor and Council refer the review of the Preliminary Plan of Subdivision and Detailed Site Plan to the Hyattsville Planning Committee for comments. The development proposal will be included on the October 13, 2015 Planning Committee agenda with comments and recommendations provided to the City Council within 60-days.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

Director of Community and Economic Development and City Planner will meet with the applicant and work with the City Planning Committee.

**STRATEGIC GOALS**

**Goal:** Goal 2 – Ensure the Long-Term Economic Viability of the City

  
Tracey Nicholson, City Administrator 10/1/2015



## Memo

To: Mayor and City Council

CC: Tracey Nicholson, City Administrator  
Lesley Riddle, Director, Public Works

From: Jim Chandler, Assistant City Administrator and Director, Community & Economic Development

Date: October 1, 2015

Re: 5334 Baltimore Avenue Redevelopment Presentation

---

### Summary

The applicant, Sevag Balian, President of the Rockville based townhouse development company Haverford Homes, will provide the City Council with a presentation detailing the proposed redevelopment of the former Bluebird Cab site located at 5334 Baltimore Avenue, Hyattsville.

### Details

The applicant is proposing to subdivide the subject property and redevelop the site with 18-residential townhouse units; six (6) rear loaded townhouse units would be constructed along Baltimore Avenue and twelve (12) front loaded townhouse units would be located internal to the western boundary of the property. The applicant is currently awaiting stormwater management concept approval and has not been assigned a Detailed Site Plan case number.

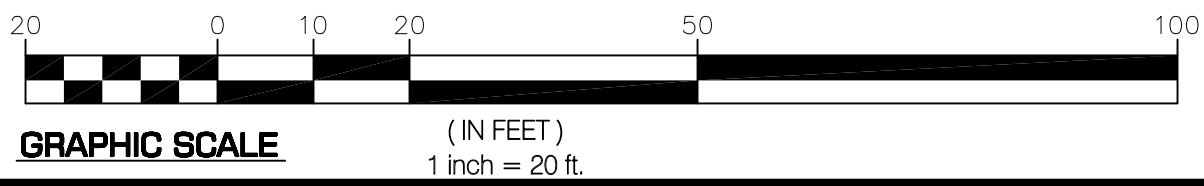
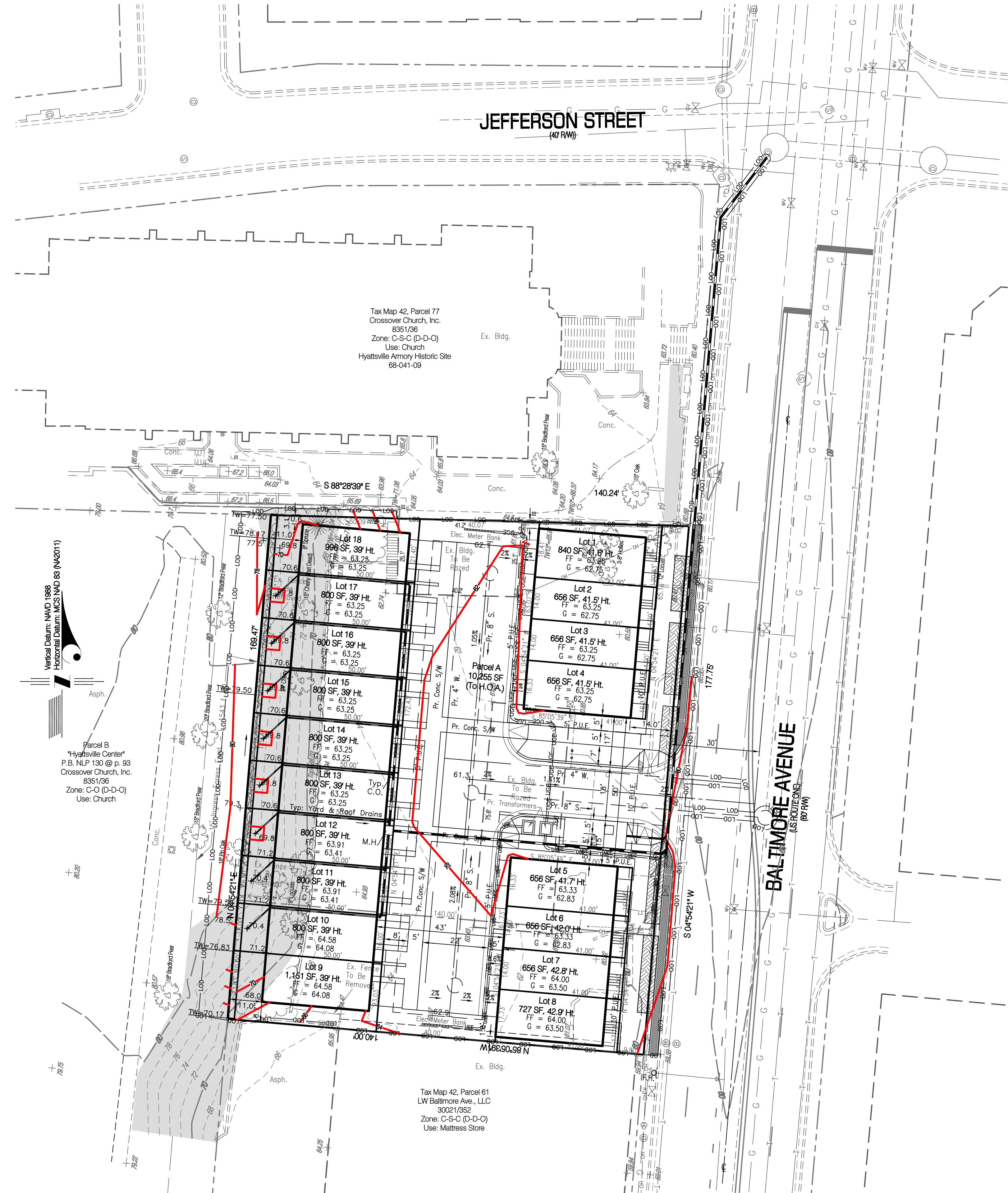
The subject property is located in the Town Center Character Area of the Gateway Arts District and is subject to the use and development standards defined in the Gateway Arts District Sector Plan.

### Recommendation

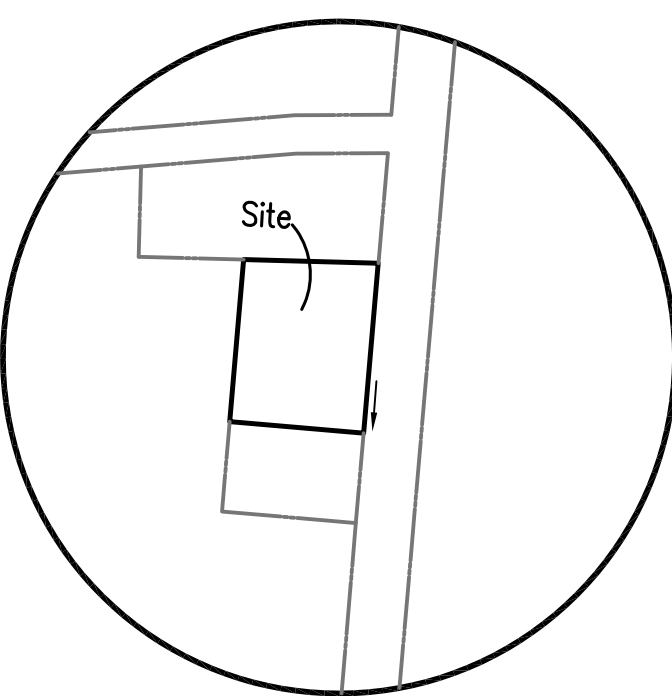
City Staff will be meeting with the applicant over the next several weeks to discuss the proposed project and will provide the City Council when this item is brought back on the City Council agenda for discussion.

Staff recommends that the Mayor and Council refer the review of the Preliminary Plan of Subdivision and Detailed Site Plan to the Hyattsville Planning Committee for comments. The development proposal will be included on the October 13, 2015 Planning Committee agenda with comments and recommendations provided to the City Council within 60-days.

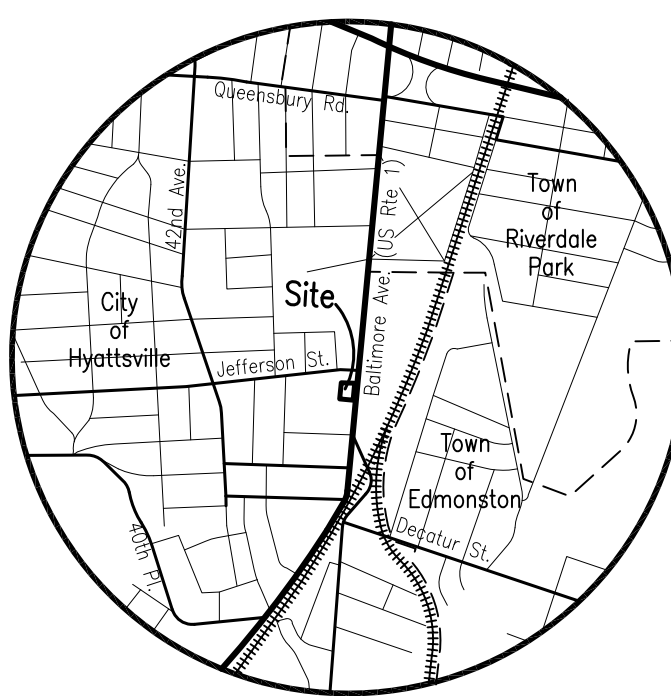




- LEGEND
- Existing 2' Contour
  - Existing 10' Contour
  - Proposed Contour
  - LOD Limit of Disturbance
  - Underground Telephone Conduit
  - G Underground Gas Main
  - Water Main
  - Sewer Main
  - OH Overhead Electric/Telephone/Cable
  - 15%+ Slopes



Drainage Area Map  
Scale: 1" = 200'



VICINITY MAP  
Scale: 1" = 2000'

GENERAL NOTES

- Subdivision Name . . . . . None (Bluebird Row proposed)
- Record References . . . . . L 21977 @ F. 409
- Site Area . . . . . 24,305 SF or 0.5580 Acres
- Existing Zoning . . . . . C-S-C (D-D-O)  
Gateway Arts District Development District Overlay Zone  
Town Center (TC) Character Area  
Former Taxicab Station
- Existing Use . . . . . Townhouses
- Proposed Use . . . . . Eighteen Lots, One Parcel
- Number of Lots, Parcels, Outlots & Outparcels . . . . . Eighteen townhouses
- Housing Unit Breakdown . . . . . 208NE4
- VSSC 200 Sheet . . . . . Tax Map 42, Grid C4
- Tax Map and Grid . . . . . Tax Map 42, Grid C4
- This site is not within an Aviation Policy Area.
- The site is located in Water and Sewer Planning Categories W-3 and S-3 (Existing and Proposed).
- Stormwater Management Concept Approval: . . . . . 28196-2015
- Public utility easements are proposed as shown.
- Mandatory park dedication is not applicable to this plan per 24-134(a)(3)(A) as the existing parcels were legally created by deeds recorded in 1954.
- There are no known cemeteries on or contiguous to this site.
- There are no Historic Sites on this site.
- The following Historic Sites are located within 1,000' of this site:  
Hyattsville Armory 68-041-09 5340 Baltimore Avenue  
Prince George's Bank & Trust 68-041-02 5214 Baltimore Avenue  
Professional Building 68-041-01 5200 Baltimore Avenue  
Hyattsville Post Office 68-041-40 4325 Gallatin Street  
Burgess House 68-010-83 5201 42nd Place  
B&O Switching Tower 68-008 (Demolished)  
The property is located within the Hyattsville National Historic District 68-10.
- There are no nonflood wetlands within the limits of this site.
- There are no areas of 100-year floodplain within the limits of this site.
- This site is not located within the Chesapeake Bay Critical Area.
- The topographic and/or planimetric data shown on this plan is based on a field-run survey conducted by this company on or about May 6, 2015.
- Owner/Applicant: Hyattsville Route One Partners, LLC  
6110 Executive Boulevard, Suite 430  
Rockville, Maryland 20862

Professional Certification

I hereby certify that these documents were prepared by me or prepared under my supervision, and that I am a duly licensed professional engineer under the laws of the State of Maryland, License No. 8231 (expiration date: 11/28/13). I further certify that this plan has been designed in accordance with the requirements of Subtitle 32, Division 2, of the code of Prince George's County, Maryland; and that I or my staff have inspected this site and that drainage flows from uphill properties onto this site, and from this site onto downhill properties have been addressed in substantial accordance with applicable codes.

Chander S. Dhalwala, P.E. Date

|                                                                                                                                   |      |
|-----------------------------------------------------------------------------------------------------------------------------------|------|
| THIS BLOCK IS FOR OFFICIAL USE ONLY                                                                                               |      |
| OR label certifies that this plan meets conditions of final approval by the Planning Board, its designee or the District Council. |      |
| M-NCPPC APPROVAL                                                                                                                  |      |
| PROJECT NAME:                                                                                                                     | Blue |
| PROJECT NUMBER: DSP-15016                                                                                                         |      |
| For Conditions of Approval see Site Plan Cover Sheet or Approval Sheet. Revision numbers must be included in the Project Number.  |      |

DSP-15016

DETAILED SITE PLAN

BLUE

City of Hyattsville  
HYATTSVILLE (16th) ELECTION DISTRICT  
PRINCE GEORGES COUNTY, MARYLAND

REVISIONS

|             |              |
|-------------|--------------|
| JOB NO.     | W - 723      |
| SCALE:      | 1" = 20'     |
| DRAWN BY:   | MGJF         |
| CHECKED BY: | MGJF         |
| DATE:       | May 28, 2015 |

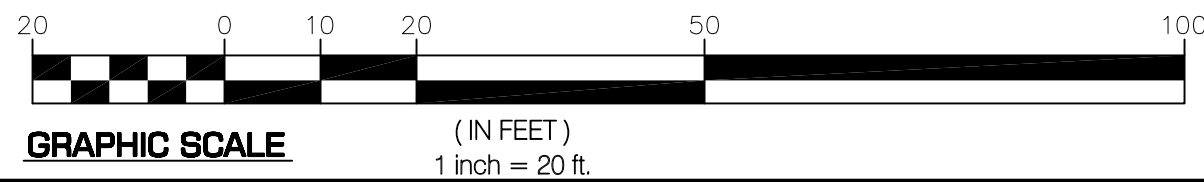
ENGINEERS  
LAND PLANNERS  
LAND SURVEYORS

**PRDA**  
PRINCE GEORGE'S COUNTY  
ENGINEERING CO., INC.

14603 MAIN STREET - UPPER MARLBORO, MD. 20772  
UPPER MARLBORO PRINCE FREDERICK  
(301)827-3100 (301)855-9500 (301)855-8200

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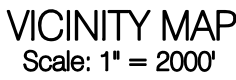


(Manually enter information/figures into shaded areas)



Prepared by \_\_\_\_\_ Date 7/8/2015

- - - - - Existing 2" Contour  
 ——— Existing 10' Contour  
 ——— Proposed Contour  
 ——— LOD ——— Limit of Disturbance  
 — T ——— Underground Telephone Conduit  
 — G ——— Underground Gas Main  
 — — — Water Main  
 - - - - - Sewer Main  
 — OH ——— Overhead Electric/Telephone/Cable  
 15%+ Slopes

DATE: 0--A--F--4 004F

SHEET 3 of X

I hereby certify that these documents were prepared by me or prepared under my supervision, and that I am a duly licensed professional engineer under the laws of the State of Maryland, License No. 8231 (expiration date: 11/28/13). I further certify that this plan has been designed in accordance with the requirements of Subtitle 32, Division 2, of the code of Prince George's County, Maryland; and that I or my staff have inspected this site and that drainage flows from uphill properties onto this site, and from this site onto downhill properties have been addressed in substantial accordance with applicable codes.

|                                                                                                                                                                                                                                                  |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <p>THIS BLOCK IS FOR<br/>OFFICIAL USE ONLY</p> <p>DP based certifies that this plan<br/>meets conditions of final approval<br/>by the Planning Board, its designee<br/>or the District Council.</p> <p><b>M-NCPPC</b></p> <p><b>APPROVAL</b></p> |  |
| <p><b>PROJECT NAME:</b> Blue</p>                                                                                                                                                                                                                 |  |
| <p><b>PROJECT NUMBER:</b> DSP-15016</p>                                                                                                                                                                                                          |  |
| <p>For Conditions of Approval see Site Plan Cover Sheet or Approval Sheet<br/>Revision number must be included in the Project Number</p>                                                                                                         |  |





16' Units  
FL  
Front Elevations at Private Alley



16' Unit RL   14' Unit RL   14' Unit RL   16' Unit RL   16' Unit RL   14' Unit RL   14' Unit RL   16' Unit RL

Front Elevations at Baltimore Av.



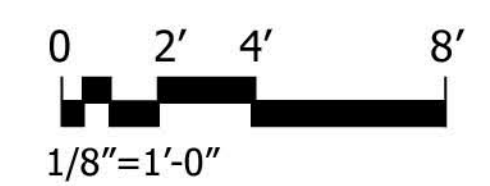
8521 Leesburg Pike Suite 700 Vienna, VA 22182  
P: 571.830.1800 | F: 571.830.1801 | www.lessarddesign.com

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## CONCEPTUAL STREETSCAPE BALTIMORE AV.

THE BLUE TOWNHOMES

HYATTSVILLE, MD.  
HAVERFORD HOMES



A1

07/07/15  
HAV003A.00D





Hyattsville City Council  
4310 Gallatin Street, 3<sup>rd</sup> floor  
Hyattsville, MD 20781

Meeting: 10/5/2015 8:00 PM  
Department: Police Department  
Prepared by: Douglas Holland  
Sponsors: At the Request of the City Administrator  
DOC ID: (ID # 1270)

5.4

**Presentations: Police CAD/RMS Transition**

**SUBJECT: Police CAD/RMS Transition**

**SECTION: Presentations**

**BACKGROUND:**

The Police Department is in the process of migrating from the current New World CAD/RMS to the Prince George's County Motorola PremierOne CAD/RMS. Sergeant Richard Hartnett will update the Mayor and Council on the benefits of the change and the progress of the project.

**NEXT STEPS:**

Continue the transition.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

The Technical Services Sergeant will lead the project. All police personnel will need to be trained on the use of the new systems.

**STRATEGIC GOALS**

**Goal:** Goal 5 – Strengthen the City's Identity as a Diverse, Creative, and Welcoming Community

  
Tracey Nicholson, City Administrator 10/1/2015





# Hyattsville City Police Department



## Migration to Motorola PremierOne Computer-Aided Dispatch (CAD) & Records Management System (RMS) Project



## Background:

Prince George's County Government has purchased the Motorola PremierOne CAD/RMS to replace their aging Tiburon system at a cost of 15 million dollars.

All municipal police departments in the county that are dispatched by the PGPD will automatically use the new P1 system for records management.

The county has invited all of the independent (self-dispatched) municipal police departments to use this new system, **at virtually no cost to the agencies**, to help promote data sharing, interoperability, and efficient transfer of emergency 911 calls.



## CAD/RMS Migration Current Software:

### **New World Systems CAD/RMS/Field Reporting**

- **Purchased 11/30/2009**
- **Vendor tech support has been responsive and timely**
- **Requires an Annual Maintenance Fee of \$75,000**
- **Requires an Annual Escrow Fee of \$1,700**
- **Requires 4 Independent Servers  
(Owned and maintained by the city)**
- **Requires some regular maintenance from the HCPD  
Technical Services Section & Communications Supervisor**

# CAD/RMS Migration

## Current Software:

### New World Systems CAD/RMS/Field Reporting

#### --- Cons ---

- Requires Annual Maintenance & Escrow Fees (\$76,170)
- Servers are past the 5-Year replacement mark  
(Replacement is approx. \$28,000 @ \$7,000 per server)
- Vendor strongly suggests software upgrade – cost \$15,000
- Arrest/Booking never implemented (issues with State)
- No interoperability/data sharing with other agencies
- No interoperability with portable radios
- No easy off-site disaster recovery
- **No “E-911 or Next Generation” 911 integration**



# CAD/RMS Migration

## New Software:

### Motorola PremierOne CAD/RMS/Field Reporting

#### --- Pros ---

- NO Annual Maintenance & Escrow Fees
- NO Servers to own or maintain
- NO cost for RMS software/version upgrades  
(One time fee for CAD “Seat” Licenses only)
- Arrest/Booking functionality (mates with State system)
- Allows interoperability/data sharing with other agencies
- Allows easy off-site disaster recovery
- Motorola technician located in Capitol Heights
- Future Integration with Motorola APX-7000 Portable Radios
- **Fully compatible with “E-911” and future “NG911” Systems**



# CAD/RMS Migration

## --- Summation ---

**Switching to the new Motorola PremierOne  
CAD/RMS will mean:**

- Annual Savings of \$76,000
- No cost for server equipment or maintenance
- 911 call receiving will be seamless and more efficient
- Accurate accountability of call clearance  
(both Hyattsville & PGPD)
- Data sharing to assist in criminal investigations.
- Simplified disaster recovery off-site.





# Hyattsville City Police Department



## Migration to Motorola PremierOne Computer-Aided Dispatch (CAD) & Records Management System (RMS) Project

### The End

Prepared by the Hyattsville City Police Department  
Technical Services Section



**Consent Items: MOTION #124-10-15 Proclamation in Recognition of Domestic Violence Awareness Month**

**SUBJECT: Proclamation in Recognition of Domestic Violence Awareness Month**

**SECTION: Consent Items**

**RECOMMENDED ACTION:**

Motion #124-10-15

I move that the Mayor & Council adopt the following proclamation of celebration for October 2015 as Domestic Violence Awareness Month.

**BACKGROUND:**

Domestic Violence Awareness Month is October, 2015. Prince George's County is raising community awareness for Domestic Violence Awareness Month through the Purple Lights campaign.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

**Goal:** Goal 5 - Strengthen the City's Identity as a Diverse, Creative, and Welcoming Community

**Action:** 5.4 Develop and/or strengthen partnerships with organizations and neighboring comm

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/1/2015





## Proclamation in Recognition of Domestic Violence Awareness Month

**WHEREAS:** Anyone can be a victim of domestic violence regardless of age, sex, ability, ethnicity, sexual orientation, socioeconomic status, or religion; and

**WHEREAS:** Domestic violence is widespread and affects over 4 million Americans each year; and

**WHEREAS:** Children that grow up in violent homes are believed to be abused and neglected at a rate higher than the national average; and

**WHEREAS:** Domestic violence costs the nation billions of dollars annually in medical expenses, police and court costs, shelters, foster care, sick leave, absenteeism, and non-productivity; and

**WHEREAS:** only a coordinated community effort will put a stop to this heinous crime; and

**WHEREAS:** Domestic Violence Awareness Month provides an excellent opportunity for citizens to learn more about preventing domestic violence and to show support for the numerous organizations and individuals who provide critical advocacy, services and assistance to victims;

NOW, THEREFORE BE IT PROCLAIMED, on behalf of all of the members of the City Council, staff, and residents of the City of Hyattsville, the month of October as DOMESTIC VIOLENCE AWARENESS MONTH in the City of Hyattsville, and urge our residents to work together to eliminate domestic violence from our community.

\_\_\_\_\_  
Candace B. Hollingsworth  
Mayor  
City of Hyattsville

October 5, 2015



**Consent Items: MOTION #125-10-15 Proclamation for Breast Cancer Awareness Month**

**SUBJECT: Proclamation for Breast Cancer Awareness Month**

**SECTION: Consent Items**

**RECOMMENDED ACTION:**

Motion #125-10-15

I move that the Mayor & Council adopt the following proclamation of celebration for October 2015 as Breast Cancer Awareness Month.

**BACKGROUND:**

n/a

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

**Goal:** Goal 5 - Strengthen the City's Identity as a Diverse, Creative, and Welcoming Community

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/2/2015



## Proclamation of Celebration for Breast Cancer Awareness Month October, 2015

**Whereas**, the City of Hyattsville is committed to raising awareness about breast cancer and the impact it has on our loved ones, friends, colleagues and community members;

**Whereas**, thousands of women and men in our country take on breast cancer each year;

**Whereas**, screening and early detection can help people to overcome breast cancer;

**Therefore**, we acknowledge the importance of raising awareness of breast cancer in order to support survivors, those currently battling breast cancer and those who might detect it in its early stages, and we recognize Breast Cancer Awareness Month.

---

Candace B. Hollingsworth  
Mayor  
City of Hyattsville

October 5, 2015





**Consent Items: MOTION #126-10-15 Proclamation for National Disability Employment Awareness Month**

**SUBJECT: Proclamation for National Disability Employment Awareness Month**

**SECTION: Consent Items**

**RECOMMENDED ACTION:**

Motion #126-10-15

I move that the Mayor & Council adopt the following proclamation of celebration for October 2015 as National Disability Employment Awareness Month.

**BACKGROUND:**

n/a

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

**Goal:** Goal 5 - Strengthen the City's Identity as a Diverse, Creative, and Welcoming Community

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/2/2015



**Proclamation of Celebration for  
National Disability Employment Awareness Month  
October, 2015**

**Whereas,** the City of Hyattsville is committed to raising awareness about Americans with disabilities and their many and varied contributions to the workforce and our community;

**Whereas,** our City is proud to be a welcoming community that strives to accommodate the needs of all residents, visitors, and employees;

**Whereas,** residents with disabilities strengthen our community's social fabric, increase our knowledge of the human condition, and enrich our local and national society and workforce;

**Therefore,** we acknowledge the many contributions that our residents with disabilities make to our city, and we recognize and celebrate National Disability Employment Month.

---

Candace B. Hollingsworth  
Mayor  
City of Hyattsville

October 5, 2015



**Consent Items: MOTION #127-10-15 ArtSpin, Ward 2 Discretionary Funding Allocation Request**

**SUBJECT: ArtSpin, Ward 2 Discretionary Funding Allocation Request**

**SECTION: Consent Items**

**RECOMMENDED ACTION:**

Motion #127-10-15

I move that the Mayor & Council approve a \$300.00 donation from the Ward 2 allotment for picture hangers to be used to hang artwork on the walls of the City Building during the ArtSpin event on October 24.

**BACKGROUND:**

As part of the FY16 budget, discretionary funding of \$1,000 was allocated to each of the City's five (5) Wards. The Council must authorize via a motion spending of the discretionary funding. Please see attached motion form from Councilmember's Croslin and Warner.

**NEXT STEPS:**

Upon approval, funding will be dispersed by the City Treasurer.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

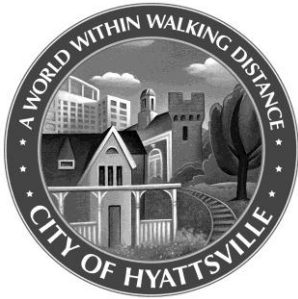
**Goal:** Goal 5 - Strengthen the City's Identity as a Diverse, Creative, and Welcoming Community

**FISCAL IMPACT:**

\$300.00

  
Tracey Nicholson, City Administrator 10/1/2015





## Council Agenda Form

|                                      |                                                 |                |
|--------------------------------------|-------------------------------------------------|----------------|
| <b>MOTION # 127-10-15</b>            |                                                 | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>08/18/2015 | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/05/2015 |                |
| <b>SUBMITTED BY: Croslin, Warner</b> |                                                 |                |
| <b>DEPARTMENT: Legislative</b>       |                                                 |                |

|                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>TITLE OF MOTION: ArtSpin</b>                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>RECOMMENDATION:</b><br><i>I move that the Mayor and Council approve the donation of \$300.00 from the ward two allotment for picture hangers to be used to hang artwork on the walls of the City Building during the ArtSpin event on October 24.</i>                                                                                                                                                                          |
| <b>BACKGROUND:</b><br>ArtSpin will be held on October 24 <sup>th</sup> in the Hyattsville Municipal Building. This event is a function to support local artist and art programs for school age children. The event will transform the Building into a night club with music on two floors while showcasing local artist. There will also be a special showing by the official photographer of the United States Attorney General. |
| <b>ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:</b><br>none                                                                                                                                                                                                                                                                                                                                                                 |
| <b>CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:</b> (must be approved by City Administrator):<br><br><hr/> Tracey E. Nicholson, City Administrator                                                                                                                                                                                                                                                                           |
| <b>STRATEGIC GOALS AND ACTIONS:</b>                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>SUPPORTING DOCUMENTATION:</b>                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>CURRENT YEAR BUDGET IMPACT:</b>                                                                                                                                                                                                                                                                                                                                                                                                |

Attachment: ArtSpin\_Croslin, Warner (1273 : ArtSpin, Ward 2 Discretionary Funding Allocation Request)



**Consent Items: MOTION #128-10-15 Community Day, Ward 5 Discretionary Funding Allocation Request**

**SUBJECT: Community Day, Ward 5 Discretionary Funding Allocation Request**

**SECTION: Consent Items**

**RECOMMENDED ACTION:**

Motion #128-10-15

I move that the Mayor & Council authorize the reimbursement of up to \$250.00 to members of the Ward 5 Community Day Planning Committee from the Ward 5 Council Budget.

**BACKGROUND:**

As part of the FY16 budget, discretionary funding of \$1,000 was allocated to each of the City's five (5) Wards. The Council must authorize via a motion spending of the discretionary funding. Please see attached motion form from Councilmember's Solomon and Frazier.

**NEXT STEPS:**

Upon approval, funding will be dispersed by the City Treasurer.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

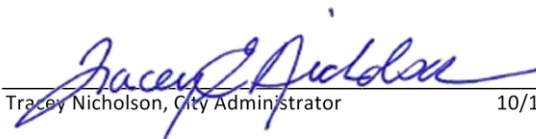
n/a

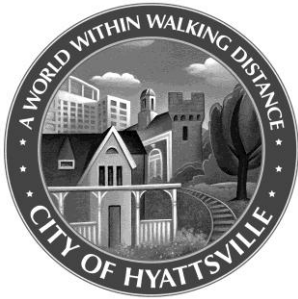
**STRATEGIC GOALS**

**Goal:** Goal 5 - Strengthen the City's Identity as a Diverse, Creative, and Welcoming Community

**FISCAL IMPACT:**

\$250.00

  
Tracey Nicholson, City Administrator 10/1/2015



## Council Agenda Form

|                                                         |                                              |                |
|---------------------------------------------------------|----------------------------------------------|----------------|
| <b>MOTION # 128-10-15</b>                               |                                              | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>9/25/15                       | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/5/15 |                |
| <b>SUBMITTED BY:</b> CM Joseph Solomon, CM Ruth Frazier |                                              |                |
| <b>DEPARTMENT:</b> Hyattsville City Council             |                                              |                |

**TITLE OF MOTION:** Ward 5 Community Day Expense Reimbursement

**RECOMMENDATION:**

*I move that the Mayor and Council authorize the reimbursement of up to \$250.00 to members of the Ward 5 Community Day Planning Committee from the Ward 5 Council Budget.*

**BACKGROUND:**

The Ward 5 Community Day Planning Committee covered \$250.00 in costs with the expectation of a contribution from the Ward 5 discretionary fund.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

Treasurer, City Clerk

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

\_\_\_\_\_  
Tracey E. Nicholson, City Administrator

**STRATEGIC GOALS AND ACTIONS:**

**SUPPORTING DOCUMENTATION:**

**CURRENT YEAR BUDGET IMPACT:** Allocation of \$250.00 from the Ward 5 Council Budget.

Attachment: Hyattsville\_Ward5\_Expense\_Reimbursement\_Motion (1274 : Community Day, Ward 5 Discretionary Funding Allocation Request)





**Consent Items: MOTION #129-10-15 FY16 Grant from MNCPPC**

**SUBJECT: FY16 Grant from MNCPPC**

**SECTION: Consent Items**

**RECOMMENDED ACTION:**

Motion #129-10-15

I move that the Mayor & Council accept and appropriate into the FY16 budget the attached grant contract from the Maryland National Capital Park and Planning Commission in the amount of \$19,000 and authorize the City Administrator to sign the contract, upon the review and approval by the City Attorney for legal sufficiency.

**BACKGROUND:**

This Contract, entered into annually, provides \$19,000 in grant funds per fiscal year to reimburse the City for Recreation programs and events.

Funds from this Contract have been used to provide instruction for the Ageless Grace classes, supplies for senior events and children's programming, and for children's entertainment at events including the Summer Jams and the City Anniversary Festival.

**NEXT STEPS:**

Upon approval, the City Administrator will sign the Contract.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

**Goal:** Goal 2 - Ensure the Long Term Economic Viability of the City

**FISCAL IMPACT:**

\$19,000



Hyattsville City Council  
4310 Gallatin Street, 3<sup>rd</sup> floor  
Hyattsville, MD 20781

Meeting: 10/5/2015 8:00 PM  
Department: Community Services  
Prepared by: Jake Rollow  
Sponsors: At the Request of the City Administrator  
DOC ID: (ID # 1283)

6.6

Consent Items: MOTION #129-10-15 FY16 Grant from MNCPPC

  
Tracey Nicholson, City Administrator 10/1/2015

## CONTRACT

THIS CONTRACT (the “CONTRACT”) made as of this 1<sup>st</sup> day of July 2015 (the “Effective Date”), by and between The Maryland-National Capital Park and Planning Commission, 6611 Kenilworth Avenue, Riverdale, Maryland 20737, a public body corporate and agency of the State of Maryland hereinafter called the “Commission”, and **City of Hyattsville (“Contractor”), a self governing incorporated city at 4310 Gallant Street, Hyattsville, MD 20783.**

## RECITALS

WHEREAS, pursuant to the Maryland Annotated Code, Land Use Article, the Commission has authority to initiate, conduct, direct or cause to be conducted or directed under its supervision a comprehensive program of recreation which may include physical, social, mental and creative opportunities for leisure-time participation as deemed advisable.

WHEREAS, Contractor is organized for a self governing city incorporated by Chapter 424, Acts of 1886 in Prince George’s County, Maryland.

WHEREAS, by action undertaken pursuant to Maryland Annotated Code, Land Use Article, the governing body of Prince George’s County, Maryland, has appropriated for Contractor certain funds totaling \$19,000 in CB-31-2015.

WHEREAS, the Commission and the Contractor desire to cooperate with each other to **provide recreational programs for residents of Hyattsville and the surrounding communities. Programs will include special events, senior programs, and pre-school programs.**

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the parties do covenant and agree as follows:

1. Scope of Work and Term. Contractor shall furnish all labor, materials and incidental supplies necessary or appropriate to perform the Scope of Services set forth in Exhibit A attached hereto and incorporated herein. The term of this Contract (the “Term”) shall be the annual period ending on the first anniversary of the effective date of this Contract, and Contractor shall substantially complete the Work no later than the last day of such Term. Any terms or conditions that are required to be completed after the expiration of this contract, shall survive the expiration of this contract.

2. Compensation. The Commission shall pay Contractor in consideration for performing the Scope of Services a sum not to exceed **\$19,000** (the “Program Fee”). The Program Fee shall be paid to Contractor after the completion of Scope of Services rendered and the submission of a proper invoice to the Commission. The Contractor shall prepare the invoices to the reasonable satisfaction of the Commission’s Secretary-Treasurer and shall not submit invoices more frequently than once a month. Said invoice shall include supporting



documentation or financial reports for expenses and a narrative report adequately describing the Scope of Services provided and shall contain a separate line item for each of the tasks outlined in Exhibit A. The Contractor shall not be entitled to any remaining portion of the Program Fee for any expenses that are incurred after June 30, 2016. All invoices should be submitted to the Commission's coordinator for this Contract: **Mr. Chris Robinson, Acting Northern Area Division Chief, 1500 Merrimac Drive, Hyattsville, MD 20783, 301-408-4320** ("Commission Coordinator").

### 3. Financial Reporting and Other Requirements.

3.1 Contractor designates **Cheri Everhart**, City of Hyattsville to serve as the liaison to the Commission's Northern Area Division and the Commission's Coordinator.

3.2 Contractor shall submit a current list of Board of Directors and a copy of its current bylaws to the Commission (if applicable).

3.3 Contractor shall provide the Commission with a final program and financial report for the Term by **August 1, 2016**.

3.4 Contractor shall provide the Commission with a fully audited fiscal report no later than **December 31, 2016**.

3.5 Contractor shall recognize and acknowledge the Commission as a contributor in all publications that reference Contractor's programs or whenever acknowledgements are given. This acknowledgement should include the following language: "Made possible in part through funding provided by the Maryland-National Capital Park and Planning Commission, Department of Parks and Recreation, Prince George's County." In addition, this language is to be accompanied by a logo provided by the Commission's Contract Coordinator.

3.6 Contractor shall use funds as outlined in Exhibit A. Should any changes to the estimated costs of the proposed schedule of activities exceed more than 10%, Contractor shall make a written request to the Commission for permission to re-direct use of funds.

3.7 Contractor is a corporation in good standing in the State of Maryland as evidenced by the certificate of good standing issued by the Maryland Department of Assessments and Taxation ("Department") attached hereto as Exhibit B. The Contractor represents and warrants that it shall remain in good standing with the Department during the Term.

3.8 The Contractor acknowledges and agrees that it shall retain its business records for at least three (3) years and that the Commission shall have the right to examine the Contractor's records. Upon request, the Commission's auditor may examine the Contractor's records for verification of any expenses or costs incurred by the Contractor to determine whether the Contractor is in compliance with the terms contained herein.

3.9 Failure to abide by any of the requirements contained in this Paragraph 3 shall be deemed a material breach of this Contract, subject this Contract to immediate termination by the Commission, and may make Contractor ineligible for future contracts with the Commission.

### 4. Compliance With Laws, Rules and Regulations; No Discrimination.

4.1 Contractor shall be bound by and comply with (at its sole cost and expense) all federal, state and local laws, ordinances and regulations (hereinafter collectively referred to as "Laws") applicable to the obligations provided under this Contract. Without limiting the generality of the foregoing, Contractor expressly covenants that it shall comply with all applicable Laws pertaining to wages, workers' compensation, equal employment opportunity, and shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, color, national origin, or disability within the meaning of such Laws.

4.1.2 Also without limiting the generality of the foregoing, Contractor expressly covenants that any personnel provided to perform the services herein shall apply for a national and State criminal history records check according to the requirements provided under Title 5 of the Family Article of the Annotated Code of Maryland, at Subtitle 5, Part VI. Any personnel provided by Contractor shall complete and submit the application required for this purpose no later than thirty (30) days from the signing of this Contract or, for newly hired personnel, at the time personnel is hired. Further, the Contractor shall return the affidavit to the Commission, attached hereto and incorporated herein as Exhibit C, listing the names of all personnel who have applied for a criminal history records check, the dates of the applications, a warrant and representation that it shall take any appropriate action regarding the information received as a result of the criminal history record checks, and that the reports are subject to inspection by the Commission. No payments shall be released to the Contractor until the Commission is in receipt of the affidavit and failure to submit the affidavit shall be considered a material breach of this Contract.

4.2. Contractor shall be bound by and comply with the Commission's Policy Guidelines for Project Charges which are attached hereto as Exhibit D.

5. Termination. This Contract may be terminated by the Commission upon thirty (30) days written notice. In the event of such termination, Contractor shall receive compensation for valid services rendered prior to the effective date thereof. Notwithstanding any provision in this Contract, the Commission may immediately terminate this Contract for cause for the following reasons: any non-performance; incomplete service; fraud; any fraudulent representation in any invoice or verification required to obtain payment under this Contract; any derogatory information obtained in connection with the criminal history records checks; or services performed in conflict with the terms and conditions of this Contract. The occurrence of any of these conditions shall constitute a material breach of this Contract and the Commission may terminate this Contract with written notice to Contractor effective immediately.

6. Indemnification and Hold Harmless. Without waiver, Contractor shall defend, indemnify and hold harmless the Commission, its commissioners, officers, directors, agents, servants and employees, and their respective heirs, personal and legal representatives, guardians, successors and assigns, from and against any and all claims, threats, liabilities, taxes, interest, fines, penalties, suits, actions, proceedings, demands, damages, losses, costs and expenses (including attorneys' and experts' fees and court costs) of every kind and nature arising out of, resulting from, or in connection with:

6.1. Contractor's activities pursuant to this Contract, including, without limitation, any act or omission by Contractor's employees, agents, guests and invitees;

6.2. Any misrepresentation or breach by the Contractor of any representation or warranty contained in this Contract;

6.3. Any non-performance, failure to comply or breach by Contractor of any covenant, promise or agreement of Contractor contained in this Contract, except as to any such non-performance, failure or breach approved in advance by the Commission or caused by the Commission's contributory negligence; or,

6.4. Any debts, obligations, duties and/or liabilities of Contractor not expressly assumed by the Commission pursuant to the provisions contained in this Contract.

7. Miscellaneous Provisions.

7.1. Notices. Except as otherwise herein expressed as to the submission of invoices and required reports, any notice, request, demand, and consent or other communications required or may be given under this Contract shall be given in the following manner:

7.1.1. If to the Commission, by First Class US mail with postage prepaid to:  
Executive Director  
The Maryland-National Capital Park and Planning Commission  
6611 Kenilworth Avenue, Suite 402  
Riverdale, MD 20737

with copy to:

General Counsel  
The Maryland-National Capital Park and Planning Commission  
6611 Kenilworth Avenue, Suite 200  
Riverdale, MD 20737

7.1.2 If to Contractor, by First Class US mail with postage prepaid to:  
**Tracey E. Nicholson,**  
**City Administrator**  
**City of Hyattsville**  
**4310 Gallatin Street**  
**Hyattsville, MD 20781**

7.2. Severability; Incorporated Terms; and Order of Precedence. Any provision of this Contract that is held by a court or tribunal of competent jurisdiction to be prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability, without invalidating or rendering unenforceable the remaining provisions of this Contract. In the event of any conflict between the terms and conditions expressed in this Contract and those expressed in any Exhibit annexed hereto, the terms and conditions expressed herein shall be deemed to control.



7.3. Integration; Amendment; Waiver; Assignment. This instrument contains the entire and integrated Contract made by and between the parties hereto and pertaining to the subject matter hereof. The terms and conditions expressed herein shall supersede all prior negotiations, representations or agreements, either written or oral. No provision of this Contract may be amended, waived, or otherwise modified without the prior written consent of all of the parties hereto. No action taken pursuant to this Contract, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement herein contained. The waiver by any party hereto of a breach of any provision or condition contained in this Contract shall not operate or be construed as a waiver of any subsequent breach or of any other conditions hereof.

7.4. Section Headings. The section and other headings contained in this Contract are for reference purposes only and shall not affect the meaning or interpretation of this Contract.

7.5. Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.

7.6. Applicable Law; Jurisdiction and Venue; Service of Process. This Contract was made in the State of Maryland, and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Maryland. All suits, proceedings and other actions relating to, arising out of or in connection with this Contract shall be submitted to the *in personam* jurisdiction of the courts of the State of Maryland and venue for all such suits, proceedings and other actions shall be in Prince George's County, Maryland. The parties hereby waive any claim against or objection to *in personam* jurisdiction and venue in the courts of Prince George's County, Maryland.

7.7. Use of Genders. Whenever used in this Contract, the singular shall include the plural and vice versa, and the use of any gender shall include all genders and the neuter.

7.8. Authorization and Validity of Agreements. The signatories hereto, each and respectively, warrant that he or she has the full right, power and authority to execute, acknowledge, seal and deliver this Contract and to perform the transactions contemplated by this Contract. This Contract has been duly executed, acknowledged, sealed and delivered by the parties as their legal, valid and binding obligations, enforceable against the parties, respectively, in accordance with its terms.

7.9. No Partnership or Joint Venture. Nothing herein contained is intended or shall be construed in any way to create or establish the relationship of partners or a joint venture for any purpose whatsoever.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Contract under seal, with the intention of making it a sealed instrument, on the date first above written.

WITNESSED BY:

**CITY OF HYATTSVILLE**

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

Title: \_\_\_\_\_

ATTEST:

THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

\_\_\_\_\_  
Joseph C. Zimmerman  
Secretary Treasurer

\_\_\_\_\_  
Patricia Colihan Barney  
Executive Director

**Exhibit A**  
**[Scope of Services]**  
**By and Between the Maryland-National Capital Park and Planning Commission and the**  
**City of Hyattsville, Maryland**

Control No. 360242-000

DATE: July 1, 2015 to June 30, 2016

The scope of work (the “Work”) requires the **City of Hyattsville, Maryland** (“Contractor”) to **provide recreational programs for residents of Hyattsville and the surrounding communities. Programs will include special events, senior programs, and pre-school programs.** Programs will be sponsored by the City of Hyattsville and will be open to residents of Prince George’s County. Events will be held at various sites throughout the City of Hyattsville, including Magruder Park and the City Municipal Building. Staff and contractors will be hired and supervised by the Hyattsville Department of Community Services.

**Programs will be operated as enumerated below.** However, in no event shall the Commission pay the Contractor more than **\$19,000** of the costs. Without limiting the generality of the foregoing, Contractor shall undertake the following tasks:

**Programs and Costs:**

**Senior Program:**

| Items                                                       | Description                                                                                                                                 | Estimated Cost    |
|-------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| <b>Contracted Services/Ageless Grace Program Instructor</b> | 80 hours of class time at \$50/hour over the course of the year for a certified Ageless Grace instructor to teach the senior fitness course | \$4,000.00        |
| <b>Contracted Services/ Senior events</b>                   | Contracted entertainment for annual senior events.                                                                                          | \$2,000.00        |
| <b>Supplies for Senior events</b>                           | Refreshments, decorations.                                                                                                                  | \$1,000.00        |
| <b>TOTAL</b>                                                |                                                                                                                                             | <b>\$7,000.00</b> |

The senior program consists of three special events (a fall event in October, a holiday event in December, and a spring event in May for Older Americans Month). We also conduct an Ageless

Grace Senior Exercise class on Wednesday and Friday mornings. The class meets approximately 80 times each year, excluding holiday weeks and occasional breaks between sessions.

**Parent and Child Creative Minds Program:**

| <b>Items</b>                                  | <b>Description</b>                                   | <b>Estimated Cost</b> |
|-----------------------------------------------|------------------------------------------------------|-----------------------|
| <b>Supplies</b>                               | Building blocks, mats, art supplies                  | \$1,000.00            |
| <b>Contracted Services/Program Performers</b> | Music instructors, art instructors, performers, etc. | \$2,000.00            |
| <b>TOTAL</b>                                  |                                                      | <b>\$3,000.00</b>     |

The program meets two mornings per week during the school year. Parents or caregivers and their pre-school children play and learn together in child-led creative projects, story time, movement and free play. The program costs \$50 per child per 10-12 week session.

Developmentally appropriate entertainment is brought into the program periodically.

**Special Events:**

The City produces events throughout the year, which are held at various sites throughout the City. Our largest event is the four-day Anniversary Carnival, which also includes our annual Anniversary Parade and a fireworks display on Saturday evening. Other events include a Summer Concert Series, which takes place five times from May through September; a Halloween-themed event for elementary school children; a late winter parent & child dance party; an outdoor movie series; and other activities throughout the year. Entertainment is contracted for each of these events.

| <b>Event(s)</b>                                                                                               | <b>Contracted Service/Provider</b>                                                                             | <b>Estimated Cost</b> |
|---------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|-----------------------|
| <b>Contracted Entertainment for Special Events (Egg Hunt, Parent &amp; Child Dance, Outdoor Movie Series)</b> | Musical performances, DJ entertainment, outdoor movie licensing.                                               | \$2,000.00            |
| <b>Anniversary Parade &amp; Carnival</b>                                                                      | Contractors for a fireworks display, rental equipment for the event, and musical performances during the event | \$7,000.00            |
| <b>TOTAL</b>                                                                                                  |                                                                                                                | <b>\$9,000.00</b>     |

**Total Costs:**



Contract No. 360242-000

| Description          | Estimated Cost     |
|----------------------|--------------------|
| Supplies & Materials | \$2,000.00         |
| Contracted Services  | \$17,000.00        |
| <b>TOTAL</b>         | <b>\$19,000.00</b> |
|                      |                    |

Attachment: FY16 City of Hyattsville-\$19K (1283 : FY16 Grant from MNCPPC)

**Exhibit B**

Certificate of good standing issued by the Maryland Department of Assessments and Taxation

N/A

**Exhibit C  
[Affidavit]**

**By and Between The Maryland-National Capital Park and Planning Commission and the  
(INSERT NAME OF CONTRACTOR)**

**AFFIDAVIT**

I \_\_\_\_\_ name \_\_\_\_\_, under the penalties of perjury do solemnly swear:

1. I am \_\_\_\_\_ (title) \_\_\_\_\_ of \_\_\_\_\_ City of Hyattsville \_\_\_\_\_ .
2. As the \_\_\_\_\_ (title) \_\_\_\_\_, I have personal knowledge of the facts contained herein and I am authorized to submit this affidavit on behalf of \_\_\_\_\_ City of Hyattsville \_\_\_\_\_.
3. The following personnel will be providing services under the Contract with The Maryland-National Capital Park and Planning Commission ("Commission"), and said personnel, in compliance with Title 5 of the Family Article of the Annotated Code of Maryland, at Subtitle 5, Part VI, have applied for a federal and state criminal history records check on the dates shown below:

| Name of Personnel | Date of Application | Application Number |
|-------------------|---------------------|--------------------|
|                   |                     |                    |

4. On behalf of \_\_\_\_\_ City of Hyattsville \_\_\_\_\_, I warrant and represent that any new personnel hired during the term of the Contract with the Commission shall immediately file for a federal and state records check.

5. On behalf of \_\_\_\_\_ City of Hyattsville \_\_\_\_\_, I warrant and represent that any appropriate action shall be taken regarding the information received as a result of the criminal history record checks and the reports shall be subject to inspection by the Commission upon request.

I do solemnly swear and affirm under the penalties of perjury that the information contained herein is true to the best of my knowledge, information and belief.

Printed Name: \_\_\_\_\_

\_\_\_\_\_ Date

**Exhibit D****POLICY GUIDELINES FOR PROJECT CHARGES****Mission of the Prince George's County Department of Parks and Recreation**

All project charges and program support placed in our adopted operating budget by the Prince George's County Council shall fully meet the Prince George's County Department of Parks and Recreation mission and core services in accordance with Maryland Annotated Code, Land Use Article. In order to receive the project charge payments, entities must enter into a contract with the Commission clearly defining the scope of the services to be provided and the reimbursement process. The services must also meet the core mission of the Commission as authorized in the Maryland Annotated Code, Land Use Article. Such determinations shall be made by the Department of Parks and Recreation, Legal and Finance. This determination shall be made prior to a contract being transmitted to the County, municipality or organization. The Department's mission and core services are as follows:

*In partnership with County citizens, provide comprehensive park and recreation programs, facilities, and services which respond to changing needs within our communities. Strive to preserve, enhance, and protect open spaces to enrich the quality of life for the present and future generations in a safe and secure environment.*

*Develop and maintain a comprehensive park system by maintaining all parks, roads, grounds and structures, and protect patron and property safety.*

*Provide recreation programs and services by providing sports, leagues, clinics, tournaments, camps, recreation and interpretative classes, and leisure/recreation experiences.*

*Preserve the environment and open space, and conserve natural resources.*

**Reimbursable Expenses**

- The Prince George's County Department of Parks and Recreation shall only reimburse the County, municipalities, and organizations for expenses that are directly related to the mission and core services of the Department that are being provided by the County, municipality or organization.
- The Commission's Secretary-Treasurer shall make the final determinations as to which expenses are allowable and which are not.
- These determinations along with the complete budget and scope of services (statement of work) for the project charges and program support shall be identified in the contract between the Commission and the County, municipality or organization.
- The general types of expenses that are allowed include:
  - Direct staff costs to operate and manage the program or provide the services
  - Supplies and materials directly associated with the program or services
  - Contracted services that are directly related to operating and managing the programs or providing the services
- No overhead or pro-rated type administrative costs will be allowed.
- Payment requests must be accompanied by an invoice for actual costs incurred along with supporting documents and/or financial reports with sufficient detail to enable the Commission to



verify that the costs were incurred for the programs identified and that the Commission property taxes used as the funding source are being spent on allowable purposes.

- Advance payments are not allowable.
- For non-County government entities, if the costs are for capital improvements or for operating costs in advance of a capital improvement, a use agreement must be executed to enable the Commission to receive fair value for the funding provided.
- For salary/compensation expenses, the County, municipality or organization shall provide a payroll register or a suitable mechanism to verify payroll expenses. For supplies and materials, other services and charges including contracted services, and any capital purchases, the County, municipality or organization shall provide receipts with original signatures verifying that the goods or services were received.
- Contract should describe what documentation will be required.
- All work or services must be fully complete or provided by the end of the fiscal year (June 30) in which the funding was approved by the County Council

#### **Vendor Requirements**

- Statement of Work per the above sections
- By-Laws (for Non-Profits)
- Affidavit
- Certificate of Good Standing from State of Maryland
- Articles of Incorporation



**Action Items: MOTION #130-10-15 Residential Parking Zone Committee**

**SUBJECT: Residential Parking Zone Committee**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #130-10-15

I move that the Mayor appoint, with Council approval, a seven-person Residential Parking Zone Committee, to review and make recommendations on City policies related to the City's residential parking zone program. The Mayor and Council shall strive to include at least one member on the committee from each Ward of the City. The committee shall conduct a review of the City's current residential parking zone program, exploring gaps in service, needs, and best practices, with the intent of developing a set of recommendations for modifying the program in order to better serve parking needs in neighborhoods throughout the City. The committee shall make its recommendations to the Council within 120 days of its inception, after which the committee's charter shall end.

**BACKGROUND:**

Please see attached motion submitted by Councilmember Lawrence. This item was on the discussion agenda of the Sept. 21 Council meeting.

**NEXT STEPS:**

Upon approval, Council, staff and resident appointments to the Committee should be submitted to the City Clerk. Appointments will be scheduled on a future Council Meeting agenda.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

**Goal:** Goal 1 - Ensure Transparent and Accessible Governance

**FISCAL IMPACT:**

None



Hyattsville City Council  
4310 Gallatin Street, 3<sup>rd</sup> floor  
Hyattsville, MD 20781

Meeting: 10/5/2015 8:00 PM  
Department: Legislative  
Prepared by: Laura Reams  
Sponsors: Lawrence  
DOC ID: (ID # 1280)

7.1

**Action Items: MOTION #130-10-15 Residential Parking Zone Committee**

  
Tracey Nicholson, City Administrator 10/1/2015



**Action Items: MOTION #131-10-15 2016 Legislative Priority: Structured Parking Facility**

**SUBJECT: 2016 Legislative Priority: Structured Parking Facility**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #131-10-15

I move that the Mayor and Council adopt structured parking facility, funding, and construction as a priority request for the legislative breakfast to be held on November 4, 2015.

**BACKGROUND:**

Please see attached motion form submitted by Mayor Hollingsworth.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

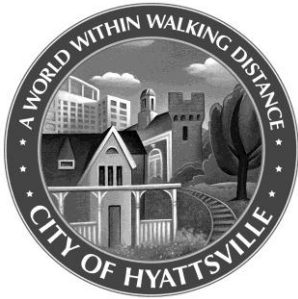
**Goal:** Goal 2 - Ensure the Long Term Economic Viability of the City

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/1/2015





## Council Agenda Form

|                                    |                                               |                  |
|------------------------------------|-----------------------------------------------|------------------|
| <b>MOTION # 131-10-15</b>          |                                               | <b>DRAFT # 1</b> |
| <b>DATE SUBMITTED:</b><br>09/30/15 | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/05/15 |                  |
| <b>SUBMITTED BY:</b> Hollingsworth |                                               |                  |
| <b>DEPARTMENT:</b> Legislative     |                                               |                  |

**TITLE OF MOTION: 2016 Legislative Priority: Structured Parking Facility**

**RECOMMENDATION:**

I move that the Mayor and Council adopt structured parking facility, funding, and construction as a priority request for the legislative breakfast to be held on November 4, 2015.

**BACKGROUND:**

The City of Hyattsville has expressed interest in partnering with the Prince George's County government and Revenue Authority in order to build a structured parking facility on Hamilton Street. A structured parking facility would serve to address the existing parking deficit and, more importantly, encourage infill development to activate vacant or otherwise unused commercial space along Route 1.

No formal commitments leading to the financing or construction of this facility have been made to date. The City of Hyattsville would make explicit asks of suitable partners to meet financing, construction, and operational needs based on the status of those conversations at the time of the legislative breakfast.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

\_\_\_\_\_  
Tracey E. Nicholson, City Administrator

**STRATEGIC GOALS AND ACTIONS:**

**Goal 2: Ensure the Long-Term Economic Viability of the City**

Action 2.2 – Invest and manage City infrastructure including streets, sidewalks, and public facilities.

Action 2.4 – Provide economic development programming and projects to support and facilitate infill, revitalization, redevelopment, and transit-oriented investment.

Action 2.5 – Leverage funding and resource opportunities to support projects, programs, and services consistent with City's adopted Vision, Mission, and Strategic Goals.

**SUPPORTING DOCUMENTATION:** N/A

**CURRENT YEAR BUDGET IMPACT:**

Attachment: Legislative Breakfast Priority Item - Parking (1277 : 2016 Legislative Priority: Structured Parking Facility)



**Action Items: MOTION #132-10-15 2016 Legislative Priority: PG County Public Schools (PGCPS) School Infrastructure Funding**

**SUBJECT: 2016 Legislative Priority: PG County Public Schools (PGCPS) School Infrastructure Funding**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #132-10-15

I move that the Mayor and Council adopt "PGCPS School Infrastructure Funding" as a 2016 legislative priority.

**BACKGROUND:**

Please see attached motion form submitted by Mayor Hollingsworth and Council members Lawrence and Ward.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

**Goal:** Goal 2 - Ensure the Long Term Economic Viability of the City

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/1/2015



## Council Agenda Form

**MOTION # 132-10-15**
**DRAFT #**
**DATE SUBMITTED:**
**9/27/2015**
**DATE TO GO BEFORE COUNCIL:**
**10/5/2015**
**SUBMITTED BY: Hollingsworth, Lawrence, Ward**
**DEPARTMENT: Legislative**
**TITLE OF MOTION: 2016 Legislative Priority: Prince George's Council Public Schools (PGCPS) School Infrastructure Funding**
**RECOMMENDATION:**

I move that the Mayor and Council adopt "PGCPS School Infrastructure Funding" as a 2016 legislative priority.

**BACKGROUND:**

Prince George's County Public School's Master Plan Support Project (MPSP) recently placed Hyattsville Elementary School (HES) 4th on the list for major renovation or replacement and Hyattsville Middle School (HMS) 11th on the list for middle school major renovation or replacement. The project start year for the 3-year, \$32.7 million HES project is 2018, and the 4-year, \$62.4 million HMS project is scheduled to start in 2021. It's imperative that the County adhere to this schedule, if not accelerate it, and provide the requisite funding.

PGCPS strives to be "Great by Choice." There are many ingredients to great schools including, but not limited to, engaged families/communities, experienced and effective administrators, highly qualified teachers, and quality/modern facilities. HES and HMS currently enjoy three out of four of these ingredients. However, these schools lack the quality of facilities necessary to be Great by Choice.

Factors such as heating/cooling, computer systems, cleanliness, bathroom conditions, overcrowding, and mobility affect student achievement and the quality of teaching.<sup>1</sup> There is also evidence that students in overutilized (overcrowded) schools score lower on mathematics and reading exams than similar students in underutilized schools.<sup>2</sup>

HES and HMS, built in 1935 and 1938, respectively, both face the challenge of overcoming the functional obsolescence and the overutilization of their school facilities. For example, Hyattsville Elementary's utilization 2014/15 rate was above 150% and its failing systems disrupted severely limited classroom space within the building. For two consecutive years, classrooms were flooded out when pipes burst, leading to temporary classroom sizes approaching 60 students. As the building sits on just 2.1 acres of land, there's simply no place to put another student or to add additional programing in the existing structure.

The increasing lack of space at HES and HMS undermines the schools' ability to provide outdoor recess (in HES's case), arts education, student mobility, appropriate lighting, and other factors that affect the effectiveness of a school.<sup>3</sup> The benefits of addressing the challenges facing these schools include—

- Improved creative, social, and emotional development of students
- Improved cognition of students
- Improved physical well-being of students
- Improved academic outcomes of students
- Improved school climate
- Improved teacher retention

<sup>1</sup> Edwards, Maureen M. (1992). Building Conditions, Parental Involvement and Student Achievement in the D.C. Public School System. Unpublished Master Degree Thesis, Georgetown University, Washington, D.C. (ED 264 285).

<sup>2</sup> Rivera-Batiz, Francisco L., and Lillian Marti (1995). A School System at Risk: A Study of the Consequences of Overcrowding in New York City Public Schools. New York: Institute for Urban and Minority Education, Teachers College, Columbia University.

<sup>3</sup> Ramstetter CL, Murray R, Garner AS. (2010). The crucial role of recess in schools. J Sch Health. 80: 517-526.

Arts Education Partnership. 2013. Preparing Students for the Next America: the Benefits of an Arts Education. Arts Education Partnership, Washington, DC.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

none

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

Tracey Nicholson, City Administrator

**STRATEGIC GOALS AND ACTIONS:**

Goal 2 – Ensure the long-term health of the City

Action 2.1 – Maintain a responsible level of investment in capital and operational resources managed through Council's adopted budget policy development plan, including the use of five-year revenue and expenditure projections

Action 2.2 – Apply energy-efficient practices to all City operations, facilities, and equipment

Goal 3 – Enhance a safe and pleasant community

Action 3.3 – Effectively manage and invest in community amenities and City infrastructure including streets, sidewalks and other public facilities

Goal 4 – Foster excellence in all City operations

Action 4.4 – Solicit and support community and inter-agency partnerships that enhance City services

Goal 5 – Strengthen the City's identity as a diverse, creative, and welcoming community

Action 5.4 – Work with other organizations and communities to broaden the range of resources and services provided to City residents

**SUPPORTING DOCUMENTATION:**

**CURRENT YEAR BUDGET IMPACT:** none



**Action Items: MOTION #133-10-15 2016 Legislative Priority: Completing the Trolley Trail to Armentrout Dr.**

**SUBJECT: 2016 Legislative Priority: Completing the Trolley Trail to Armentrout Dr.**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #133-10-15

I move that the Mayor and Council adopt "Completing the Trolley Trail to Armentrout Dr." as a 2016 legislative priority.

**BACKGROUND:**

Please see attached motion form submitted by Council members Lawrence and Ward.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

**Goal:** Goal 2 - Ensure the Long Term Economic Viability of the City

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/1/2015





## Council Agenda Form

**MOTION # 133-10-15**
**DRAFT #**
**DATE SUBMITTED:**
**9/27/2015**
**DATE TO GO BEFORE COUNCIL:**
**10/5/2015**
**SUBMITTED BY: Lawrence, Ward**
**DEPARTMENT: Legislative**
**TITLE OF MOTION: 2016 Legislative Priority: Completing the Trolley Trail to Armentrout Dr.**
**RECOMMENDATION:**

I move that the Mayor and Council adopt "Completing the Trolley Trail to Armentrout Dr." as a 2016 legislative priority.

**BACKGROUND:**

Once completed, the Anacostia River bike path network will include access to the Bladensburg Waterfront Park, Kenilworth Aquatic Gardens, Nationals Stadium, and more. Yet, a small yet-to-be-completed section of the Trolley Trail means that these bike path systems won't directly connect cyclists to the retail establishments and neighborhoods along Rte. 1, starting in Hyattsville.

Park and Planning's Master Plan design includes the creation of 400 new miles of hard and soft trails in Prince George's County by 2040. Compared to this lofty goal, the short stretch of bike path along Rte. 1 from Armentrout Dr. north to Farragut St. seems miniscule, yet the potential benefits of completing this short stretch of bike path are great, including the following:

- Increased bicycle tourism, including dining and shopping
- Increased personal health
- Increased personal transportation (e.g., commuting)

Investment in bicycle infrastructure has been shown to lead to health care and fuel consumption savings.<sup>1</sup> Improved bicycle infrastructure can also lead to neighborhood revitalization, by generating tourism and supporting local businesses.<sup>2</sup>

<sup>1</sup> Gotschi, T. (2011). Investment in bicycle infrastructure can lead to health care and fuel consumption savings. *Journal of Physical Activity and Health*, 2011, 8(Suppl 1), S49-S58.

<sup>2</sup> Flusche, D. (2009). *Bicycling Means Business: The Economic Benefits of Bicycle Infrastructure*. League of American Bicyclists: Portland, Oregon.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT: none**
**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT: (must be approved by City Administrator):**

\_\_\_\_\_  
Tracey Nicholson, City Administrator

**STRATEGIC GOALS AND ACTIONS:**

Goal 2 – Ensure the long-term health of the City

Action 2.3 –Promote alternative transportation methods and connectivity throughout the City

Goal 3 – Enhance a safe and pleasant community

Action 3.1 – Increase the quality of parks, recreation facilities, and broaden recreation related programs and opportunities for City residents

Goal 5 – Strengthen the City's identity as a diverse, creative, and welcoming community

Action 5.4 – Work with other organizations and communities to broaden the range of resources and services provided to City residents

**SUPPORTING DOCUMENTATION:**

**CURRENT YEAR BUDGET IMPACT:** none



**Action Items: MOTION #134-10-15 2016 Legislative Priority: County Paid Sick Leave Legislation**

**SUBJECT: 2016 Legislative Priority: County Paid Sick Leave Legislation**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #134-10-15

I move that the Mayor and Council adopt County Paid Sick Leave Legislation as a 2016 Legislative Priority.

**BACKGROUND:**

Please see attached motion form submitted by Councilmember Paschall.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

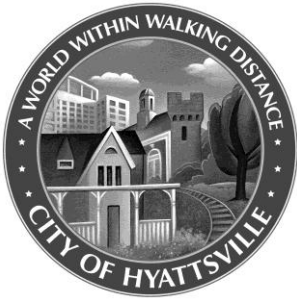
**STRATEGIC GOALS**

**Goal:** Goal 4 - Foster Excellence in All City Operations

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/2/2015



## Council Agenda Form

|                                           |                                                |                |
|-------------------------------------------|------------------------------------------------|----------------|
| <b>MOTION # 134-10-15</b>                 |                                                | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>October 1, 2015 | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/5/2015 |                |
| <b>SUBMITTED BY: Paschall</b>             |                                                |                |
| <b>DEPARTMENT:</b>                        |                                                |                |

**TITLE OF MOTION: 2016 Legislative Priority: County Paid Sick Leave Legislation**

**RECOMMENDATION:**

*I move that the Mayor and Council adopt County Paid Sick Leave Legislation as a 2016 Legislative Priority.*

**BACKGROUND:**

According to the National Partnership for Women & Families, over 800,000 workers across the state of Maryland do not have access to paid sick leave, representing 39.1% of Maryland workers. Progressive Maryland reports that an even higher percentage – 43% - of Prince George's County private sector workers lack paid sick leave, with nearly half (48%) of low-income workers lacking access to paid sick leave.

Lack of paid sick leave contributes to public health concerns as employees are faced with going to work sick (which workers are 1.5 times more likely to do if they do not have paid sick leave) or taking unpaid leave if their employer allows it. A report from the Senate Committee on Health, Education, Labor, and Pensions from 2007 found that 78% of food service and hotel workers lack paid sick leave, and also reporting overwhelming rates among child care center and nursing home workers lacking paid sick leave.

Perhaps most relevant to Hyattsville, the Congressional Research Service found that less than half of Hispanic workers in the country lack access to paid sick leave. As Hyattsville's Hispanic population is around 36% of total residents, Hyattsville has a particular interest in ensuring that employers throughout the county offer paid sick leave to all workers.

County legislation that has been introduced would require businesses to allow workers one hour of paid sick leave for every 30 hours worked, with a cap of 7 paid sick days accrued annually.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

\_\_\_\_\_  
Tracey E. Nicholson, City Administrator

**STRATEGIC GOALS AND ACTIONS:**

**SUPPORTING DOCUMENTATION:**

**CURRENT YEAR BUDGET IMPACT:**

Attachment: 2016 Leg Priority Paid Sick Leave (1296 : 2016 Legislative Priority: County Paid Sick Leave Legislation)



**Action Items: MOTION #135-10-15 2016 Legislative Priority: West Hyattsville Metro Development**

**SUBJECT: 2016 Legislative Priority: West Hyattsville Metro Development**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #135-10-15

I move that the Mayor and Council accept the prioritization of West Hyattsville Metro Development as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.

**BACKGROUND:**

Please see attached motion form submitted by Councilmember Solomon.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

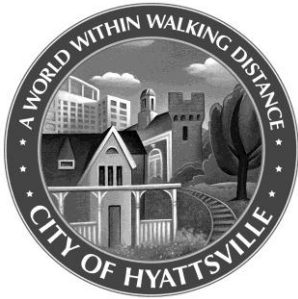
**Goal:** Goal 2 - Ensure the Long Term Economic Viability of the City

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/1/2015





## Council Agenda Form

|                                             |                                                |                |
|---------------------------------------------|------------------------------------------------|----------------|
| <b>MOTION # 135-10-15</b>                   |                                                | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>10/1/2015         | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/5/2015 |                |
| <b>SUBMITTED BY:</b> CM Joseph Solomon      |                                                |                |
| <b>DEPARTMENT:</b> Hyattsville City Council |                                                |                |

**TITLE OF MOTION: 2016 Legislative Priority: West Hyattsville Metro Development**

**RECOMMENDATION:**

*I move that the Mayor and Council accept the prioritization of West Hyattsville Metro Development as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.*

**BACKGROUND:**

The Hyattsville City Council seeks to adopt FY2016 legislative priorities for discussion with State and County representation during a November 2015 Legislative breakfast.

In March of 2014 WMATA's Planning, Program Development and Real Estate committee voted to adopt the proposed 2014 joint development work program, which included requests for proposals for developable parcels at a number of metro stations including the West Hyattsville Metro Station. The station was selected on the basis of market strength, developer offers and interest, adjacent projects and consultation with local economic development officials, as reference Metro's director of real estate and station planning, by Stan Wall. (SOURCE: BIZJOURNAL.COM)

At the March 2 Hyattsville City Council meeting, the Washington Metropolitan Area Transit Authority (WMATA) presented information to the council about a joint development solicitation for the West Hyattsville Metro Station. Stan Wall briefed the council on Metro's joint development program, their vision for the West Hyattsville station, as well as the process and next steps. "Joint development," Wall said, refers to the transit agency working with the private sector. (SOURCE: HYATTSVILLE LIFE & TIMES)

While WMATA had chosen to prioritize the West Hyattsville Metro, as in March of 2014, Prince George's County announced a new strategy aimed at spurring development and growth around the county's transit centers with a focus on five of the county's 15 Metro stations, using investment in infrastructure, financial incentives and regulatory policies to jump-start development, West Hyattsville Metro was not listed among these. (SOURCE: WASHINGTON POST)

The success of West Hyattsville Metro Development will require not only the prioritization of WMATA but also the support Prince George's County and the State of Maryland through the offering of necessary infrastructure, financial incentives and regulatory policies to jump-start development. While development remains stagnant at West Hyattsville Metro Station, the regular visual presence of additional safety resources, specifically bicycle police patrol of the Anacostia trail system and regular canine walks, would be useful in crime prevention.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

\_\_\_\_\_  
**Tracey E. Nicholson, City Administrator**

**STRATEGIC GOALS AND ACTIONS:**

Action 2.3 –Promote alternative transportation methods and connectivity throughout the City

Action 2.4 – Support high quality, low-impact development and private investment that enhances the community

**SUPPORTING DOCUMENTATION:**

**CURRENT YEAR BUDGET IMPACT:**



**Action Items: MOTION #136-10-15 2016 Legislative Priority: Nicholson Street Traffic Lights**

**SUBJECT: 2016 Legislative Priority: Nicholson Street Traffic Lights**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #136-10-15

I move that the Mayor and Council accept the request for traffic lights at the intersections Nicholson Street and Ager Road, and Nicholson Street and Queens Chapel Road as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.

**BACKGROUND:**

Please see attached motion form submitted by Councilmember Solomon.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

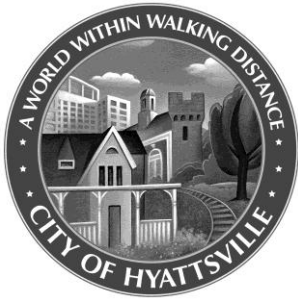
**STRATEGIC GOALS**

**Goal:** Goal 2 - Ensure the Long Term Economic Viability of the City

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/2/2015



## Council Agenda Form

|                                             |                                                |                |
|---------------------------------------------|------------------------------------------------|----------------|
| <b>MOTION # 136-10-15</b>                   |                                                | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>10/1/2015         | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/5/2015 |                |
| <b>SUBMITTED BY: CM Joseph Solomon</b>      |                                                |                |
| <b>DEPARTMENT: Hyattsville City Council</b> |                                                |                |

### **TITLE OF MOTION: 2016 Legislative Priority: Nicholson Street Traffic Lights**

#### **RECOMMENDATION:**

*I move that the Mayor and Council accept the request for traffic lights at the intersections Nicholson Street and Ager Road, and Nicholson Street and Queens Chapel Road as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.*

#### **BACKGROUND:**

The Hyattsville City Council seeks to adopt FY2016 legislative priorities for discussion with State and County representation during a November 2015 Legislative breakfast.

##### Ager Rd:

In May of 2014 Prince George's County police reported a man who was struck by a car on Ager Road in Hyattsville was not in a crosswalk at the time. According to police, 30-year-old Bruce Coppage walked into the path of a car headed southbound in the 5500 block of Ager Road. Police later pronounced Coppage dead at the hospital. (SOURCE: WUSA9)

In June of 2012 Prince George's County Department of Public Works and Transportation unveiled conceptual plans to overhaul Ager Road and bring it up to modern transportation standards. Later in October of 2012, (Source: Hyattsville Patch) Since 2012 the County DPW has shared additional iterations of the plans with the Hyattsville City Council and Planning Committee, however, three years later Ager Road remains unimproved and current plans to do not include any additional traffic lights at the Nicholson Street intersection. Parents and children cross this at this intersection they travel to Rosa Parks Elementary School or Heurich Park from Kirkwood Apartments, and residents of Ward 4 cross this road as they travel to the West Hyattsville Metro Station. During the October 2012 presentation to the Hyattsville City Council, Mayor Marc Tartaro, and Council Members Paula Perry (Ward 4) and Carlos Lizanne (Ward 4) all asked county planners to consider adding an additional crosswalk at the intersection of Ager Road and Lancer Drive, citing that spot was frequently used to cross towards the West Hyattsville Metro Station; this too would be an acceptable solution.

##### Queens Chapel Rd:

In January 2000, Violet Jasmine Johnson, 33, and Nikola Nduume Musembi, 4, of Toledo Terrace in Hyattsville, died after being struck by a vehicle that drove up on the sidewalk at Queens Chapel Road and Nicholson Street. During the same year Hyattsville Police Chief Douglas Holland disclosed that 214 accidents occurred along Queens Chapel Road between 1995 and 1999. (SOURCE: GAZETTE.NET)

A State Highway Administration (SHA) traffic light feasibility study completed at Queens Chapel and Nicholson Street 10 months after the mother and her 4-year-old daughter were killed determined that a traffic light was not warranted.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

\_\_\_\_\_  
**Tracey E. Nicholson, City Administrator**

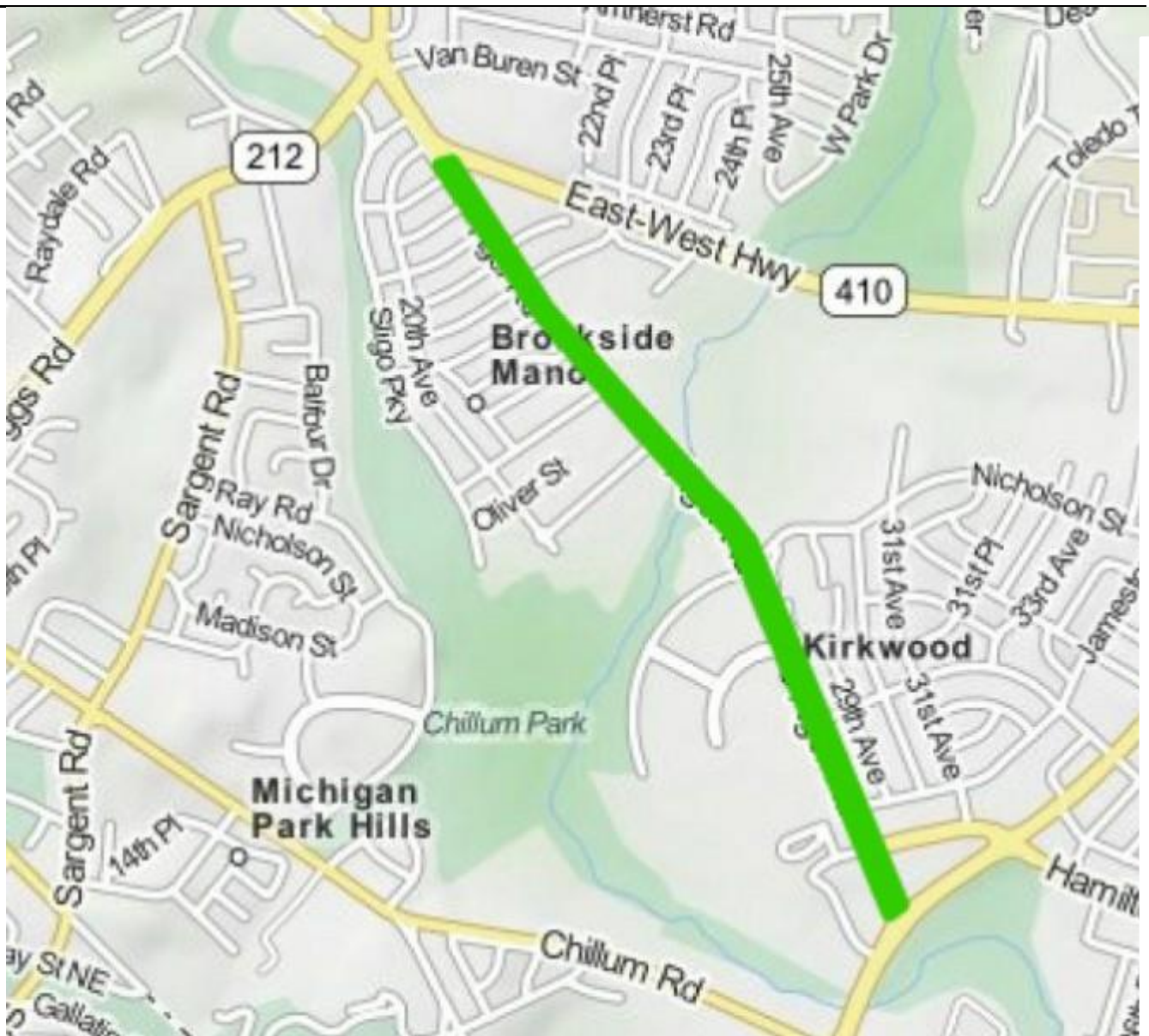
**STRATEGIC GOALS AND ACTIONS:**

Goal 3 – Enhance a safe and pleasant community

**SUPPORTING DOCUMENTATION:**

1. Ager Road Capital Roadway Improvements Pubic Presentation:  
[http://www.princegeorgescountymd.gov/sites/PublicWorks/Services/CapitalRoadwayProject/Documents/Ager\\_Road\\_Public\\_Presentation\\_Final.pdf](http://www.princegeorgescountymd.gov/sites/PublicWorks/Services/CapitalRoadwayProject/Documents/Ager_Road_Public_Presentation_Final.pdf)
2. Prince George's County Anticipated DPW Budgeting for Ager Rd:  
[http://www.princegeorgescountymd.gov/sites/OMB/Resources/Budget-2014/Documents/OMB\\_FY14ApprovedBudget\\_capital\\_Sept2013.pdf](http://www.princegeorgescountymd.gov/sites/OMB/Resources/Budget-2014/Documents/OMB_FY14ApprovedBudget_capital_Sept2013.pdf)
3. Photo of Ager Road provide by Patch.com





CURRENT YEAR BUDGET IMPACT:



**Action Items: MOTION #137-10-15 2016 Legislative Priority: Local Regulation of Tobacco Products**

**SUBJECT: 2016 Legislative Priority: Local Regulation of Tobacco Products**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #137-10-15

I move that the Mayor and Council support the abrogation of the Altadis U.S.A. INC v Prince George's County Maryland court decision by accepting the local regulation of tobacco products as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.

**BACKGROUND:**

Please see attached motion form submitted by Council member's Solomon and Croslin.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

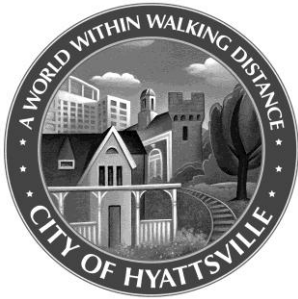
**STRATEGIC GOALS**

**Goal:** Goal 2 - Ensure the Long Term Economic Viability of the City

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/1/2015



## Council Agenda Form

|                                                           |                                                |                |
|-----------------------------------------------------------|------------------------------------------------|----------------|
| <b>MOTION # 137-10-15</b>                                 |                                                | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>10/1/2015                       | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/5/2015 |                |
| <b>SUBMITTED BY:</b> CM Joseph Solomon, CM Robert Croslin |                                                |                |
| <b>DEPARTMENT:</b> Hyattsville City Council               |                                                |                |

### TITLE OF MOTION: 2016 Legislative Priority: Local Regulation of Tobacco Products

#### RECOMMENDATION:

*I move that the Mayor and Council support the abrogation of the Altadis U.S.A. INC v Prince George's County Maryland court decision by accepting the local regulation of tobacco products as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.*

#### BACKGROUND:

The Hyattsville City Council seeks to adopt FY2016 legislative priorities for discussion with State and County representation during a November 2015 Legislative breakfast.

Councilmember Robert Croslin (Ward 2) and I seek to introduce legislation to regulate the sale of tobacco products within the corporate limits of the City of Hyattsville. The Altadis legal decision preempts municipalities from enacting any regulatory authority over tobacco products, reserving this authority exclusively for the state legislature. This decision of Maryland Court of Appeals coupled with the Bowie/Takoma Park decision, are viewed as breaks from a historical precedent of allowing municipalities some authority over tobacco regulation.

#### ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

\_\_\_\_\_  
Tracey E. Nicholson, City Administrator

#### STRATEGIC GOALS AND ACTIONS:

- Goal 2 – Ensure the long-term health of the City
- Goal 3 – Enhance a safe and pleasant community

#### SUPPORTING DOCUMENTATION:

1. Altadis Abrogation Bill Draft
2. MD Courts Altadis USA (Cigar Packing) Opinion -  
<http://www.mdcourts.gov/opinions/coa/2013/85a10.pdf>
3. Tokoma/Bowie Preemption -  
[https://scholar.google.com/scholar\\_case?case=17951441476938651307&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=17951441476938651307&hl=en&as_sdt=6&as_vis=1&oi=scholar)

#### CURRENT YEAR BUDGET IMPACT:

|  |
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**Action Items: MOTION #138-10-15 2016 Legislative Priority: Statewide Racial Profiling Bill**

**SUBJECT: 2016 Legislative Priority: Statewide Racial Profiling Bill**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #138-10-15

I move that the Mayor and Council affirm that it must be illegal for a police officer to profile a person on the basis race, religion, ethnicity or national origin by adopting the support and encouragement for a statewide racial profiling ban as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.

**BACKGROUND:**

Please see attached motion form submitted by Councilmember Solomon.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

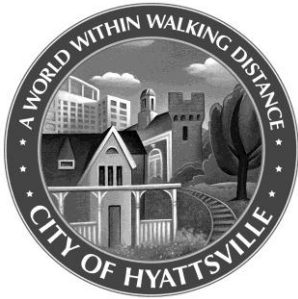
**Goal:** Goal 5 - Strengthen the City's Identity as a Diverse, Creative, and Welcoming Community

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/2/2015





## Council Agenda Form

|                                             |                                                |                |
|---------------------------------------------|------------------------------------------------|----------------|
| <b>MOTION # 138-10-15</b>                   |                                                | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>10/1/2015         | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/5/2015 |                |
| <b>SUBMITTED BY: CM Joseph Solomon</b>      |                                                |                |
| <b>DEPARTMENT: Hyattsville City Council</b> |                                                |                |

### **TITLE OF MOTION: 2016 Legislative Priority: Statewide Racial Profiling Bill**

#### **RECOMMENDATION:**

*I move that the Mayor and Council affirm that it must be illegal for a police officer to profile a person on the basis race, religion, ethnicity or national origin by adopting the support and encouragement for a statewide racial profiling ban as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.*

#### **BACKGROUND:**

The Hyattsville City Council seeks to adopt FY2016 legislative priorities for discussion with State and County representation during a November 2015 Legislative breakfast.

Racial profiling—which occurs when law enforcement authorities target particular individuals based not on their behavior, but rather on the basis of personal characteristics, such as their race, ethnicity, national origin, or religion—is an unjust and ineffective method of law enforcement that makes us less, not more, safe and secure. The practice is nonetheless pervasive and used by law enforcement authorities at the federal, state, and local levels. (SOURCE: THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS)

Racial profiling affects a wide array of communities of color. More than 240 years of slavery and 90 years of legalized racial segregation have led to systemic profiling of blacks in traffic and pedestrian stops. Since September 11, 2001, members of Muslim, Arab, and South Asian communities have been profiled by airline personnel, federal law enforcement, and local police. (SOURCE: ACLU)

The federal government's encouragement of unprecedented raids on immigrant communities and workplaces by local law enforcement in cooperation with federal agencies has targeted Latino communities in particular. These policies have unjustly expanded the purview of and undermined basic trust in local law enforcement, alienated immigrant communities, and created an atmosphere of fear. Anti-immigrant rhetoric has led to a dramatic increase in hate crimes against and racial profiling of Latinos. (SOURCE: ACLU)

The State of Maryland should adopt a racial profiling ban consistent with the guidelines developed End Racial Profiling 2011 and The Leadership Conference on Civil and Human Rights:

1. Anti-profiling legislation should ban profiling and biased policing by all law enforcement agencies and officials within the State of Maryland.
  - The ban on profiling must be uniformly applicable to all law enforcement agencies and officials; there should be no exceptions for border security, members of joint-terrorism task forces, etc.
2. Anti-profiling legislation should address and ban all forms of racial profiling, including stop-and-frisk, driving while black or brown, immigration profiling, and law enforcement surveillance activities.

- The legislation should ban profiling for a broad set of law enforcement activities and must address interactions on all forms of public and private transportation, in the context of border and immigration enforcement, as well as surveillance.
3. The definition of profiling encompassed within anti-profiling legislation should include a broad set of protected categories, prohibiting law enforcement from using factors such as race, ethnicity, national origin, immigration or citizenship status, religion, gender, gender identity, gender expression, sexual orientation, and disability in guiding law enforcement decisions. Having as broad a definition as possible will strengthen protection for many forms of profiling and broaden the coalition of impacted communities that feel included in the legislation, thereby increasing the number of allies.
    - Anti-profiling legislation passed in New Mexico and proposed in New York City reflect a definition of profiling that includes a broad set of protected categories and serve as good models.
  4. Anti-profiling legislation, to the extent possible, should promote a comprehensive solution to the problem of racial profiling by:
    - Requiring law enforcement agencies to develop detailed written policies defining and prohibiting profiling;
    - Mandating law enforcement training on racial profiling and other civil rights and constitutional issues;
    - Compelling law enforcement agencies to collect, analyze, and report data on racial profiling;
    - Creating incentives for law enforcement agencies to comply with anti-profiling legislation by conditioning state funding or other benefits on compliance; and
    - Including meaningful complaint mechanisms for victims of racial profiling to seek recourse.

#### **ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

\_\_\_\_\_  
Tracey E. Nicholson, City Administrator

#### **STRATEGIC GOALS AND ACTIONS:**

Action 5.1 – Build connections among residents by developing programs, events, and celebrations accessible to all

#### **SUPPORTING DOCUMENTATION:**

1. ACLU - <https://www.aclu.org/issues/racial-justice/race-and-criminal-justice/racial-profiling>
2. Toolkit on State Anti-Profiling Legislation - <http://www.ushrnetwork.org/sites/ushrnetwork.org/files/proactiveteamguide.pdf>
3. Restoring a National Consensus: The Need to End Racial Profiling in America
4. Illinois Racial Profiling Prevention and Data Oversight Act

#### **CURRENT YEAR BUDGET IMPACT:**

### Information maintained by the Legislative Reference Bureau

Updating the database of the Illinois Compiled Statutes (ILCS) is an ongoing process. Recent laws may not yet be included in the ILCS database, but they are found on this site as [Public Acts](#) soon after they become law.

For information concerning the relationship between statutes and Public Acts, refer to the [Guide](#).

Because the statute database is maintained primarily for legislative drafting purposes, statutory changes are sometimes included in the statute database before they take effect. If the source note at the end of a Section of the statutes includes a Public Act that has not yet taken effect, the version of the law that is currently in effect may have already been removed from the database and you should refer to that Public Act to see the changes made to the current law.

## EXECUTIVE BRANCH

### (20 ILCS 2715/) Racial Profiling Prevention and Data Oversight Act.

(20 ILCS 2715/1)

Sec. 1. Short title. This Act may be cited as the Racial Profiling Prevention and Data Oversight Act.

(Source: P.A. 94-997, eff. 1-1-08.)

(20 ILCS 2715/5)

Sec. 5. Legislative purpose. The purpose of this Act is to identify and address bias-based policing through the monitoring, review, and improvement of the collection of racial profiling information collected under the Illinois Traffic Stop Statistical Study. Through this data collection and review, a more accurate understanding of this problem can be obtained, thus allowing the concerns of the motoring public to be better addressed, resources such as specialized training to be provided, the honest efforts of Illinois' law enforcement professionals to be demonstrated, and the civil rights of all Illinois citizens to be protected.

(Source: P.A. 94-997, eff. 1-1-08.)

(20 ILCS 2715/10)

(Text of Section before amendment by P.A. 99-352)

Sec. 10. Definitions. As used in this Act:

(a) "Oversight Board" means the Racial Profiling Prevention and Data Oversight Board established under this Act.

(b) "Department" means the Illinois Department of Transportation.

(c) "Traffic Stop Statistical Study Act" means Section 11-212 of the Illinois Vehicle Code.

(Source: P.A. 94-997, eff. 1-1-08.)

(Text of Section after amendment by P.A. 99-352)

Sec. 10. Definitions. As used in this Act:

(a) "Oversight Board" means the Racial Profiling Prevention and Data Oversight Board established under this Act.

(b) "Department" means the Illinois Department of Transportation.

(c) "Traffic and Pedestrian Stop Statistical Study Act" means Section 11-212 of the Illinois Vehicle Code.

(Source: P.A. 99-352, eff. 1-1-16.)

(20 ILCS 2715/15)

Sec. 15. Oversight Board.

(a) There is created within the Department a Racial

Profiling Prevention and Data Oversight Board, consisting of 15 members, which shall independently exercise its powers, duties, and responsibilities. The Board shall have the authority to allow additional participation from various groups that the Board deems necessary for additional input.

(b) The membership of the Oversight Board shall consist of:

(1) 4 legislators appointed by the General Assembly leadership equally apportioned between the 2 houses and political parties;

(2) the Attorney General or his or her designee;

(3) the Secretary of the Illinois Department of Transportation or his or her designee;

(4) the Director of the Illinois State Police or his or her designee;

(5) 3 members of county or city law enforcement agencies, representing jurisdictions of varied size and geography, appointed by the Governor;

(6) 4 members of community organizations representing minority interests, appointed by the Governor; and

(7) one member of the Illinois academic community with specific expertise in both statistical analysis and law enforcement, appointed by the Governor.

(c) All members shall serve 2 years and until their successors are appointed. Members may be reappointed for an unlimited number of terms. The Oversight Board shall meet at least quarterly.

(Source: P.A. 94-997, eff. 1-1-08.)

(20 ILCS 2715/20)

Sec. 20. Chairpersons. From the membership of the Board, the Governor shall designate the chair and vice chair, who shall serve at the discretion of the Governor. Chairpersons shall serve in that capacity for a term not to exceed 2 years.

(Source: P.A. 94-997, eff. 1-1-08.)

(20 ILCS 2715/25)

Sec. 25. Funding. Funding to implement this Act shall be appropriated by the General Assembly to the Department.

(Source: P.A. 94-997, eff. 1-1-08.)

(20 ILCS 2715/30)

Sec. 30. Compensation. Members of the Oversight Board shall serve without compensation. Members may be reimbursed by the Department for reasonable expenses incurred in connection with their duties.

(Source: P.A. 94-997, eff. 1-1-08.)

(20 ILCS 2715/35)

Sec. 35. Staffing. The Secretary of the Department shall employ or assign, in accordance with the provisions of the Illinois Personnel Code, the administrative, professional, clerical, and other personnel required and may organize his or her staff as may be appropriate to effectuate the purposes, powers, duties, and responsibilities contained in this Act.

(Source: P.A. 94-997, eff. 1-1-08.)

(20 ILCS 2715/40)

(Text of Section before amendment by P.A. 99-352)

Sec. 40. Powers and Duties of the Oversight Board. The

Oversight Board shall have the following powers, duties, and responsibilities:

(a) To operate purely as an advisory body. Any changes to rules and policy promoted by the Oversight Board are only recommendations, which may be reported to the Governor, the Secretary of State, and the General Assembly or to appropriate law enforcement agencies.

(b) To coordinate the development, adoption, and implementation of plans and strategies to eliminate racial profiling in Illinois and to coordinate the development, adoption, and implementation of plans and strategies to create public awareness programs in minority communities, designed to educate individuals regarding racial profiling and their civil rights.

(c) To promulgate model policies for police agencies that are designed to protect individuals' civil rights related to police traffic enforcement and to recommend to law enforcement agencies model rules as may be necessary to effectuate training regarding data collection and mechanisms to engage those agencies who willfully fail to comply with the requirements of the Traffic Stop Statistical Study Act.

(d) To study and to issue reports and recommendations to the Governor, the Secretary of State, and the General Assembly regarding the following subjects by the following dates:

(1) no later than July 1, 2008, regarding strategies to improve the benchmark data available to identify the race, ethnicity, and geographical residence of the Illinois driving population, beginning on August 1, 2008, with the collection of race and ethnicity data on new and renewal applicants for driver's licenses. This data shall be available for statistical benchmark comparison purposes only;

(2) no later than January 1, 2009, regarding data collection requirements with respect to additional race and ethnicity categories to be added to the traffic stop statistical study in order to improve data collection among unreported and under-reported minority populations. The Board shall study, and recommend if required, at a minimum, data collection strategies, categories, and benchmarks for persons of Middle-Eastern origin. The Board shall also study stops lasting over 30 minutes and define categorical reasons for the extended stops;

(3) no later than July 1, 2009, regarding technological solutions to aid in the identification, elimination, and prevention of racial profiling and to recommend funding sources for statewide implementation of the technological solutions;

(4) no later than January 1, 2010, regarding whether Illinois should continue the mandatory data collection required under this Act, as well as the best practices of data collection as related to the identification, elimination, and prevention of bias-based policing; and

(5) on or before April 1 of each year, regarding the Oversight Board's activities during the previous fiscal year.

(Source: P.A. 94-997, eff. 1-1-08.)

(Text of Section after amendment by P.A. 99-352)

Sec. 40. Powers and Duties of the Oversight Board. The Oversight Board shall have the following powers, duties, and



responsibilities:

(a) To operate purely as an advisory body. Any changes to rules and policy promoted by the Oversight Board are only recommendations, which may be reported to the Governor, the Secretary of State, and the General Assembly or to appropriate law enforcement agencies.

(b) To coordinate the development, adoption, and implementation of plans and strategies to eliminate racial profiling in Illinois and to coordinate the development, adoption, and implementation of plans and strategies to create public awareness programs in minority communities, designed to educate individuals regarding racial profiling and their civil rights.

(c) To promulgate model policies for police agencies that are designed to protect individuals' civil rights related to police traffic enforcement and to recommend to law enforcement agencies model rules as may be necessary to effectuate training regarding data collection and mechanisms to engage those agencies who willfully fail to comply with the requirements of the Traffic and Pedestrian Stop Statistical Study Act.

(d) To study and to issue reports and recommendations to the Governor, the Secretary of State, and the General Assembly regarding the following subjects by the following dates:

(1) no later than July 1, 2008, regarding strategies to improve the benchmark data available to identify the race, ethnicity, and geographical residence of the Illinois driving population, beginning on August 1, 2008, with the collection of race and ethnicity data on new and renewal applicants for driver's licenses. This data shall be available for statistical benchmark comparison purposes only;

(2) no later than January 1, 2009, regarding data collection requirements with respect to additional race and ethnicity categories to be added to the traffic stop statistical study in order to improve data collection among unreported and under-reported minority populations. The Board shall study, and recommend if required, at a minimum, data collection strategies, categories, and benchmarks for persons of Middle-Eastern origin. The Board shall also study stops lasting over 30 minutes and define categorical reasons for the extended stops;

(3) no later than July 1, 2009, regarding technological solutions to aid in the identification, elimination, and prevention of racial profiling and to recommend funding sources for statewide implementation of the technological solutions;

(4) no later than January 1, 2010, regarding whether Illinois should continue the mandatory data collection required under this Act, as well as the best practices of data collection as related to the identification, elimination, and prevention of bias-based policing; and

(5) on or before April 1 of each year, regarding the Oversight Board's activities during the previous fiscal year.

(Source: P.A. 99-352, eff. 1-1-16.)

(20 ILCS 2715/90)

Sec. 90. (Amendatory provisions; text omitted).

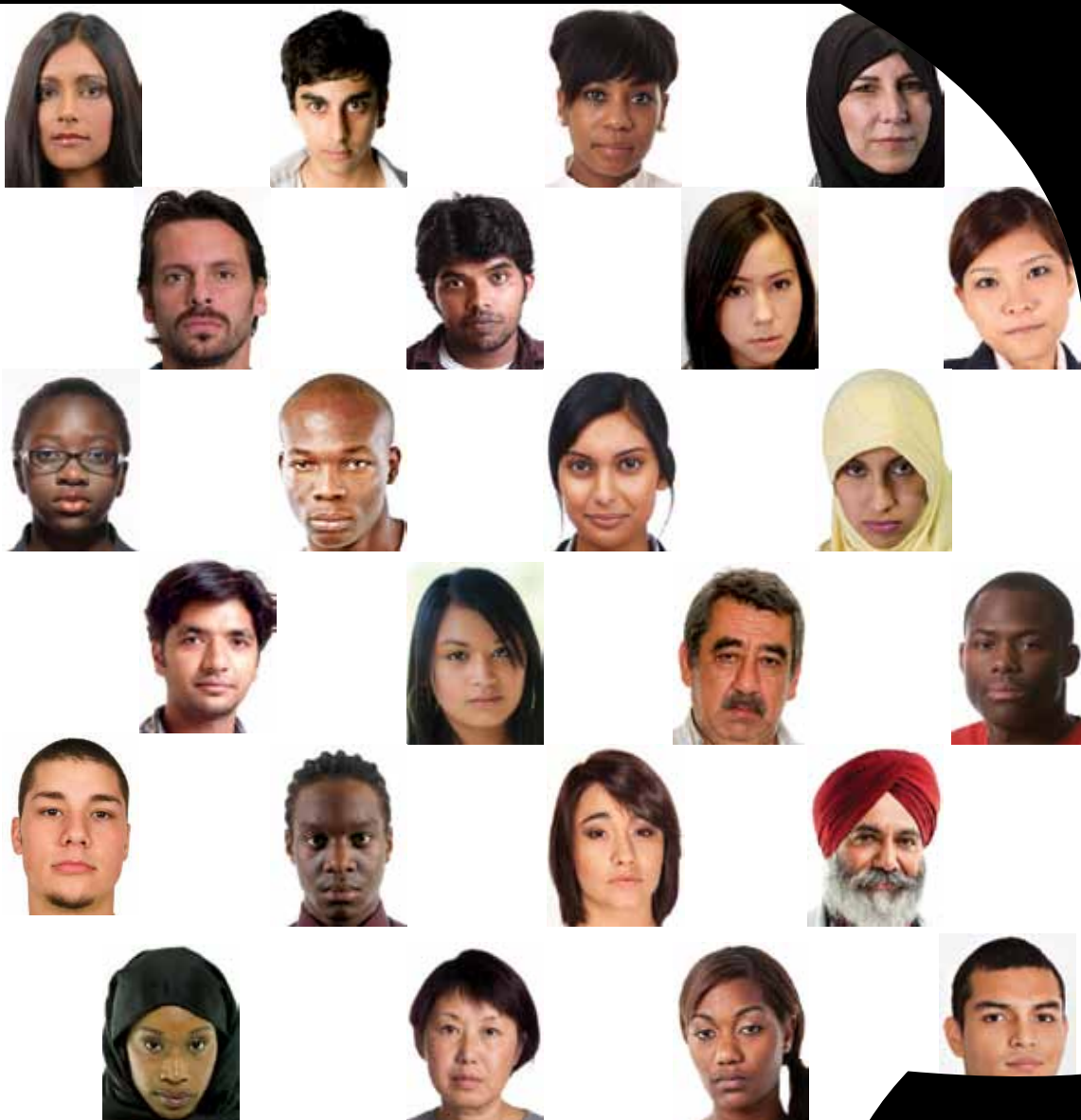
(Source: P.A. 94-997, eff. 1-1-08; text omitted.)

(20 ILCS 2715/99)

Sec. 99. Effective date. This Act takes effect January 1, 2007, except that the Racial Profiling Prevention and Data Oversight Act takes effect January 1, 2008.  
(Source: P.A. 94-997, eff. 1-1-08.)

# *Restoring a National Consensus: The Need to End Racial Profiling in America*

MARCH 2011



## Acknowledgements

“Restoring a National Consensus: The Need to End Racial Profiling in America” is an initiative of The Leadership Conference on Civil and Human Rights (The Leadership Conference). Staff assistance was provided by Lisa Bornstein, Senior Counsel; Charlotte Irving, Bookkeeper; Tyler Lewis, Communications Manager; Jeff Miller, Vice President for Communications; Antoine Morris, Researcher and Policy Associate; Lexer Quamie, Counsel; June Zeitlin, Director, CEDAW Education Project; and Corrine Yu, Managing Policy Director, who was an editor of the report. Overall supervision was provided by Nancy Zirkin, Executive Vice President.

We would like to thank Robert Chanin, who was one of the principal authors of the report, as well as members of The Leadership Conference Criminal Justice Task Force, who have provided useful advice and guidance in our work, and whose resources we relied on in writing this report. Thanks are also due to Jonathan Rintels for his contributions to this report.

The design and layout were created by Laura Drachler of The Leadership Conference.

This report is an update of our 2003 report, “Wrong Then, Wrong Now: Racial Profiling Before and After September 11, 2001.” Sadly, 10 years after 9/11, the problem of racial profiling continues to be a significant national concern that demands priority attention. In releasing this report, our goals are to examine the use of racial profiling in the street-level context in which it originally arose, in the newer context of counterterrorism, and in the most recent context of immigration; and to re-establish a national consensus against racial profiling in all its forms. The substance and recommendations of the work are dedicated to the countless advocates for criminal justice reform.

The authors and publisher are solely responsible for the accuracy of statements and interpretations contained in this publication.



Wade J. Henderson, Esq., President and CEO,  
The Leadership Conference on Civil and Human Rights



Karen McGill Lawson, Executive Vice President and COO,  
The Leadership Conference on Civil and Human Rights

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## *Executive Summary*

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Racial profiling—which occurs when law enforcement authorities target particular individuals based not on their behavior, but rather on the basis of personal characteristics, such as their race, ethnicity, national origin, or religion—is an unjust and ineffective method of law enforcement that makes us less, not more, safe and secure. The practice is nonetheless pervasive and used by law enforcement authorities at the federal, state, and local levels.

By way of example, a U.S. Congressman tells the Department of Homeland Security that Muslims should be profiled at airports. A county sheriff conducts a sweep of an Arizona Hispanic community that involves more than 100 deputies, a volunteer posse, and a helicopter. A prominent African-American professor charges he was a victim of racial profiling after he was arrested in his Massachusetts home.

In the months preceding September 11, 2001, a national consensus had developed on the need to end “racial profiling.” The enactment of a comprehensive federal statute banning the practice seemed imminent. However, on 9/11, everything changed. In the aftermath of the terrorist attacks, the federal government focused massive investigatory resources on Arabs and Muslims, singling them out for questioning, detention, and other law enforcement activities. Many of these counterterrorism initiatives involved racial profiling.

In the 10 years since the terrorist attacks, the anti-racial profiling consensus that had developed prior to 9/11 evaporated and the use of racial profiling has expanded, not only in the counterterrorism context, but also in the context in which it originally arose—the fight against drug trafficking and other “street-level” crimes—as well as in the effort to enforce immigration laws.

Now is the time to re-establish a national anti-racial profiling consensus and take the steps necessary to end the practice in all contexts at the federal, state, and local levels. The purpose of this report is to assist in that effort.

In this report, we present quantitative and qualitative evidence to demonstrate the widespread use of racial profiling in each of the three contexts referenced above—*i.e.*, street-level crime, counterterrorism, and immigration law enforcement. We also present evidence to show how racial profiling in the counterterrorism and immigration contexts is encouraged by misguided federal programs that incentivize law enforcement authorities to engage in the practice.

In the counterterrorism context, these problematic federal programs include the National Security Entry-Exit Registration System (which requires certain individuals from Muslim countries to register with the federal government, as well as to be fingerprinted, photographed, and interrogated) and Operation Front Line (which allows federal law enforcement authorities to target immigrants and foreign nationals for investigation in order to “detect, deter, and disrupt terrorist operations”). The federal government claims that these programs do not involve racial profiling, but the actions taken—from the singling out of Arabs and Muslims in the United States for questioning and detention to the selective application of immigration laws to nationals of Arab and Muslim countries—belie this claim.

In the immigration law enforcement context, the federal government has shifted significant responsibility for the enforcement of civil immigration laws to state and local law enforcement authorities through Agreements

of Cooperation in Communities to Enhance Safety and Security (known as ICE ACCESS programs). The most notable of these programs is the 287(g) program, the stated purpose of which is to enable state and local law enforcement authorities to identify suspected undocumented immigrants “who pose a threat to public safety.” In point of fact, the 287(g) program has been widely misused by state and local law enforcement authorities to stop, detain, question, and otherwise treat as suspected undocumented immigrants vast numbers of persons—primarily Hispanics—most of whom are U.S. citizens or legal residents.

Although perhaps the most well-known, the 287(g) program is not the only ICE ACCESS program that raises concerns about racial profiling. Other such programs include the Criminal Alien Program (which involves an immigration screening process within federal, state, and local correctional facilities to identify undocumented immigrants “who pose a threat to public safety”) and the Secure Communities program (which allows local law enforcement authorities to run fingerprint checks against Department of Homeland Security databases, not just FBI databases).

Federal inaction on comprehensive immigration reform has prompted a flurry of activity by state lawmakers seeking to fill the void left by Congress. The most sweeping and controversial of these state laws is Arizona’s S.B. 1070, which is widely seen as encouraging racial profiling.

This report makes the case against racial profiling by showing that the assumptions underlying racial profiling—*i.e.*, that certain crimes are more likely to be committed by members of a particular racial, ethnic, national origin, or religious group, and that members of that group are more likely than non-members to be involved in that type of criminal activity—are false. We also demonstrate the devastating impact that racial profiling has on individuals, families, and communities that are subject to the practice; and explain why racial profiling is in all contexts a flawed law enforcement method that diverts and misuses precious law enforcement resources and destroys the relationship between local law enforcement authorities and the people that they must rely on in carrying out their law enforcement activities.

The End Racial Profiling Act of 2010 (ERPA 2010) was introduced into the House of Representatives during the 111<sup>th</sup> Congress. The 111<sup>th</sup> Congress took no action on ERPA 2010, and it died with the adjournment of that

Congress on December 22, 2010. However, ERPA 2010 warrants continued attention because it provides an appropriate model for an anti-racial profiling statute in the 112<sup>th</sup> Congress, addressed the major concerns about racial profiling expressed in this report, and would have gone a long way toward ending the practice.

Finally, we offer recommendations that are designed to end racial profiling. The key point of each of these recommendations—which are addressed to Congress, the president, Executive Branch agencies, and civil and human rights organizations—is summarized below:

#### **Congress**

- The 112<sup>th</sup> Congress should enact an anti-racial profiling statute modeled on ERPA 2010.

#### **The President**

- The president should urge the 112<sup>th</sup> Congress to enact an anti-racial profiling statute modeled on ERPA 2010, and make enactment of such a statute one of his administration’s highest legislative priorities.
- Pending enactment by Congress of an anti-racial profiling statute, the president should issue an executive order that prohibits federal law enforcement authorities from engaging in racial profiling or sanctioning the use of the practice by state and local law enforcement authorities in connection with any federal program.

#### **Executive Branch Agencies**

- The U.S. Department of Justice (DOJ) should revise its June 2003 guidance on racial profiling to clarify ambiguities, close loopholes, and eliminate provisions that allow for any form of racial profiling.
- The DOJ Office of Legal Counsel should issue an opinion stating that the federal government has exclusive jurisdiction to enforce federal immigration laws, and should rescind its 2002 “inherent authority” opinion, which takes a contrary position.
- The DOJ Civil Rights Division should make the remediation of racial profiling a priority.
- The U.S. Department of Homeland Security (DHS) should terminate the 287(g) program.
- DHS should suspend operation of the Criminal Alien Program, the Secure Communities Program, and other federal programs pursuant to which authority to engage in the enforcement of federal immigration laws has been delegated to state and local law enforcement

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authorities, until a panel of independent experts has reviewed the programs to ensure that they do not involve racial profiling.

- DHS should terminate the National Security Entry-Exit Registration System.
- Other federal counterterrorism programs, including Operation Front Line, should be reviewed by a panel of independent experts to ensure that they do not involve racial profiling.

#### **Civil and Human Rights Organizations**

- Civil and human rights organizations should urge the 112<sup>th</sup> Congress to enact an anti-racial profiling statute modeled on ERPA 2010, and provide the American public with accurate information about racial profiling.

## *I. Introduction and Background*

During a February 2011 hearing of the U.S. House of Representatives Homeland Security Committee, Rep. Paul Broun, R. Ga., told U.S. Department of Homeland Security (DHS) Secretary Janet Napolitano that he recently went through screening at an airport in front of a man that was of “Arabian, or Middle Eastern descent.” According to Broun, neither the man nor Broun was patted down; but behind the man was an elderly woman with a small child, both of whom were patted down. “This administration and your department seems to be very adverse to focusing on those entities that want to do us harm,” Broun stated. “And the people who want to harm us are not grandmas and it’s not little children. It’s the Islamic extremists...I encourage you to maybe take a step back and see how we can focus on those people who want to harm us. And we’ve got to profile these fellas.”<sup>1</sup>

Sheriff Joe Arpaio of Maricopa County, Arizona, has received widespread attention for his stops of Hispanic drivers and sweeps of Hispanic communities in an attempt to identify undocumented immigrants. In April 2008, in the most notorious of his neighborhood sweeps, more than 100 deputies, a volunteer posse, and a helicopter descended upon and terrorized a community of approximately 6,000 Yaqui Indians and Hispanics, in an attempt to identify undocumented immigrants. By the end of the two-day operation, only nine undocumented immigrants were arrested. In addition to his profiling of drivers and neighborhoods, Arpaio has also led raids on area businesses that employ Hispanics.<sup>2</sup>

On July 16, 2009, James Crowley, an 11-year police department veteran responded to a 911 call reporting a possible break-in at a home on Ware Street in Cambridge, Massachusetts. The address, Crowley would

later learn, was the home of Harvard professor Henry Louis Gates, Jr., one of the most prominent African-American scholars in the United States. Within a few minutes of Crowley and Gates’ encounter, Crowley had arrested Gates for disorderly conduct and placed him in handcuffs at his own home. Gates charged that he was a victim of “racial profiling,” claiming that the actions of the police were dictated by the fact that he was African American, and that they would have behaved differently if he were White. The Cambridge Police Department denied the charge, asserting that its actions were prompted by Gates’ confrontational behavior.<sup>3</sup>

Because of Gates’ prominence, this particular incident captured the attention of the media and sparked a much-needed national dialogue about racial profiling in America. Though the national dialogue may not have resolved the narrow question of whether Gates was or was not a victim of racial profiling, it provided ample support for the broader proposition that racial profiling is pervasive and used by law enforcement authorities at the federal, state, and local levels. As President Obama put it during a nationally televised press conference on July 24, 2009, “What I think we know—separate and apart from [the Gates] incident—is that there is a long history in this country of African Americans and Latinos being stopped by law enforcement disproportionately, and that’s just a fact.”<sup>4</sup> Lt. Charles Wilson, chairman of the National Association of Black Law Enforcement Officers and a 38-year veteran of law enforcement, stated that “[t]his is an issue that occurs in every single place in this country.”<sup>5</sup> The factors that account for this troubling reality provide a framework for the analysis in this report and are summarized below.

For years, African Americans, Hispanics,<sup>6</sup> and other minorities complained that they received unwarranted

police scrutiny in their cars and on the streets, yet their complaints were routinely ignored. By early 2001, this had changed. Rigorous empirical evidence developed in civil rights lawsuits and studies of law enforcement practices revealed that the so-called “Driving While Black or Brown” phenomenon was more than anecdotal. Minority drivers were in fact stopped and searched more than similarly situated White drivers. The data also showed that minority pedestrians were stopped and frisked<sup>7</sup> at a disproportionate rate, and that, in general, federal, state and local law enforcement authorities frequently used race, ethnicity, and national origin as a basis for determining who to investigate for drug trafficking, gang involvement, and other “street-level” crimes.<sup>8</sup>

Polls showed that Americans of all races, ethnicities, and national origins considered racial profiling widespread and unacceptable.<sup>9</sup> Government actions and words mirrored the public’s concern about the practice. In the mid-1990s, the Civil Rights Division of the U.S. Department of Justice entered into far-reaching settlement agreements in response to racial profiling by certain state and local law enforcement agencies, including the New Jersey State Police and the Los Angeles Police Department.<sup>10</sup> Many states and localities instituted data collection and other requirements to address disparities in law enforcement based upon race and other personal characteristics.<sup>11</sup> And, in 1996, the U.S. Supreme Court held that the Equal Protection Clause of the Constitution “prohibits selective enforcement of the law based on considerations such as race.”<sup>12</sup>

By early 2001, concerns about racial profiling were voiced at the highest levels of the federal government. Then-Attorney General John Ashcroft publicly condemned racial profiling,<sup>13</sup> and on February 27, 2001, President Bush told a joint session of Congress that the practice was “wrong and we will end it in America.”<sup>14</sup>

Backed by a strong national consensus to end racial profiling, on June 6, 2001, Sen. Russell Feingold, D. Wisc., and Rep. John Conyers, D. Mich. introduced the bipartisan End Racial Profiling Act of 2001<sup>15</sup>, and the enactment of a comprehensive federal anti-racial profiling statute seemed imminent.

However, on September 11, 2001, everything changed. The 19 men who hijacked airplanes to carry out the attacks on the World Trade Center and the Pentagon were Arabs from Muslim countries. The federal government immediately focused massive investigative

resources and law enforcement attention on Arabs and Muslims—and in some cases on individuals who were perceived to be, but in fact were not, Arabs or Muslims, such as Sikhs and other South Asians. In the years that followed, the federal government undertook various initiatives in an effort to protect the nation against terrorism. The federal government claimed that these counterterrorism initiatives did not constitute racial profiling, but the actions taken—from the singling out of Arabs and Muslims in the United States for questioning and detention to the selective application of immigration laws to nationals of Arab and Muslim countries—belied this claim.

More recent initiatives by federal, state, and local law enforcement authorities to enforce immigration laws have further encouraged racial profiling. Immigration and Customs Enforcement (ICE) within DHS has shifted significant responsibility for the enforcement of civil immigration laws to state and local law enforcement authorities. And many state and local law enforcement authorities misuse these programs—particularly the Delegation of Immigration Authority, known as the 287(g) program—to stop, detain, question, and otherwise target Hispanics and other minorities as suspected undocumented immigrants, although most of them are U.S. citizens or legal residents. Federal inaction on comprehensive immigration reform has prompted some states to undertake initiatives of their own—including most notably Arizona’s S.B. 1070, which is widely seen as encouraging racial profiling.

The short of the matter is this: The anti-racial profiling consensus that had developed prior to 9/11 evaporated in the aftermath of the terrorist attacks, and the use of racial profiling—in the street-level context in which it originally arose, and in the new contexts of counterterrorism and immigration law enforcement—has expanded in the intervening years.

During the 2008 presidential campaign, candidate Barack Obama promised that, if elected, “Obama and [vice presidential running mate Joe] Biden will ban racial profiling by federal law enforcement agencies and provide federal incentives to state and local police departments to prohibit the practice.”<sup>16</sup> During his 2009 confirmation hearing, Attorney General Eric Holder similarly declared that racial profiling was “simply not good law enforcement,” and that ending the practice was a “priority” for the Obama administration.<sup>17</sup> Now is the time for the Obama administration to make good on these promises and take the steps necessary to end racial profiling in all contexts at the federal, state, and



local levels.

The purpose of this report is to assist in the effort to end racial profiling. In the chapters that follow, we explain what does and does not constitute racial profiling (Chapter II); examine quantitative and qualitative evidence regarding the use of racial profiling in the street-level crime, counterterrorism, and immigration law enforcement contexts (Chapter III); debunk the assumptions that are advanced in an effort to justify racial profiling, and discuss the devastating consequences of racial profiling for persons and communities that are subject to the practice and its adverse impact on effective law enforcement (Chapter IV); review the End Racial Profiling Act of 2010, which was introduced in the House of Representatives during the 111<sup>th</sup> Congress and died with the adjournment of that Congress on December 22, 2010, but which provides an appropriate model for an anti-racial profiling statute in the 112<sup>th</sup> Congress (Chapter V); and conclude with recommendations designed to end racial profiling in America (Chapter VI).

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## II. What is Racial Profiling?

“Racial profiling” refers to the targeting of particular individuals by law enforcement authorities based not on their behavior, but rather their personal characteristics. It is generally used to encompass more than simply an individual’s race. As used in this report, it encompasses race, ethnicity, national origin, and religion—and means the impermissible use by law enforcement authorities of these personal characteristics, to any degree, in determining which individuals to stop, detain, question, or subject to other law enforcement activities. Two points should be emphasized in connection with this definition.

As the qualifying term “impermissible use” indicates, the definition does not prohibit reliance by law enforcement authorities on race, ethnicity, national origin, or religion in all circumstances. Rather, it is aimed at law enforcement activities that are premised on the erroneous assumption that individuals of a particular race, ethnicity, national origin, or religion are more likely to engage in certain types of unlawful conduct than are individuals of another race, ethnicity, national origin, or religion. Thus, it is *not* racial profiling when law enforcement authorities rely on these personal characteristics as part of a subject description or in connection with an investigation if there is reliable information that links a person of a particular race, ethnicity, national origin, or religion to a specific incident, scheme, or organization.

It also should be noted that under this definition, race<sup>18</sup> need not be the *sole* factor used by law enforcement authorities in deciding who to subject to investigative procedures. Even if individuals are not targeted by law enforcement authorities solely because of their race, race is often a factor—and, indeed, the decisive factor—

in guiding law enforcement decisions about who to stop, detain, question, or subject to other investigative procedures. Selective law enforcement based in part on race is no less pernicious or offensive to the principle of equal justice than is enforcement based solely on race.

In order to demonstrate how the foregoing definition would apply in practice, we set forth below several hypothetical examples to illustrate what would and would not constitute racial profiling under that definition:

1. A police officer who is parked on the side of a highway notices that nearly all vehicles are exceeding the posted speed limit. Since the driver of each such vehicle is committing a traffic violation that would legally justify a stop, the officer may not use the race of the driver as a factor in deciding who to pull over or subject to further investigative procedures. If, however, a police officer receives an “all points bulletin” to be on the look-out for a fleeing robbery suspect, who is described as a man of a particular race in his thirties driving a certain model automobile, the officer may use this description—including the suspect’s race—in deciding which drivers to pull over.

2. While investigating a drug trafficking operation, law enforcement authorities receive reliable information that the distribution ring plans to pick up shipments of illegal drugs at a railroad station, and that elderly couples of a particular race are being used as couriers. Law enforcement authorities may properly target elderly couples of that race at the railroad station in connection with this investigation. Assume, however, that the information provided to law enforcement authorities indicates that elderly couples are being used as couriers, but there is no reference to race. Law enforcement

authorities may properly target elderly couples, but may not selectively investigate elderly couples of a particular race.

3. In connection with an initiative to prevent terrorist activity, law enforcement authorities may not target members of any particular race or religion as suspects based on a generalized assumption that members of that race or religion are more likely than non-members to be involved in such activity. On the other hand, if law enforcement authorities receive a reliable tip that persons of a particular race or religion living in a specific apartment building are plotting terrorist acts, they may focus their investigation on persons of that race or religion who live in the building.

4. In an effort to identify undocumented immigrants, border agents may not—even in areas near the Mexican border in which a substantial part of the population is Hispanic—take Hispanic origin into account in deciding which individuals to stop, detain, and question. Border agents may take Hispanic origin into account, however, in attempting to identify undocumented immigrants at a particular worksite if they have reliable information that undocumented immigrants of Hispanic origin are employed at that worksite.

### III. The Reality of Racial Profiling

The U.S. Supreme Court has held that racial profiling violates the constitutional requirement that all persons be accorded equal protection of the law.<sup>19</sup> The “Guidance Regarding the Use of Race By Federal Law Enforcement Agencies” that was issued by the U.S. Department of Justice in 2003 states:

*“Racial profiling” at its core concerns the invidious use of race or ethnicity as a criterion in conducting stops, searches and other law enforcement investigative procedures. It is premised on the erroneous assumption that any particular individual of one race or ethnicity is more likely to engage in misconduct than any particular individual of another race or ethnicity.*

*Racial profiling in law enforcement is not merely wrong, but also ineffective. Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society.*<sup>20</sup>

Notwithstanding the fact that racial profiling is unconstitutional, and despite the emphatic declaration from the federal government that the practice is “invidious,” “wrong,” “ineffective,” and “harmful to our rich and diverse democracy,” quantitative and qualitative evidence collected at the federal, state, and local levels confirms that racial profiling persists. Moreover, as the evidence also shows, racial profiling is often encouraged by misguided federal programs and policies that incentivize law enforcement authorities to engage in the practice.

In this section of the report, we consider the use of racial profiling in each of the three contexts referenced

above, *i.e.*, street-level crime, counterterrorism, and immigration law enforcement. To be sure, this breakdown is to some extent artificial, and there are obvious points of overlap among the contexts—as, for example, when Hispanics who are targeted by law enforcement authorities for engaging in drug trafficking or other street-level crimes are also profiled as suspected undocumented immigrants, or when Arabs or Muslims who are targeted as potential terrorists are also questioned about whether they are in the country without authorization. Despite these and other points of overlap, it is helpful to discuss racial profiling in each of the three contexts separately inasmuch as this allows for a more context-specific analysis.

#### A. Street-Level Crime

Empirical evidence confirms the existence of racial profiling on America’s roadways. At the national level, the U.S. Department of Labor’s Bureau of Justice Statistics reports that for the year 2005, the most recent data available, “[p]olice actions taken during a traffic stop were not uniform across racial and ethnic categories.” “Black drivers (4.5%) were twice as likely as White drivers (2.1%) to be arrested during a traffic stop, while Hispanic drivers (65%) were more likely than White (56.2%) or Black (55.8%) drivers to receive a ticket. In addition, Whites (9.7%) were more likely than Hispanics (5.9%) to receive a written warning, while Whites (18.6%) were more likely than Blacks (13.7%) to be verbally warned by police.” When it came to searching minority motorists after a traffic stop, “Black (9.5%) and Hispanic (8.8%) motorists stopped by police were searched at higher rates than Whites (3.6%). The “likelihood of experiencing a search did not change for Whites, Blacks, or Hispanics from 2002 to 2005.”<sup>21</sup>

Quantitative evidence reported in several states confirms this nationwide data:

- A study in Arizona shows that during 2006-2007, the state highway patrol was significantly more likely to stop African Americans and Hispanics than Whites on all the highways studied, while Native Americans and persons of Middle Eastern descent were more likely to be stopped on nearly all the highways studied. The highway patrol was 3.5 times more likely to search a stopped Native American than a White, and 2.5 times more likely to search a stopped African American or Hispanic.<sup>22</sup>

The Arizona study also shows that racial profiling is counterproductive and a misallocation of scarce law enforcement resources. Although Native Americans, Hispanics, Middle Easterners, and Asians were far more likely to be stopped and searched than Whites on Arizona's highways, Whites who were searched were more likely to be transporting drugs, guns, or other contraband. While African Americans were twice as likely as Whites to be stopped and searched, the rates of contraband seizures for the two groups were comparable.<sup>23</sup>

- A February 2009 study of traffic stops and searches in West Virginia found a similar pattern of racial profiling. The data reveal that African-American motorists were 1.64 times more likely to be stopped than White drivers. Hispanics were 1.48 times more likely to be stopped. After the traffic stop, non-Whites were more likely to be arrested, yet police in West Virginia obtained a significantly higher contraband hit rate for White drivers than minorities.<sup>24</sup>
- In Minnesota, a statewide study of racial profiling during 2002 found that African-American, Hispanic, and Native American drivers were all stopped and searched more often than Whites, yet contraband was found more frequently in searches of White drivers' cars. Had all drivers been stopped at the same rates in the 65 local jurisdictions reporting data, 22,500 more Whites would have been stopped, while 18,800 fewer African Americans and 5,800 fewer Hispanics would have been stopped.<sup>25</sup>
- In Illinois, data collected after the 2003 passage of the Illinois Traffic Stops Statistics Act, sponsored by then-Illinois State Senator Barack Obama, shows similar patterns of racial profiling by law enforcement authorities. The number of consent searches after traffic stops of African-American and Hispanic motorists was more than double that of Whites. The

consent searches found White motorists were twice as likely to have contraband.<sup>26</sup>

- A 2005 study analyzing data gathered statewide in Texas reveals disproportionate traffic stops and searches of African Americans and Hispanics, even though law enforcement authorities were more likely to find contraband on Whites.<sup>27</sup>

At the local level, studies of data collected in Sacramento County, California,<sup>28</sup> and DuPage County, Illinois,<sup>29</sup> also report disproportionate traffic stops and searches of African Americans and Hispanics.

Although the foregoing studies confirm the reality of the "Driving While Black or Brown" phenomenon, statistical analysis does not reflect the human cost of racial profiling. For that purpose, we offer the following examples:

- In Newark, New Jersey, on the night of June 14, 2008, two youths aged 15 and 13 were riding in a car driven by their football coach, Kelvin Lamar James. All were African American. Newark police officers stopped their car in the rain, pulled the three out, and held them at gunpoint while the car was searched. James stated that the search violated his rights. One officer replied in abusive language that the three African Americans didn't have rights and that the police "had no rules." The search of the car found no contraband, only football equipment.<sup>30</sup>
- In May 2009, in Hinds County, Mississippi, Hiran Medina, a Hispanic, was pulled over for crossing the center line of the highway, one of several potentially subjective pretexts for "Driving While Black or Brown" traffic stops. Medina consented to the county deputy's request to search the vehicle. Upon discovering \$5,000 in cash in the car, the deputy handcuffed Medina, seized the money, and issued Medina a forfeiture notice that would require Medina to sue the county for the return of the money within 30 days or forfeit the cash to the Sheriff's Department. Eventually, after much laughter on the scene among the gathered deputies, Medina was released but his cash was kept because, they claimed, it smelled of marijuana, even though no drugs were found in Medina's vehicle. Only after Medina retained the American Civil Liberties Union, which threatened a lawsuit, did he get his money back.<sup>31</sup>

Just as minority *motorists* are subject to racial profiling, so too are minority *pedestrians*. This is especially true following the adoption of community-based



policing strategies that often provide street-level law enforcement authorities with wide discretion to “clean up” the communities they patrol. Professor Angela Davis has noted, “[t]he practical effect of this deference [to law enforcement discretion] is the assimilation of police officers’ subjective beliefs, biases, hunches, and prejudices into law.”<sup>32</sup> As is the case in the “Driving while Black or Brown” motorist context, such discretion in the pedestrian context is often exercised to racially profile minorities who are perceived to pose a threat to public safety even if they have done nothing wrong. Harvard Law School Professor Charles Ogletree, who is African American, has stated, “If I’m dressed in a knit cap and hooded jacket, I’m probable cause.”<sup>33</sup> These anecdotal assessments are supported by statistical analysis.

In 2008, as the result of a discovery request in *Floyd v. City of New York*, a lawsuit filed against the New York City Police Department (“NYPD”) alleging racial profiling and suspicion-less stops-and-frisks against law-abiding New York City residents,<sup>34</sup> the Center for Constitutional Rights received and analyzed data collected by the NYPD for the years 2005 to mid-2008. The Center found that:

- In 2005, the NYPD made fewer than 400,000 stops in comparison to a projected more than 500,000 stops in 2008. Over a period of three and one half years, the NYPD has initiated nearly 1.6 million stops of New Yorkers.
- From 2005 to mid-2008, approximately 80 percent of total stops made were of Blacks and Latinos, who comprise 25 percent and 28 percent of New York City’s total population, respectively. During this same time period, only about 10 percent of stops were of Whites, who comprise 44 percent of the city’s population.
- From 2005 to mid-2008, Whites comprised 8 percent and Blacks comprised 85 percent of all individuals frisked by the NYPD. In addition, 34 percent of Whites stopped during this time period were frisked, while 50 percent of Blacks and Latinos stopped were frisked.
- A significant number of stops resulted in the use of physical force by the NYPD. Of those stops, a disproportionate number of Blacks and Latinos had physical force used against them. Between 2005 and mid-2008, 17 percent of Whites, compared to 24 percent of Blacks and Latinos, had physical force used against them during NYPD-initiated encounters.

- Of the cumulative number of stops made during the three and one-half year period, only 2.6 percent resulted in the discovery of a weapon or contraband. Although rates of contraband yield were minute across all racial groups, stops made of Whites proved to be slightly more likely to yield contraband.
- Arrest and summons rates for persons stopped between 2005 and mid-2008 were low for all racial groups, with between 4 and 6 percent of all NYPD-initiated stops resulting in arrests and 6 and 7 percent resulting in summons being issued during this period.<sup>35</sup>

The Center concluded that “data provided by the NYPD plainly demonstrate that Black and Latino New Yorkers have a greater likelihood of being stopped-and-frisked by NYPD officers at a rate significantly disproportionate to that of White New Yorkers. That NYPD officers use physical force during stops of Blacks and Latinos at an exceedingly disproportionate rate compared to Whites who are stopped, and that this disparity exists despite corresponding rates of arrest and weapons or contraband yield across racial lines, further supports claims that the NYPD is engaged in racially biased stop-and-frisk practices.”<sup>36</sup>

Empirical evidence from Los Angeles obtained as the result of a 2001 federal consent decree between the U.S. Department of Justice and the Los Angeles Police Department (“LAPD”) that sought to remedy past racial profiling and other discriminatory practices against minorities tells a similar story. During the period from July 2003 to June 2004, “after controlling for violent and property crime rates in specific LAPD reporting districts, as well as a range of other variables,” the researchers found that:

- Per 10,000 residents, the Black stop rate was 3,400 stops higher than the White stop rate, and the Hispanic stop rate was almost 360 stops higher.
- Relative to stopped Whites, stopped Blacks were 127 percent more likely and stopped Hispanics were 43 percent more likely to be frisked.
- Relative to stopped Whites, stopped Blacks were 76 percent more likely and stopped Hispanics were 16 percent more likely to be searched.
- Relative to stopped Whites, stopped Blacks were 29 percent more likely and stopped Hispanics were 32 percent more likely to be arrested.
- Frisked Blacks were 42.3 percent less likely to be

found with a weapon than frisked Whites, and frisked Hispanics were 31.8 percent less likely to have a weapon than frisked Whites.

- Consensual searches of Blacks were 37 percent less likely to uncover weapons, 23.7 percent less likely to uncover drugs, and 25.4 percent less likely to uncover any other type of contraband than consensual searches of Whites.
- Consensual searches of Hispanics were 32.8 percent less likely to uncover weapons, 34.3 percent less likely to uncover drugs, and 12.3 percent less likely to uncover any other type of contraband than consensual searches of Whites.<sup>37</sup>

The researchers concluded:

*It is implausible that higher frisk and search rates are justified by higher minority criminality, when these frisks and searches are substantially less likely to uncover weapons, drugs or other types of contraband. We also find that the black arrest disparity was 9 percentage points lower when the stopping officer was black than when the stopping officer was not black. Similarly, the Hispanic arrest disparity was 7 percentage points lower when the stopping officer was Hispanic than when the stopping officer was a non-Hispanic white. Taken as a whole, these results justify further investigation and corrective action.<sup>38</sup>*

Despite this evidence of continued racial profiling by the LAPD—and the researchers’ conclusion that “these results justify further investigation and corrective action”—a federal court in July 2009 lifted the consent decree over the LAPD.<sup>39</sup>

Another example of racial profiling in the stop-and-frisk context is provided by Jackson, Tennessee. In Jackson, police conduct what they term “field interviews” in which they stop, interview, and may photograph pedestrians and bystanders when an officer has “reasonable suspicion to believe a crime has occurred [or] is about to occur or is investigating a crime.” A review of “field cards” generated by the field interviews indicates that 70 percent were for African Americans. The population of Jackson is only 42 percent African American. One African-American college student reported that police in Jackson stopped him on the street while he was walking to his grandmother’s house. They then followed him onto the porch of her home where they conducted field interviews of him and five other African-American visitors, and threatened to arrest them if they did not cooperate.<sup>40</sup>

The use of racial profiling in connection with entry into the U.S. in the counterterrorism and immigration contexts is discussed later in this report, but the practice has long been commonplace in the war on drugs at the nation’s border crossings and airports. For example, drug courier profiles used by the U.S. Customs Service regularly include race as a factor in guiding law enforcement discretion.<sup>41</sup> The case of Curtis Blackwell, a long haul trucker, who tried to cross from Mexico into the U.S. at a border crossing in Lordsburg, New Mexico, is illustrative.

On August 15, 2008, Blackwell, an African American, was driving his truck across the border when he was stopped and searched by officers of the New Mexico State Police. The officers accused Blackwell of being under the influence of alcohol or narcotics, despite the fact that he passed every sobriety and drug test administered. His truck was impounded for 24 hours until it was allowed entry into the U.S. Evidence suggests other African-American truckers entering the U.S. from Mexico at this point of entry have also been detained without reasonable suspicion.<sup>42</sup>

In October 2003, in another case involving an African American who may have “fit” the drug courier profile, state police troopers at Boston’s Logan Airport stopped attorney King Downing as he talked on his cell phone. According to Downing, police demanded to see his identification and travel documents. Downing knew he was under no obligation to provide the documents and declined to do so. Police first ordered him to leave the airport, but then stopped him from leaving, surrounded him with officers, and placed him under arrest. At that point, Downing agreed to provide his identification and travel documents. After a 40-minute detention, he was released. Four years later, in a lawsuit brought by Downing, a jury found the police had unlawfully detained him without reasonable suspicion.<sup>43</sup>

## B. Counterterrorism

The 9/11 terrorist attacks on the World Trade Center and the Pentagon were carried out by Arabs from Muslim countries. In response to the attacks, the federal government immediately engaged in a sweeping counterterrorism campaign focused on Arabs and Muslims, and in some cases on persons who were perceived to be, but in fact were not, Arabs or Muslims, such as Sikhs and other South Asians. That focus continues to this day. The federal government claims that its anti-terrorism efforts do not amount to racial profiling, but the singling out for questioning and detention of Arabs and Muslims in the United States, as

well as selective application of the immigration laws to nationals of Arab and Muslim countries, belie this claim.

A prime example of a federal program that encourages racial profiling is the National Security Entry-Exit Registration System (NSEERS), implemented in 2002.<sup>44</sup> NSEERS requires certain individuals from predominantly Muslim countries to register with the federal government, as well as to be fingerprinted, photographed, and interrogated. A report issued in 2009 by the American Civil Liberties Union (ACLU) and the Rights Working Group had this to say about NSEERS:

*More than seven years after its implementation, NSEERS continues to impact the lives of those individuals and communities subjected to it. It has led to the prevention of naturalization and to the deportation of individuals who failed to register, either because they were unaware of the registration requirement or because they were afraid to register after hearing stories of interrogations, detentions and deportations of friends, family and community members. As a result, well-intentioned individuals who failed to comply with NSEERS due to a lack of knowledge or fear have been denied "adjustment of status" (green cards), and in some cases have been placed in removal proceedings for willfully failing to register.<sup>45</sup>*

Despite NSEERS' near explicit profiling based on religion and national origin, federal courts have held that the program does not violate the Equal Protection Clause of the Constitution, and that those forced to participate in the program have not suffered violations of their rights under the Fourth or Fifth Amendments to the U.S. Constitution, which protect against unreasonable search and seizure and guarantee due process, respectively.<sup>46</sup>

Another example of a federal program that involves racial profiling is Operation Front Line (OFL). The stated purpose of OFL,<sup>47</sup> which was instituted just prior to the November 2004 presidential election, is to "detect, deter, and disrupt terror operations."<sup>48</sup> OFL is a covert program, the existence of which was discovered through a Freedom of Information Act lawsuit filed by the American-Arab Anti-Discrimination Committee and the Yale Law School National Litigation Project.<sup>49</sup>

According to the 2009 ACLU/Rights Working Group report, data regarding OFL obtained from the Department of Homeland Security show that:

*an astounding seventy-nine percent of the targets investigated were immigrants from Muslim*

*majority countries. Moreover, foreign nationals from Muslim-majority countries were 1,280 times more likely to be targeted than similarly situated individuals from other countries. Incredibly, not even one terrorism-related conviction resulted from the interviews conducted under this program. What did result, however, was an intense chilling effect on the free speech and association rights of the Muslim, Arab and South Asian communities targeted in advance of an already contentious presidential election.<sup>50</sup>*

Lists of individuals who registered under NSEERS were apparently used to select candidates for investigation in OFL.<sup>51</sup> Inasmuch as the overwhelming majority of those selected were Muslims, OFL is a clear example of a federal program that involves racial profiling. Moreover, because OFL has resulted in no terror-related convictions, the program is also a clear example of how racial profiling uses up valuable law enforcement resources yet fails to make our nation safer.<sup>52</sup>

Although Arabs and Muslims, and those presumed to be Arabs or Muslims based on their appearance, have since 9/11 been targeted by law enforcement authorities in their homes, at work, and while driving or walking,<sup>53</sup> airports and border crossings have become especially daunting. One reason for this is a wide-ranging and intrusive Customs and Border Patrol (CBP) guidance issued in July 2008 that states, "in the course of a border search, and *absent individualized suspicion*, officers can review and analyze the information transported by any individual attempting to enter . . . the United States." (Emphasis added)<sup>54</sup> In addition, the standard to copy documents belonging to a person seeking to enter the U.S. was lowered from a "probable cause" to a "reasonable suspicion" standard.<sup>55</sup> Operating under such a broad and subjective guidance, border agents frequently stop Muslims, Arabs, and South Asians for extensive questioning about their families, faith, political opinions, and other private matters, and subject them to intrusive searches. Often, their cell phones, laptops, personal papers and books are taken and reviewed.

The FBI's Terrorist Screening Center (TSC) maintains a list of every person who, according to the U.S. government, has "any nexus" to terrorism.<sup>56</sup> Because of misidentification (*i.e.*, mistaking non-listed persons for listed persons) and over-classification (*i.e.*, assigning listed persons a classification that makes them appear dangerous when they are not), this defective "watch-list" causes many problems for Muslims, Arabs, and South Asians seeking to enter the United States, including those who are U.S. citizens.

The case of Zabarria Reed, a U.S. citizen, Gulf War veteran, 20-year member of the National Guard, and firefighter, illustrates the problem. Trying to reenter the U.S. from Canada where he travels to visit family, Reed is frequently detained, searched, and interrogated about his friends, politics, and reasons for converting to Islam. Officials have handcuffed Reed in front of his children, pointed weapons at him, and denied him counsel.<sup>57</sup>

In 2005, a lawsuit—*Rahman v. Chertoff*—was filed in federal district court in Illinois by nine U.S. citizens and one lawful permanent resident, none of whom had any connection to terrorist activity.<sup>58</sup> The plaintiffs—all of whom are of South Asian or Middle Eastern descent—alleged that they were repeatedly detained, interrogated, and humiliated when attempting to re-enter the U.S. because their names were wrongly on the watch-list, despite the fact that they were law abiding citizens who were always cleared for re-entry into the U.S. after these recurring and punitive detentions.<sup>59</sup>

In May 2010, the court dismissed the case, finding that almost all of the disputed detentions were “routine,” meaning that border guards needed no suspicion at all to undertake various intrusions such as pat-down frisks and handcuffing for a brief time.<sup>60</sup> Further, the court held that where the stops were not routine, the detentions, frisks, and handcuffings were justified by the placement of the individuals on the TSC’s database—even when the listing may have been a mistake.<sup>61</sup>

Notwithstanding the adverse decision in the *Rahman* case, and the continuation of these practices on a national level, it is important to note that there have been certain positive changes in government policy since 2005. Specifically, a standard of “reasonable suspicion” is now used before a name can be added to the TSC’s database, which marks a sharp departure from the essentially “standardless” policy previously in effect.<sup>62</sup>

Individuals wearing Sikh turbans or Muslim head coverings are also profiled for higher scrutiny at airports. In response to criticism from Sikh organizations, the Transportation Security Administration (TSA) recently revised its operating procedure for screening head coverings at airports. The current procedure provides that:

*All members of the traveling public are permitted to wear head coverings (whether religious or not) through the security checkpoints. The new standard procedures subject all persons wearing head coverings to the possibility of additional security screening, which may include a pat-down search of the head covering. Individuals*

*may be referred for additional screening if the security officer cannot reasonably determine that the head area is free of a detectable threat item. If the issue cannot be resolved through a pat-down search, the individual will be offered the opportunity to remove the head covering in a private screening area.*<sup>63</sup>

Despite this new procedure, and TSA’s assurance that in implementing it “TSA does not conduct ethnic or religious profiling, and employs multiple checks and balances to ensure profiling does not happen,”<sup>64</sup> Sikh travelers report that they continue to be profiled and subject to abuse at airports.<sup>65</sup>

Amardeep Singh, director of programs for the Sikh Coalition and a second-generation American, recounted the following experience in his June 2010 testimony before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the House Judiciary Committee:

*Two months ago, my family and I were coming back to the United States from a family vacation in Playa Del Carmen, Mexico. At Fort Lauderdale Airport, not only was I subjected to extra screening, but so was [my 18 month-old son Azaad]. I was sadly forced to take my son, Azaad, into the infamous glass box so that he could [be] patted down. He cried while I held him. He did not know who that stranger was who was patting him down. His bag was also thoroughly searched. His Elmo book number one was searched. His Elmo book number two was searched. His mini-mail truck was searched. The time spent waiting for me to grab him was wasted time. The time spent going through his baby books was wasted time. I am not sure what I am going to tell him when he is old enough and asks why his father and grandfather and soon him—Americans all three—are constantly stopped by the TSA 100% of the time at some airports.*<sup>66</sup>

## C. Immigration Law Enforcement

### 1. 287(g) and Other Federal Programs

The federal government has shifted significant responsibility for the enforcement of civil immigration laws to state and local law enforcement authorities. The Immigration and Customs Enforcement agency (ICE) in the U.S. Department of Homeland Security (DHS), which is the agency responsible for enforcing federal immigration laws, has done this through Agreements of Cooperation in Communities to Enhance Safety and



Security (known as ICE ACCESS programs). Most notable among these programs is the 287(g) program, so named for its statutory source, Chapter 287(g) of the Immigration and Nationality Act.<sup>67</sup>

The 287(g) program allows state and local law enforcement authorities to enter into a Memorandum of Agreement (MOA) with DHS that enables them to perform limited immigration enforcement activities, provided there is supervision and training by ICE.<sup>68</sup> The MOAs allow ICE to suspend or revoke the delegated authority at any time.<sup>69</sup> As of June 2009, a total of 66 287(g) MOAs had been signed in 23 states.<sup>70</sup> Funding for the 287(g) program has increased significantly on an annual basis since fiscal year 2006, when \$5 million was allocated for the program, to \$68 million in fiscal year 2010.<sup>71</sup>

Chapter 287(g) was added to the Immigration and Nationality Act in 1996, at a time when the U.S. Department of Justice (DOJ) recognized no inherent authority for state and local law enforcement authorities to enforce federal immigration laws.<sup>72</sup> A 2002 opinion from the DOJ Office of Legal Counsel (OLC), however, reversed that earlier position, and concluded that state and local law enforcement authorities do have such inherent authority.<sup>73</sup>

The stated purpose of the 287(g) program is to pursue undocumented immigrants suspected of committing serious crimes, “giving [state and local] law enforcement the tools to identify and remove dangerous criminal aliens.”<sup>74</sup> A 2007 ICE factsheet describing the 287(g) program states that it is

*not designed to allow state and local agencies to perform random street operations. It is not designed to impact issues such as excessive occupancy and day laborer activities ... it is designed to identify individuals for potential removal, who pose a threat to public safety, as a result of an arrest and/or conviction for state crimes. It does not impact traffic offenses such as driving without a license unless the offense leads to an arrest ... Officers can only use their 287(g) authority when dealing with persons suspected of committing state crimes and whose identity is in question or are suspected of being an illegal alien.*<sup>75</sup>

Unfortunately, these clear statements of intent have not guided the operation of the 287(g) program. Combined with the 2002 OLC “inherent authority” opinion, the program has been used by state and local

law enforcement authorities to stop, detain, question, and otherwise target individual Hispanics and entire Hispanic communities in a broad way to enforce federal immigration laws, thus racially profiling vast numbers of Hispanics—most of whom are U.S. citizens or legal residents—as suspected undocumented immigrants.

In New Jersey, a wide-ranging study found that despite a 2007 directive issued by the state attorney general that limited police to questioning about immigration status only those individuals arrested for indictable offenses or driving while intoxicated, officers routinely ignored these limitations, stopping and questioning tens of thousands of Hispanic motorists, pedestrians, passengers, and others who had committed no crime. During the six-month period following issuance of the directive, police referred 10,000 individuals who they believed were undocumented to ICE. Some of those turned over to ICE were crime victims. Others were jailed for days without charges. Many of those referred to ICE turned out to be legal residents or U.S. citizens. Only 1,417 individuals were charged with immigration offenses by the federal government. “The data suggest a disturbing trend towards racial profiling by the New Jersey police,” said Bassina Farenblum, a lawyer for the Center for Social Justice at Seton Hall University Law School, which conducted the study.<sup>76</sup>

A familiar and troubling pattern has emerged in some jurisdictions operating under 287(g) MOAs pursuant to which local police make traffic stops of Hispanic drivers for minor infractions, if any, and then arrest the driver rather than issue the customary citation. Once an arrest is made, a federal background check can be conducted to determine if the driver is an undocumented immigrant.

The case of Juanna Villegas provides an example. In Nashville, Tennessee, on July 3, 2008, Villegas was pulled over for what the local police termed “careless driving,” another potentially subjective pretext for “Driving While Black or Brown” traffic stops. Villegas, who was nine months pregnant, did not have a driver’s license. Instead of receiving a citation, as is customary in Tennessee in such cases, she was arrested and taken to jail. The arrest of Villegas then enabled a federal immigration officer, operating under a 287(g) MOA with local authorities, to conduct a background check on her. He determined that Villegas was an undocumented immigrant who had previously been deported in 1996, but had no other criminal record. The county authorities then declared Mrs. Villegas a medium security prisoner and jailed her. Upon going into labor, she was handcuffed and transported to a hospital, where her leg



was cuffed to the hospital bed until her labor reached the final stages and she gave birth. She was not permitted to see or speak to her husband, who came to pick up the baby from the hospital as his wife was returned to jail. Hospital personnel offered Villegas a breast pump, but she was not permitted to take it back to her cell. Villegas's breasts then became infected and her newborn son developed jaundice. Five days after her arrest, she pleaded guilty to driving without a license and was sentenced to time served. Villegas was then transferred to the jurisdiction of ICE, which began deportation proceedings, but immediately released her in accord with its policy against separating babies from their nursing mothers.<sup>77</sup>

Local law enforcement authorities now profile entire communities as they assume duties of immigration enforcement under 287(g) MOAs. Nowhere is there a clearer illustration of the abuses inherent in such community-wide policing actions than in Maricopa County, Arizona, where Sheriff Joe Arpaio has received national attention for his aggressive "Driving While Brown" profiling of Hispanic drivers, as well as his sweeps of Hispanic communities. In the most notorious of these neighborhood sweeps, Arpaio sent more than 100 deputies, a volunteer posse, and a helicopter into a community of approximately 6,000 Yaqui Indians and Hispanics outside Phoenix. For two days, this outsized police presence stopped residents on the street, chased them into their homes, and generally terrorized community members so completely that many will not come out of their homes if they see a sheriff's patrol car. By the time the operation had ended, a total of only nine undocumented immigrants had been arrested.<sup>78</sup>

Arpaio has also led raids on area businesses that employ Hispanics, causing a substantial number of U.S. citizens and lawful residents to be stopped, detained, and questioned. As a result, employers are reluctant to hire U.S. citizens or lawful residents who happen to be Hispanic because of the risk of disruption to their businesses that the sheriff's raids may cause.<sup>79</sup>

Responding to outcries about such abuses, the Obama administration revised its 287(g) MOA with the Maricopa County Sheriff's Office (MCSO) to restrict it to conducting background checks only of prisoners in local jails. Perversely, such an arrangement could lead to more arrests of Hispanics for traffic violations that customarily merit only a summons. Perhaps previewing his adoption of this tactic after his 287(g) authority had been restricted, Arpaio commented, "[t]hey took away my authority on the streets. That doesn't matter because I will still pursue illegals on the streets of Maricopa

utilizing the authority I have as the elected official."<sup>80</sup>

Like Arpaio, Sheriff Tom Helder of Washington County, Arkansas, seemed unconcerned about racial profiling and the potential for U.S. citizens and lawful residents to be caught up in his 287(g) dragnets. "There's going to be collateral damage," said Helder. "If there's 19 people in there who could or could not be here illegally, they are going to be checked. Although those people might not be conducting criminal activity, they are going to get slammed up in the middle of an investigation."<sup>81</sup>

In North Carolina, Alamance County Sheriff's Office personnel assured Hispanic residents that the county's 287(g) authority would only be used to deport undocumented immigrants who committed violent crimes. Instead, of 170 roadblocks set up to spot-check licenses, 30 were established outside Buckhorn market on a Saturday or Sunday morning, the customary time when Hispanic residents shop there by the hundreds. Police have also arrested Hispanics at schools, libraries, and sporting events. Five immigrants were arrested for fishing without a license, rarely an offense resulting in an arrest, and then deported. Perhaps this profiling of entire communities should not be surprising in a county where Sheriff Terry Johnson declared about Mexicans, "[t]heir values are a lot different—their morals—than what we have here. In Mexico, there's nothing wrong with having sex with a 12, 13 year-old girl ... They do a lot of drinking down in Mexico."<sup>82</sup>

Although the ICE factsheet provides that 287(g) programs are not intended to be used to impact "day laborer activities" or "traffic offenses," that prohibition is not observed. A 2009 report by Justice Strategies found that 287(g) MOAs were being used in Maricopa County, Arizona, to do "crime suppression sweeps" of day laborer sites.<sup>83</sup> And in a study of the implementation of 287(g) MOAs in North Carolina, the state ACLU and the University of North Carolina Immigration and Human Rights Policy Clinic found that a majority of arrests in several counties came as a result of traffic stops, not criminal acts.<sup>84</sup>

Enforcement of federal immigration laws by local law enforcement authorities under 287(g) MOAs is inherently problematic. As the ACLU explained in 2009 testimony before Congress:

*Because a person is not visibly identifiable as being undocumented, the basic problem with local police enforcing immigration law is that police officers who are often not adequately*

*trained, and in some cases not trained at all, in federal immigration enforcement will improperly rely on race or ethnicity as a proxy for undocumented status. In 287(g) jurisdictions, for example, state or local police with minimal training in immigration law are put on the street with a mandate to arrest “illegal aliens.” The predictable and inevitable result is that any person who looks or sounds “foreign” is more likely to be stopped by police, and more likely to be arrested (rather than warned or cited or simply let go) when stopped.<sup>85</sup>*

As indicated, the stated purpose of the 287(g) program is to give state and local law enforcement authorities the tools to bring in undocumented immigrants who have engaged in serious criminal offenses, and supporters of the program will misleadingly cite cases of dangerous or violent criminals who are also in this country without authorization. Sheriff Charles Jenkins of Frederick County, Maryland, made this point in written testimony that he submitted to the House Homeland Security Committee in March 2009: “Some of the most serious offenses in which criminal aliens have been arrested as offenders and identified include: Attempted 2<sup>nd</sup> Degree Murder, 2<sup>nd</sup> Degree Rape, Armed Robbery, 1<sup>st</sup> Degree Assault, Child Abuse, Burglary, and Possessing Counterfeit U.S. Currency.”<sup>86</sup> But these comments fail to mention that state and local law enforcement authorities can already arrest anyone suspected of committing these offenses without 287(g) authority from ICE, since the authority to arrest is based on the act and not the actor’s immigration status. Giving police the ability to inquire into a person’s immigration status in no way enhances their ability to meet the goals of law enforcement.

In March 2010, the Department of Homeland Security (DHS) Office of Inspector General issued a comprehensive 87-page report assessing the 287(g) program (OIG report).<sup>87</sup> This Report is highly critical of the operation of the program:

*We observed instances in which Immigration and Customs Enforcement and participating law enforcement agencies were not operating in compliance with the terms of the agreements. We also noted several areas in which Immigration and Customs Enforcement had not instituted controls to promote effective program operations and address related risks. Immigration and Customs Enforcement needs to (1) establish appropriate performance measures and targets to determine whether program results are aligned with program goals; (2) develop guidance for*

*supervising 287(g) officers and activities; (3) enhance overall 287(g) program oversight; (4) strengthen the review and selection process for law enforcement agencies requesting to participate in the program; (5) establish data collection and reporting requirements to address civil rights and civil liberties concerns; (6) improve 287(g) training programs; (7) increase access to and accuracy of 287(g) program information provided to the public; and (8) standardize 287(g) officers’ access to Department of Homeland Security information systems.<sup>88</sup>*

With regard to civil rights violations generally, and racial profiling specifically, the OIG report notes that those critical of the 287(g) program “have charged that ICE entered into agreements with [law enforcement authorities] that have checkered civil rights records, and that by doing so, ICE has increased the likelihood of racial profiling and other civil rights violations.”<sup>89</sup> Crediting these criticisms, the OIG report concludes that “ICE needs to direct increased attention to the civil rights and civil liberties records of current and prospective 287(g) jurisdictions,” and “must include consideration of civil rights and civil liberties factors in the site selection and MOA review process.”<sup>90</sup>

Although perhaps the most well-known, the 287(g) program is not the only ICE-state/local law enforcement authority collaboration program that raises concerns about racial profiling. As the ACLU noted in its 2009 Congressional testimony:

*The problem of racial profiling, however, is not limited to 287(g) field models ....the federal government uses an array of other agreements to encourage local police to enforce immigration law. Racial profiling concerns therefore are equally present under jail-model MOUs or other jail-screening programs. Officers, for example, may selectively screen in the jails only those arrestees who appear to be Latino or have Spanish surnames. Police officers may also be motivated to target Latinos for selective or pretextual arrests in order to run them through the booking process and attempt to identify undocumented immigrants among them.<sup>91</sup>*

Included among the problematic “other jail-screening programs” is the Criminal Alien Program (CAP), which involves an immigration screening process within federal, state, and local correctional facilities to identify and place immigration holds on “criminal aliens to

process them for removal before they are released to the general public.”<sup>92</sup> Although CAP is intended to target “illegal aliens with criminal records who pose a threat to public safety,”<sup>93</sup> a recent study by the Earl Warren Institute on Race, Ethnicity and Diversity at the University of California, Berkeley School of Law, indicates that the program is not effective in prioritizing the arrest and removal of individuals who commit dangerous or violent crimes. The study, which examined the CAP program in Irving, Texas, found that felony charges accounted for only two percent of the immigration holds, while 98 percent were issued for misdemeanor offenses.<sup>94</sup>

Another ICE-state/local law enforcement authority collaboration program that raises concerns about racial profiling is the Secure Communities program. This ICE program, which was launched in 2008, allows local authorities to run fingerprint checks of arrestees during the booking process against DHS databases, not just FBI databases. According to ICE, “[t]he technology enables local Law Enforcement Agencies (LEAs) to initiate an integrated records check of criminal history and immigration status for individuals in their custody ... when there is a fingerprint match in both systems, ICE and the LEA that encountered the individual are automatically notified, in parallel.”<sup>95</sup> Local LEAs can apparently run fingerprint checks of any person in their custody, thus making the Secure Communities program ripe for abuse. With the program in place, police may have a strong incentive “to arrest people based on racial or ethnic profiling or for pretextual reasons so that immigration status can be checked.”<sup>96</sup>

## **2. State Initiatives: Arizona’s S.B. 1070**

In addition to federal programs such as those discussed above that incentivize state and local law enforcement authorities to engage in racial profiling, federal inaction on comprehensive immigration reform has prompted state lawmakers to undertake initiatives of their own. Many of these state initiatives have further encouraged racial profiling.

During the first half of 2010, 314 laws and resolutions were enacted across the country, representing a 21 percent increase over the same period in 2009, as states tightened restrictions on hiring undocumented immigrants, instituted stringent ID requirements to receive public benefits, and increased their participation in programs aimed at removing persons who are in the country without authorization.<sup>97</sup> But no state law has been as sweeping or controversial as Arizona’s S.B. 1070—the “Support our Law Enforcement

and Safe Neighborhoods Act.” The stated purpose of S.B. 1070, which was passed in April 2010, is to “discourage and deter” the presence of unauthorized immigrants in Arizona.<sup>98</sup> S.B. 1070 turns mere civil infractions of federal immigration law, such as not carrying immigration registration papers, into state crimes, and requires police to inquire about the legal status of individuals if “reasonable suspicion” exists during arrests or even traffic stops. The law also gives private citizens the right to sue Arizona law enforcement authorities if they believe that the law is not being fully enforced. S.B. 1070 has provided a template for other states, and within a few months of its enactment, clone bills were being considered in more than 20 states around the country.<sup>99</sup>

Opponents of S.B. 1070 contend that the law will lead to more racial profiling, increase community mistrust of the police, and strain already limited law enforcement resources. The Arizona Association of Chiefs of Police has opposed the law, stating that it will “negatively affect the ability of law enforcement agencies across the state to fulfill their many responsibilities in a timely manner.”<sup>100</sup> And President Obama has criticized the law, calling it a “misguided” effort to deal with a national problem.<sup>101</sup>

In May 2010, a group of civil rights organizations filed a class action lawsuit in federal district court in Arizona challenging the constitutionality of S.B. 1070 on the ground that it is “preempted” by federal law.<sup>102</sup> The U.S. Department of Justice (DOJ) filed a similar lawsuit in July.<sup>103</sup>

On July 28, one day before S.B. 1070 was scheduled to go into effect, the court issued a preliminary injunction in the DOJ’s lawsuit, enjoining implementation of certain key provisions of the law, including those that raised the most significant concerns regarding racial profiling.<sup>104</sup> The state appealed the preliminary injunction to the U.S. Court of Appeals for the Ninth Circuit, and, as of the date of this publication, the Ninth Circuit had not issued its decision.<sup>105</sup>

## **D. The Department of Justice’s 2003 Guidance**

As evidence of its bona fides in attempting to eliminate racial profiling by federal law enforcement authorities, the Bush administration relied heavily on the DOJ’s June 2003 “Guidance Regarding the Use by Federal Law Enforcement Agencies” (2003 Guidance), which was developed in response to a directive from then-Attorney-General John Ashcroft “to develop guidance for Federal officials to ensure an end to racial profiling

in law enforcement.”<sup>106</sup> But this reliance on the 2003 Guidance was misplaced.

At the time of its issuance, The Leadership Conference on Civil and Human Rights—reflecting the views of the broader civil and human rights community—referred to the 2003 Guidance as a “useful first step,” but emphasized that “it falls far short of what is needed to fulfill the president’s promise [in his February 27, 2001, address to Congress] to end racial profiling in America.”<sup>107</sup> As Wade Henderson, then-executive director (and currently president and CEO) of The Leadership Conference explained:

*The guidance falls far short of what is needed in four important ways. First, it does not apply to state and local police, who are more likely than federal agents to engage in routine law enforcement activities, such as traffic and pedestrian stops. Second, the guidance includes no mechanism for enforcement of the new policy, leaving victims of profiling without a remedy. Third, there is no requirement of data collection*

*to monitor the government’s progress toward eliminating profiling. And finally, the guidance includes broad and vaguely worded ‘national security’ and ‘border’ exemptions that could swallow the rule. Many in the Latino, Arab, Muslim, African, and South Asian communities will remain targets of unjustified law enforcement action based on race or ethnicity.*<sup>108</sup>

Despite these and other criticisms made by The Leadership Conference and its allies—including the failure of the 2003 Guidance to prohibit profiling on the basis of national origin or religion—the 2003 Guidance has to date remained unchanged. In his November 18, 2009, appearance before the Senate Committee on the Judiciary, Attorney General Eric Holder stated that “[i]n the area of racial profiling, the Department’s [June 2003 Guidance] has been the subject of some criticism,” and announced that he had “initiated an internal review to evaluate the 2003 Guidance and to recommend any changes that may be warranted.”<sup>109</sup> That review is presently ongoing.



## IV. The Case Against Racial Profiling

### A. The Assumptions Underlying Racial Profiling

Defenders of racial profiling argue that it is a rational response to patterns of criminal behavior.

In the context of street-level crime, this argument rests on the assumption that minorities—used in this context to refer to African Americans and Hispanics—commit most drug-related and other street-level crimes, and that many, or most, street-level criminals are in turn African Americans and Hispanics. Thus, the argument continues, it is a sensible use of law enforcement resources to target African Americans and Hispanics in this context. This assumption is false.

The empirical data presented in Chapter III (A) of this report reveal that “hit rates” (*i.e.*, the discovery of contraband or evidence of other illegal conduct) among African Americans and Hispanics stopped and searched by the police—whether driving or walking—are lower than or similar to hit rates for Whites who are stopped and searched. These hit rate statistics render implausible any defense of racial profiling on the ground that African Americans and Hispanics commit more drug-related or other street-level crimes than Whites.<sup>110</sup>

The basic assumption underlying racial profiling in the counterterrorism context, predominantly at airports and border crossings, is the same as that underlying the practice in the street-level crime context—*i.e.*, that a particular crime (in this context, terrorism) is most likely to be committed by members of a particular racial, ethnic or religious group (in this context, Arabs and Muslims), and that members of that group are, in general, more likely than non-members to be involved in that type of criminal activity. As in the street-level crime context, this assumption is false.

While all the men involved in the 9/11 hijackings were Arab nationals from Muslim countries, terrorist acts are not necessarily perpetrated by Arabs or Muslims. Richard Reid, who on December 22, 2001, tried to ignite an explosive device on a trans-Atlantic flight, was a British citizen of Jamaican ancestry. Prior to 9/11, the bloodiest act of terrorism on U.S. soil was perpetrated by Timothy McVeigh, a White American citizen. And non-Arabs such as John Walker Lindh can be found in the ranks of the Taliban, al Qaeda, and other terrorist organizations. As former U.S. Department of Homeland Security (DHS) Secretary Michael Chertoff explained following the December 2001 bomb attempt by Richard Reid:

*Well, the problem is that the profile many people think they have of what a terrorist is doesn't fit the reality. Actually, this individual probably does not fit the profile that most people assume is the terrorist who comes from either South Asia or an Arab country. Richard Reid didn't fit that profile. Some of the bombers or would-be bombers in the plots that were foiled in Great Britain don't fit the profile. And in fact, one of the things the enemy does is to deliberately recruit people who are Western in background or in appearance, so that they can slip by people who might be stereotyping.<sup>111</sup>*

The assumption that underlies the use of racial profiling in the effort to enforce immigration laws is the same as that which underlies its use in the street-level crime and counterterrorism contexts—*i.e.*, that most of the people who are in this country without authorization are members of a particular racial or ethnic group, and that members of that particular racial or ethnic



group are therefore more likely to be in this country without documentation than are non-members. Although, since 9/11, Arabs and Muslims have been subjected to selective and unfair enforcement of the immigration laws, racial profiling in the immigration context traditionally has been, and remains today, aimed primarily at Hispanics.

Although the Supreme Court has held that race, ethnicity, and national origin cannot be the *sole* factors giving rise to a law enforcement stop for suspected immigration law violations,<sup>112</sup> the Court has indicated that there may be certain situations in which it is constitutional for a law enforcement stop to be *partially* based on such considerations. Specifically, in *United States v. Martinez-Fuente* (1976), which involved fixed inspection checkpoints near the Mexican border, the Court concluded that the population demographics were such as to allow law enforcement stops to be partially based on race.<sup>113</sup>

Because racial profiling in the immigration context may be constitutionally permissible under certain limited circumstances does not in any way justify its use. Even if the population demographics in a particular community make it likely that most undocumented immigrants are Hispanic, it does not follow that many, or most, Hispanics in that community are undocumented immigrants. To the contrary, the overwhelming majority of Hispanics in the United States are U.S. citizens or legal residents.<sup>114</sup> And the adverse consequences of the use of racial profiling for the individuals who are subject to it, and for effective law enforcement—consequences that are discussed below—argue forcefully against the use of any form of racial profiling in any context.

### B. The Consequences of Racial Profiling

Racial profiling forces individuals who have engaged in no wrongdoing to endure the burdens of law enforcement in order to prove their innocence. For each criminal, terrorist, or undocumented immigrant apprehended through racial profiling, many more law-abiding minorities are treated through profiling as if they are criminals, terrorists, or undocumented immigrants.

The 2009 experience of Elvis Ware, a 36 year-old African-American veteran of Operation Desert Storm, is illustrative of the humiliation and stress experienced by a person who has been a victim of racial profiling. In 2009, police in Detroit, Michigan, conducted a stop-and-frisk of Ware. While in a public parking lot, one officer “shoved his bare hand down Ware’s pants and squeezed his genitals and then attempted to stick a bare finger into Ware’s anus.” Other young men of African

descent report that the same two officers who stopped Ware conducted similar outrageous and inappropriate searches on them without warrants, probable cause, or reasonable suspicion. In accepting a settlement from the city of Detroit that included monetary damages, Ware said, “I not only wanted justice for myself, but I wanted it for others who were treated this way.... If, by coming forward, I prevent just one person from having to go through this, I have succeeded.”<sup>115</sup>

Ware’s humiliation is not unique. Texas State Judge Gillberto Hinajosa, the subject of immigration-related profiling on many occasions, has stated that Southern Texas “feels like occupied territory ... It does not feel like we’re in the United States of America.”<sup>116</sup> Such alienation is a common consequence of being profiled.

Exposure to racial profiling has behavioral as well as emotional consequences. Many minorities who are entirely innocent of any wrongdoing choose to drive in certain automobiles and on certain routes, or to dress in certain clothes, to avoid drawing the attention of police who might otherwise profile and stop them.<sup>117</sup> Or they choose to live in areas where they will not stand out as much, thereby reinforcing patterns of residential segregation.<sup>118</sup>

An example of behavioral changes in an effort to avoid racial profiling in the counterterrorism context is provided by Khaled Saffuri. Saffuri, a Lebanese man living in Great Falls, Virginia, has said that he shaves closely and wears a suit when he flies, then remains silent during flights and avoids using the aircraft’s bathroom. Sometimes he avoids flying altogether in favor of long drives to his destination.<sup>119</sup>

Defenders of racial profiling argue that profiling is necessary and useful in the effort by law enforcement authorities to fight street-crime, combat terrorism, and enforce the nation’s immigration laws. The opposite is true: racial profiling is in all contexts a flawed law enforcement tactic that may increase the number of people who are brought through the legal system, but that actually decreases the hit rate for catching criminals, terrorists, or undocumented immigrants. There are two primary reasons for this.

To begin with, racial profiling is a tactic that diverts and misuses precious law enforcement resources. This became clear in 1998 when the U.S. Customs Service responded to a series of discrimination complaints by eliminating the use of race in its investigations and focusing solely on suspect behavior. A study found that

this policy shift led to an almost 300 percent increase in the discovery of contraband or illegal activity.<sup>120</sup>

Consider the inefficient allocation of scarce police resources in New Jersey when, as described in Chapter III (C) of this report local law enforcement authorities stopped tens of thousands of Hispanic motorists, pedestrians, passengers, and others in a six-month period. Just 1,417 of the tens of thousands stopped were ultimately charged with immigration offenses by the federal government.<sup>121</sup>

Or, consider the April 2008 assault by more than 100 Maricopa County, Arizona deputies, a volunteer posse, and a helicopter on a small town of 6,000 Yaqui Indians and Hispanics outside of Phoenix, as described in Chapter III (C) above. After terrorizing the residents for two days, stopping residents and chasing them into their homes to conduct background checks, Sheriff Joe Arpaio's operation resulted in the arrest of just nine undocumented immigrants.<sup>122</sup>

Turning to the counterterrorism context, the use of racial profiling—and the focus on the many Arabs, Muslims, Sikhs, and other South Asians who pose no threat to national security—diverts law enforcement resources away from investigations of individuals who have been linked to terrorist activity by specific and credible evidence.

A memorandum circulated to U.S. law enforcement agents worldwide by a group of senior law enforcement officials in October 2002 makes clear that race is an ineffective measure of an individual's terrorist intentions. The memorandum, entitled "Assessing Behaviors," emphasized that focusing on the racial characteristics of individuals was a waste of law enforcement resources and might cause law enforcement officials to ignore suspicious behavior, past or present, by someone who did not fit a racial profile.<sup>123</sup> One of the authors of the report noted: "Fundamentally, believing that you can achieve safety by looking at characteristics instead of behaviors is silly. If your goal is preventing attacks ... you want your eyes and ears looking for pre-attack behaviors, not characteristics."<sup>124</sup>

In sum, ending racial profiling will result in the more efficient deployment of law enforcement resources. As David Harris, a professor of law at the University of Pittsburgh Law School and a recognized expert on racial profiling, explained in his June 2010 testimony before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the U.S. House of Representatives Judiciary Committee:

*From those who advocate racial profiling, one frequently hears what we may call the profiling hypothesis: we know who the criminals are and what they look like, because we know what societal groups they come from; therefore using racial or ethnic appearance will allow police to better target their enforcement efforts; and when police target those efforts, they will be more effective, because they will get higher rates of "hits"—finding guns, drugs, criminals—than when they do not use racial targeting ... [T]he data do not support the profiling hypothesis; the data contradict it. It is not, in fact, an effective crime-fighting strategy.*

*The reasons for these results originate with what profiling is supposed to be: a predictive tool that increases the odds of police finding the "right" people to stop, question, or search. Using race or ethnic appearance as part of a description of a person seen by a witness is absolutely fine, because that kind of information helps police identify a particular individual. On the other hand, using race as a predictor of criminal behavior, in situations in which we do not yet know about the criminal conduct—for example, when we wonder which of the thousands of vehicles on a busy highway is loaded with drugs, or which passenger among tens of thousands in an airport may be trying to smuggle a weapon onto an airplane—throws police work off. That is because using race or ethnic appearance as a short cut takes the eye of law enforcement off of what really counts. And what really matters in finding as-yet-unknown criminal conduct is the close observation of behavior. Paying attention to race as a way to more easily figure out who is worthy of extra police attention takes police attention off of behavior and focuses it on appearance, which predicts nothing.*<sup>125</sup>

An additional reason why racial profiling is not an effective law enforcement tactic is that it destroys the relationship between local law enforcement authorities and the communities that they serve. This is particularly true with regard to the enforcement of federal immigration laws by local police under the 287(g) program and other ICE ACCESS programs.

When local police function as rogue immigration agents, fear—as opposed to trust—is created in Hispanic and other immigrant communities. U.S. born children with parents who are either U.S. citizens or lawful residents

may avoid coming in contact with police or other public officials (including school officials) out of concern that they, their parents, or family members will be targeted by local law enforcement authorities for a check of their immigration status. Victims of domestic violence who are immigrants may fear interacting with the police because of their immigration status, or the status of their families, or even their abusers, and the consequences of that fear can leave them in dangerous and violent situations. Respect and trust between law enforcement authorities and immigrant communities are essential to successful police work.

Racial profiling has a destructive impact on minority communities. How many community members will step up to be “Good Samaritans” and report crimes or accidents, or offer help to a victim until the police arrive, if the risk of doing the good deed is an interaction with a police officer that may result in a background check or challenge to immigration status? Perversely, the ultimate result of racial profiling in minority communities is precisely the opposite of the goal of effective local law enforcement. It is for this reason that many police executives and police organizations have expressed concern that the enforcement of the immigration laws by local law enforcement authorities has a “negative overall impact on public safety.”<sup>126</sup>

The use of racial profiling in the counterterrorism context—as in the immigration context—alienates the very people that federal authorities have deemed instrumental in the anti-terrorism fight. Arab and Muslim communities may yield useful information to those fighting terrorism. Arabs and Arab Americans also offer the government an important source of Arabic speakers and translators. The singling out of Arabs and Muslims for investigation regardless of whether any credible evidence links them to terrorism simply alienates these individuals and compromises the anti-terrorism effort. In particular, to the extent that federal authorities use the anti-terrorism effort as a pretext for detaining or deporting immigration law violators, individuals who might have information that is useful in the fight against terrorism may be reluctant to come forward. For a special registration program such as NSEERS, those individuals will choose not to register, thereby defeating the very purpose of the program.<sup>127</sup>

Professor Harris made this point in his June 2010 congressional testimony, when he stated that racial profiling “drives a wedge between police and those they serve, and this cuts off the police officer from

the most important thing the officer needs to succeed: information.”<sup>128</sup> As he explained:

*For more than two decades, the mantra of successful local law enforcement has been community policing. One hears about community policing efforts in every state. The phrase means different things in different police agencies. But wherever community policing really takes root, it comes down to one central principle: the police and the community must work together to create and maintain real and lasting gains in public safety. Neither the police nor the public can make the streets safe by themselves; police work without public support will not do the whole job. The police and those they serve must have a real partnership, based on trust, dedicated to the common goal of suppressing crime and making the community a good place to live and work. The police have their law enforcement expertise and powers, but what the community brings to the police—information about what the real problems on the ground are, who the predators are, and what the community really wants—can only come from the public. Thus the relationship of trust between the public and the police always remains of paramount importance. This kind of partnership is difficult to build, but it is neither utopian nor unrealistic to strive for this kind of working relationship. In other words, this is not an effort to be politically correct or sensitive to the feelings of one or another group. Thus these trust-based partnerships are essential for public safety, and therefore well worth the effort to build.*

*When racial profiling becomes common practice in a law enforcement agency, all of this is put in jeopardy. When one group is targeted by police, this erodes the basic elements of the relationship police need to have with that group. It replaces trust with fear and suspicion. And fear and suspicion cut off the flow of communication. This is true whether the problem we face is drug dealers on the corner, or terrorism on our own soil. Information from the community is the one essential ingredient of any successful effort to get ahead of criminals or terrorists; using profiling against these communities is therefore counterproductive.<sup>129</sup>*

Because racial profiling diverts precious law enforcement resources and destroys the relationship between local law enforcement authorities and the

communities they serve, it is a flawed method of law enforcement in any context. But it is particularly ineffective in the counterterrorism context for two additional reasons.

First, even if one accepts the false assumption that terrorists are likely to be Arabs or Muslims, the application of the profile is fraught with error. The profile of a terrorist as an Arab or Muslim has been applied to individuals who are neither Arab nor Muslim (*e.g.*, Sikhs and other South Asians). Profiling of Arabs and Muslims amounts to selective enforcement of the law against anyone with a certain type of “swarthy” foreign-looking appearance even if they do not in fact fit the terrorist profile. The profile is then useless in fighting terrorism, as well as offensive to an ever-broadening category of persons.

Second, using racial profiling in the counterterrorism context is a classic example of refighting the last war. Al Qaeda and other terrorist organizations are pan-ethnic:

they include Asians, Anglos, and ethnic Europeans. They are also adaptive organizations that will learn how to use non-Arabs such as Richard Reid to carry out terrorists attacks, or to smuggle explosive devices onto planes in the luggage of innocent people. Chertoff, the former DHS secretary made this point when, in his statement following the bomb attempt by Reid, he observed that “one of the things the enemy does is to deliberately recruit people who are Western in background or in appearance so that they can slip by people who might be stereotyping.”<sup>130</sup> In short, the fact that the 9/11 hijackers were Arabs means little in predicting who the next terrorists will be. In a situation analogous to the one facing Arabs and Muslims today, the 10 individuals found to be spying for Japan during World War II were not Japanese or Asian, but Caucasian. They clearly did not fit the profile that caused America to order the internment of thousands of Japanese Americans.<sup>131</sup> Racial profiling in any case is a crude mechanism; against an enemy like al Qaeda, it is virtually useless.



## V. The End Racial Profiling Act of 2010

Before 9/11, polls showed that Americans of all races, ethnicities, and national origins considered racial profiling a widespread and unacceptable practice.<sup>132</sup> On June 6, 2001, Sen. Russell Feingold, D. Wisc., and Rep. John Conyers, D. Mich., introduced the End Racial Profiling Act of 2001 (ERPA 2001) into the 107<sup>th</sup> Congress.<sup>133</sup> The bill had bipartisan support, and the enactment of a comprehensive federal anti-racial profiling statute seemed imminent. On 9/11, the consensus evaporated, and the Bush administration took no action to encourage Congress to pass ERPA 2001. The suggestion—which, as this report indicates, is fundamentally wrong—that racial profiling could not be addressed without compromising the counterterrorism effort, prevented any rational discussion of ending the practice, not only in that context, but in the street-level crime and immigration contexts as well. End Racial Profiling Acts were introduced into Congress in 2004, 2005, 2007, and 2009,<sup>134</sup> but Congress failed to enact legislation to ban the practice.

Looking toward the introduction of another End Racial Profiling Act, the Subcommittee on the Constitution, Civil Rights and Civil Liberties of the U.S. House of Representatives Committee on the Judiciary held a hearing in June 2010 on “Ending Racial Profiling: Necessary for Public Safety and the Protection of Civil Rights.” Shortly thereafter, on July 15, Conyers, chair of the Judiciary Committee, introduced into the 111<sup>th</sup> Congress H.R. 5748—the End Racial Profiling Act of 2010 (ERPA 2010).<sup>135</sup> The 111<sup>th</sup> Congress took no action on ERPA 2010, and it died with the adjournment of that Congress on December 22, 2010. But ERPA 2010 warrants continued attention because it contained all of the elements that are necessary for an effective federal anti-racial profiling statute and provides a template for action by the 112<sup>th</sup> Congress.

Those who advocate for a federal statute to end racial profiling agree that the centerpiece of any such statute should be an explicit and unqualified prohibition against use of the practice in all contexts, including the street-level crime, counterterrorism, and immigration law enforcement context. They further agree that, for purposes of this prohibition, the term “racial profiling” should be broadly defined to encompass at least race, ethnicity, national origin, and religion, and that law enforcement authorities should be prohibited from relying on these factors, to any extent, in deciding which individuals to investigate or subject to other law enforcement activities. There is agreement, moreover, that the prohibition should apply to law enforcement activities at the federal, state, and local levels, and that there should be a “private cause of action,” which would allow those who have been the victims of racial profiling to file a lawsuit to enforce the prohibition. The centerpiece of ERPA 2010 was a prohibition against racial profiling that met all of these criteria.

The first section of Title I of ERPA 2010 (PROHIBITION) provided as follows:

*No law enforcement agent or law enforcement agency shall engage in racial profiling.*

The statutory definitions of the terms used in the foregoing provision confirmed the broad reach of the prohibition. Thus, “law enforcement agency” meant

*any federal, state, local, or Indian tribal public agency engaged in the prevention, detection, or investigation of violations of criminal, immigration, or customs laws.*

And the definition of “racial profiling” was essentially



the same as that used in this report. The term was defined to mean:

*[T]he practice of a law enforcement agent or agency relying, to any degree, on race, ethnicity, national origin, or religion in selecting which individual to subject to routine or spontaneous investigatory activities or in deciding upon the scope and substance of law enforcement activity following the initial investigatory procedure, except when there is trustworthy information, relevant to the locality and timeframe, that links a person of a particular race, ethnicity, national origin, or religion to an identified criminal incident or scheme.<sup>136</sup>*

With regard to remedy, ERPA 2010 provided that the United States or “an individual injured by racial profiling” may enforce the prohibition by filing an action “for declaratory or injunctive relief” in state or federal court against “any governmental body that employed any law enforcement agent” who engaged in racial profiling, the law enforcement agent in question, and anyone with supervisory authority over the agent. An individual plaintiff who prevailed in such a lawsuit could recover reasonable attorneys’ fees.<sup>137</sup>

Although the relief available to an individual plaintiff under ERPA 2010 did not include monetary damages, the limitation to declaratory or injunctive relief must be read in conjunction with the bill’s Savings Clause.<sup>138</sup> This provision preserved for plaintiffs all “legal or administrative remedies,” including damages, which they may have under Section 1983, Title VI of the Civil Rights Act of 1964, and certain other federal statutes.

In addition to its broad and unqualified prohibition against all forms of racial profiling, ERPA 2010 was responsive to other recommendations made by proponents of a federal statute, both at the June 2010 hearing before the subcommittee of the House Judiciary Committee and in other forums. Thus, for example, in his June 2010 testimony, Hilary O. Shelton, director of the NAACP’s Washington Bureau and senior vice president for advocacy and policy, outlined the provisions that he believed should be included in a federal anti-racial profiling statute. Emphasizing first and foremost the “need for a clear definition of what is racial profiling as well as an unambiguous and unequivocal ban on its use by all law enforcement officials,” Shelton continued as follows:

*Second, we need data collection to truly assess the extent of the problem. In simple terms, “in order to fix it, you must first measure it.” The only*

*way to move the discussion about racial profiling from rhetoric and accusation to a more rational dialogue and appropriate enforcement strategies is to collect the information that will either allay community concerns about the activities of the police or help communities ascertain the scope and magnitude of the problem. Furthermore, implementing a data collection system also sends a clear message to the entire police community, as well as to the larger community, that racial profiling is inconsistent with effective policing and equal protection.*

*If it is done right, data collection will also lead to the third element of an effective anti-racial profiling agenda: training. Law enforcement officials at all levels, from the unit commander to the desk sergeant to the cop-on-the-beat and of all jurisdictions, from federal agents to state and local police, should all be required to be able to not only identify racial profiling, but also to know of its short-comings and be able to put an end to it while increasing their effectiveness in protecting our communities and our Nation.<sup>139</sup>*

Shelton is not, of course, alone in recommending that a federal statute provide for data collection and training of law enforcement authorities at all levels. Similar recommendations were made by others who testified at the June 2010 hearing;<sup>140</sup> are included in a 2003 report by The Leadership Conference Education Fund and the 2009 report by the ACLU/Rights Working Group;<sup>141</sup> and provisions dealing with these matters were included in predecessor versions of ERPA 2010 tracing back to 2001.<sup>142</sup>

ERPA 2010 required federal law enforcement agencies to “include ... training on racial profiling issues as part of federal law enforcement training,” and provided for the “collection of data in accordance with the regulations issued by the Attorney General under [a later section of the bill].”<sup>143</sup> Similar requirements were imposed on state, local, and Indian tribal law enforcement authorities as a condition for receiving federal funding under specified federal criminal justice programs, and of eligibility for competitive law enforcement grants or contracts.<sup>144</sup>

Another recommendation that has consistently been put forth by proponents of a federal statute to end racial profiling is that the statute require law enforcement authorities to establish administrative complaint procedures for victims of racial profiling.<sup>145</sup> ERPA 2010 also responded to this recommendation: it required

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federal law enforcement authorities to establish “procedures for receiving, investigating, and responding meaningfully to complaints alleging racial profiling by [federal] law enforcement agents,”<sup>146</sup> and imposed a similar requirement on state, local, and Indian tribal law enforcement agencies as a condition for receiving specified federal program and grant funding.<sup>147</sup>

In sum, ERPA 2010 addressed the major concerns about racial profiling expressed in this report, and would have gone a long way toward ending the practice. Accordingly, ERPA 2010 provides an appropriate model for an anti-racial profiling act in the 112<sup>th</sup> Congress.

## *VI. Conclusion and Recommendations*

As this report demonstrates, racial profiling is a pervasive nationwide practice: federal, state, and local law enforcement authorities repeatedly stop, detain, question, and otherwise target individuals based on their race, ethnicity, national origin, or religion. As this report also demonstrates, racial profiling is in all contexts an unjust and ineffective method of law enforcement.

In early 2001, a consensus had emerged on the need to end racial profiling in America, but in the aftermath of the 9/11 terrorist attacks many people, both in and out of government, re-evaluated their views, and the consensus evaporated. It is now time to establish a new national anti-racial profiling consensus, and do what is necessary to stop the use of the practice. Toward that end, we offer the following recommendations, addressed to Congress, the president, Executive Branch agencies, and civil and human rights organizations.

### **Congress**

- The 112<sup>th</sup> Congress should enact an anti-racial profiling statute modeled after ERPA 2010. Such a statute would address the major concerns about racial profiling expressed in this report, and go a long way toward ending the practice at the federal, state, and local levels.

### **The President**

- President Obama should urge Congress to enact an anti-racial profiling statute modeled after ERPA 2010. Consistent with his campaign promises, the president should publicly support such a statute, and make its enactment one of his administration's highest legislative priorities.
- Pending enactment by Congress of an anti-racial profiling statute, the president should issue an

executive order that prohibits federal law enforcement authorities from engaging in racial profiling or sanctioning the use of the practice by state or local law enforcement authorities in connection with any federal program. For purposes of this prohibition, the executive order should use the definition of "racial profiling" in Sec. 2(6) of ERPA 2010 (and in this report), and incorporate the provisions of Title II, Section 201, of ERPA 2010 regarding the training of federal law enforcement authorities, the collection of data, and the procedures for receiving, investigating, and responding to complaints alleging racial profiling.

### **Executive Branch Agencies**

- The U.S. Department of Justice (DOJ) should revise its June 2003 "Guidance Regarding the Use of Race by Federal Law Enforcement Agencies" to clarify ambiguities, close loopholes, and eliminate provisions that allow for any form of racial profiling. Specifically, the revised guidance should add national origin and religion as prohibited bases for profiling; eliminate the national and border security exceptions; explicitly state that the ban on profiling applies to intelligence activities carried out by law enforcement authorities subject to the guidance; establish enforceable standards that include accountability mechanisms for noncompliance; and be made applicable to all state and local law enforcement authorities as a condition for the receipt of appropriate federal funding.
- DOJ should take the position that it has exclusive jurisdiction to enforce federal immigration laws. Consistent with that position, DOJ's Office of Legal Counsel should immediately rescind its 2002 opinion that state and local law enforcement authorities have "inherent authority" to enforce federal immigration laws, and issue a new opinion declaring that state

and local law enforcement authorities may enforce federal immigration laws only if the authority to do so has been expressly delegated to them by the federal government.

- The Civil Rights Division of DOJ should make the remediation of racial profiling a priority. The activities of the Civil Rights Division in the 1990s were critical to exposing the widespread existence of racial profiling. The division's continued involvement will be critical to ending the practice—both pursuant to Sec. 14141 of the Violent Crime Control and Law Enforcement Act of 1994 and other federal laws prior to the enactment of a federal anti-racial profiling statute, and in ensuring that any federal anti-racial profiling statute that is enacted by Congress is properly implemented.
- The U.S. Department of Homeland Security (DHS) should terminate the 287(g) program (and Congress should repeal the statutory basis for the program—*i.e.*, Section 287(g) of the Immigration and Nationality Act).
- DHS should suspend operation of the Criminal Alien Program, the Secure Communities program, and other federal programs pursuant to which authority to engage in the enforcement of federal immigration laws has been delegated to state and local law enforcement authorities until a panel of independent experts reviews their operation and makes such recommendations as it deems appropriate to ensure that the programs do not involve racial profiling. Unless the president directs otherwise, the programs in question should remain suspended until the panel determines that its recommendations have been properly implemented.

- DHS should terminate the National Security Entry-Exit Registration System, and provide appropriate retroactive relief to individuals who were unjustly harmed by the operation of the program.

- Operation Front Line and other federal counterterrorism programs should be reviewed by a panel of independent experts. The panel should be charged with the task of making such recommendations as it deems appropriate to ensure that the programs do not involve racial profiling. Unless the president directs otherwise, DHS should implement any such recommendations as expeditiously as possible.

#### **Civil and Human Rights Organizations**

- Civil and human rights organizations should take the lead in calling for prompt introduction into the 112<sup>th</sup> Congress of an anti-racial profiling statute modeled after ERPA 2010, and should push for its enactment.
- As indicated in this report, racial profiling is often predicated on the mistaken belief that the practice will make us safer and more secure. Civil and human rights organizations should undertake a public education campaign to refute the erroneous assumptions underlying racial profiling; demonstrate the devastating impact that racial profiling has on individuals, families, and entire communities that are subject to the practice; and explain why racial profiling is in all contexts an ineffective and counterproductive method of law enforcement that makes us all not more, but less safe and secure.

## Endnotes

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6. The terms "African American" and "Black" are used interchangeably in this report, as are the terms "Hispanic" and "Latino."
7. A search is an examination of a person's body, property, or other area that the person would reasonably be expected to consider as private, conducted by a law enforcement officer for the purpose of finding evidence of a crime. A frisk is a pat-down of a person to discover a concealed weapon or other contraband. *See Black's Law Dictionary*, 7<sup>th</sup> Ed.
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  15. H.R. 2074/S. 989, 107<sup>th</sup> Congress, 1<sup>st</sup> Session (June 6, 2001).
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  18. For purposes of simplicity in discussion, the term “race” is sometimes used in this report as a shorthand reference for the four personal characteristics—*i.e.*, race, ethnicity, national origin, and religion—encompassed by the definition of racial profiling.
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  66. Amardeep Singh, testimony before the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, June 17, 2010, <http://judiciary.house.gov/hearings/pdf/Singh100617.pdf>.
  67. Codified at 8 U.S.C. § 1357(g).
  68. Department of Homeland Security, Office of Inspector General, “The Performance of 287(g) Agreements Report Update”, Sept. 2010, at 23.
  69. Department of Homeland Security, Office of Inspector General, “The Performance of 287(g) Agreements”, March 2010, 23 (hereafter OIG Report, 2010).
  70. *Id.* at 2.
  71. *Id.* at 4.
  72. Memorandum from Teresa Wynn Roseborough, Deputy Assistant Attorney General, Office on Legal Counsel, for the U.S. Attorney for the Southern District of California (Feb. 5, 1996), [www.usdoj.gov/olc/immstopola.htm](http://www.usdoj.gov/olc/immstopola.htm) (last visited Nov. 17, 2010) (precluding local officers from stopping and detaining individuals solely on suspicion of civil deportability); see also Linda Reyna Yanez & Alfonso Soto, Local Police Involvement in the Enforcement of Immigration Law, 1 *Hispanic L.J.* 9, 36 (1994) (quoting a 1978 DOJ press release indicating that “local police should refrain from detaining ‘any person not suspected of a crime, solely on the ground that they may be deportable aliens’”).
  73. Memorandum from Jay Bybee, Assistant Attorney General, Office of Legal Counsel, for William J. Haynes, II, General Counsel, Department of Defense, Office of Legal Counsel, U.S. Department of Justice, March 13, 2002, <http://www.justice.gov/olc/docs/memorandum03132002.pdf>.
  74. Department of Homeland Security. “Secretary Napolitano Announces New Agreement for State and Local Immigration Enforcement Partnerships and Adds 11 New Agreements,” July 10, 2009, <http://www.ice.gov/pi/nr/0907/090710washington.htm>.
  75. U.S. Immigration and Customs Enforcement, Delegation of Immigration Authority, Section 287(g) Immigration and Nationality Act, Sept. 5, 2007. <http://www.ice.gov/pi/news/factsheets/070906factsheet287gprover.htm>.
  76. Nina Bernstein, “Study Says Police Misuse Immigration-Inquiry Rule,” *New York Times*, April 15, 2009, <http://www.nytimes.com/2009/04/15/nyregion/15immigration.html>.
  77. Julia Preston, “Immigrant, Pregnant, is Jailed Under Pact,” *New York Times*, July 20, 2008, [http://www.nytimes.com/2008/07/20/us/20immig.html?\\_r=3](http://www.nytimes.com/2008/07/20/us/20immig.html?_r=3).
  78. ACLU and Rights Working Group, “The Persistence of Racial and Ethnic Profiling in the United States,” Aug. 2009, 41–42, <http://www.aclu.org>.

org/pdfs/humanrights/cerd\_finalreport.pdf.

79. *Id.* at 42.
80. Miriam Jordan, “Arizona Sheriff’s Powers Cut,” *Wall Street Journal*, Oct. 7, 2009, <http://online.wsj.com/article/SB125487274278469239.html>. In addition to the problems that have existed with regard to the operation of the 287(g) MOA with the MCSO, DOJ filed a lawsuit against Maricopa County and MCSO in Arizona federal district court on September 2, 2010. The lawsuit alleges that the MCSO has refused to cooperate with DOJ’s investigation of national origin discrimination in violation of the Civil Rights Act of 1964, which prohibits discrimination in programs that receive federal funds. The lawsuit—which DOJ has characterized as “unprecedented”—charges that Sheriff Arpaio has refused to provide access to documents and facilities in connection with its investigation of alleged discrimination against Hispanics in MCSO’s police practices and jail operations. *See U.S. v. Maricopa County et al.*, <http://www.justice.gov/opa/documents/maricopa-complaint.pdf>; “Justice Department Files Lawsuit Against Maricopa County Sheriff’s Office for Refusing Full Cooperation with Title VI Investigation” Press Release, Sept. 2, 2010, <http://www.justice.gov/opa/pr/2010/September/10-crt-993.html>.
81. ACLU and Rights Working Group, “The Persistence of Racial and Ethnic Profiling in the United States,” Aug. 2009 at 44, [http://www.aclu.org/pdfs/humanrights/cerd\\_finalreport.pdf](http://www.aclu.org/pdfs/humanrights/cerd_finalreport.pdf).
82. *Id.* at 61.
83. Justice Strategies, “Local Democracy on ICE: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement,” Feb. 2009, <http://www.justicestrategies.org/sites/default/files/JS-Democracy-On-Ice-print.pdf>
84. “For example, during the month of May 2008, eighty-three percent of the immigrants arrested by Gaston County ICE authorized officers pursuant to the 287(g) program were charged with traffic violations. This pattern has continued as the program has been implemented throughout the state. The arrest data appears to indicate that Mecklenburg and Alamance Counties are typical in the targeting of Hispanics for traffic offenses for the purposes of a deportation policy.” The Policies and Politics of Local Immigration Enforcement Laws: 287(g) Program in North Carolina, ACLU of North Carolina Legal Foundation and Immigration & Human Rights Policy Clinic, at 29, Feb. 2009, <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf>.
85. *Joint Hearing on The Public Safety and Civil Rights Implications of State and Local Enforcement of Federal Immigration Laws Before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law & the Subcommittee on the Constitution, Civil Rights, and Civil Liberties U.S.H.R.*, 111<sup>th</sup> Cong. (2009) (written statement of the American Civil Liberties Union (ACLU) (hereinafter ACLU Written Statement), at 6, <http://www.aclu.org/immigrants/gen/39242leg20090401.html>.
86. Testimony of Sheriff Charles Jenkins, Frederick County, MD, to the House Homeland Security Committee, March 2, 2009, <http://homeland.house.gov/SiteDocuments/20090304140923-73834.pdf>.
87. OIG Report, 2010 *supra* note 69.
88. *Id.* at 1.
89. *Id.* at 23.
90. *Id.* at 24.
91. ACLU Written Statement, *supra* note 85, [http://www.aclu.org/pdfs/humanrights/cerd\\_finalreport.pdf](http://www.aclu.org/pdfs/humanrights/cerd_finalreport.pdf).
92. U.S. Department of Homeland Security Immigration and Customs Enforcement. “Criminal Alien Program,” Fact Sheet, (Nov. 19, 2008), [http://www.ice.gov/pi/news/factsheets/criminal\\_alien\\_program.htm](http://www.ice.gov/pi/news/factsheets/criminal_alien_program.htm).
93. *Id.* [http://www.ice.gov/pi/news/factsheets/criminal\\_alien\\_program.htm](http://www.ice.gov/pi/news/factsheets/criminal_alien_program.htm).
94. Trevor Gardner II and Aarti Kohli, The Chief Justice Earl Warren Institute on Race, Ethnicity, and Diversity, University of California Berkeley, Berkeley Law School, “The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program”, 2009, at 7. [http://www.law.berkeley.edu/files/policybrief\\_irving\\_FINAL.pdf](http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf).



95. ACLU and Rights Working Group, "The Persistence of Racial and Ethnic Profiling in the United States," Aug. 2009, at 28, [http://www.aclu.org/pdfs/humanrights/cerd\\_finalreport.pdf](http://www.aclu.org/pdfs/humanrights/cerd_finalreport.pdf).
96. *Id.*
97. National Conference of State Legislatures, Immigrant Policy Project, 2010 Immigration-Related Laws and Resolutions in the States (January–June 2010), <http://www.ncsl.org/default.aspx?tabid=20881>.
98. Arizona, S.B. 1070, Section 1 – Intent, *available at* <http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf>.
99. *See* VotoLatino <http://www.votolatino.org/sb-1070-copy-cat-legislation>. (last visited Feb. 24, 2011).
100. The Arizona Association of Chiefs of Police Statement on Senate Bill 1070, [http://www.leei.us/main/media/AACOP\\_STATEMENT\\_ON\\_SENATE\\_BILL\\_1070.pdf](http://www.leei.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf).
101. Nicholas Riccardi, "Arizona's Immigration Law May Spur a Showdown" *Los Angeles Times*, April 23, 2010, <http://articles.latimes.com/2010/apr/23/nation/la-na-obama-immigration-20100424>.
102. Press Release, ACLU and Civil Rights Groups File Legal Challenge to Arizona Racial Profiling Law, May 17, 2010, <http://www.aclu.org/immigrants-rights-racial-justice/aclu-and-civil-rights-groups-file-legal-challenge-arizona-racial-pr>.
103. Press Release, Department of Justice, Citing Conflict with Federal Law, Department of Justice Challenges Arizona Immigration Law," <http://www.justice.gov/opa/pr/2010/July/10-opa-776.html>.
104. *U.S. v. State of Arizona*, 10-CV-1413, Order preliminarily enjoining the State of Arizona and Governor Brewer from enforcing sections of Senate Bill 1070, <http://www.azcentral.com/ic/pdf/0729sb1070-bolton-ruling.pdf>. To date, no other state has passed a law replicating S.B. 1070, and several states that were moving that direction are reassessing their position. Confronted with budgetary problems, these states are, among other things, concerned with the cost of implementing such a statute, as well as the potential for legal challenges. *See* Lois Romano, "Arizona Inspired Immigration Bills Lose Momentum in Other States," *Washington Post*, Jan. 29, 2011.
105. Dylan Smith, "Brewer Files SB 1070 Appeal," *Tucson Sentinel*, July 29, 2010, [http://www.tucsonsentinel.com/local/report/072910\\_brewer\\_1070\\_appeal](http://www.tucsonsentinel.com/local/report/072910_brewer_1070_appeal).
106. Civil Rights Division, U.S. Dep't of Justice, Guidance Regarding the Use of Race by Federal Law Enforcement Agencies (2003), at 1, [http://www.usdoj.gov/crt/split/documents/guidance\\_on\\_race.php](http://www.usdoj.gov/crt/split/documents/guidance_on_race.php).
107. Press Release, Racial Profiling Guidance: "Useful First Step" on the Road to Enacting Comprehensive Federal Legislation, June 18, 2003, *available at* <http://www.civilrights.org/press/2003/racial-profiling-guidance-useful-first-step-on-the-road-to-enacting-comprehensive-federal-legislation.html>.
108. *Id.*
109. Hearing entitled "Oversight of the Department of Justice," Before the Committee on the Judiciary United States Senate, Statement of Eric H. Holder, Jr. Attorney General, Nov. 18, 2009, at 10, [www.justice.gov/olp.sjc-oversight.pdf](http://www.justice.gov/olp.sjc-oversight.pdf).
110. The argument made by some defenders of racial profiling that minorities commit more violent crimes than Whites ignores the nature of racial profiling, which has nothing to do with violent crime. In the violent crime context, racial profiling is rare because it is unnecessary. Such crimes typically feature a complaining victim who provides police with a specific suspect description. In contrast, profiling is used to address offenses without complaining witnesses—in particular drug-related crimes. And, while there is clearly a connection between certain acts of criminal violence and the drug trade, the incidence of violent crime is less a function of who uses or sells drugs than of who lives in poor and dangerous neighborhoods.
111. Campbell Brown, "Investigating the Christmas Day Terror Attack: Obama Administration Downplaying War on Terror?" CNN, Dec. 30, 2009, <http://transcripts.cnn.com/TRANSCRIPTS/0912/30/ec.01.html>.



112. *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).
113. Congressional Research Service, “State Efforts to Deter Unauthorized Aliens: Legal Analysis of Arizona’s S.B. 1070,” May 3, 2010, at p. 23. The Court indicated, however, that a different conclusion might be reached at locations further removed from the U.S.-Mexican border with different population demographics. *Id.* In 2000, the Ninth Circuit ruled that the border patrol could not take Hispanic origin into account when making stops in southern California, concluding that in areas “in which the majority—or even a substantial part of the population—is Hispanic,” as was the case in southern California, the probability that any given Hispanic person “is an alien, let alone an illegal alien, is not high enough to make Hispanic appearance a relevant factor in the reasonable suspicion calculus.” *Id.* This ruling would seem to preclude Arizona law enforcement authorities from using Hispanic origin as a relevant factor in the “reasonable suspicion” test under S.B. 1070, at least in areas with population demographics similar to those in southern California. The Ninth Circuit’s ruling goes further than the position taken by Arizona Governor Jan Brewer in an executive order issued on the same day that she signed S.B. 1070 into law, which stated that “an individual’s race, color or national origin *alone* cannot be grounds for reasonable suspicion to believe that any law has been violated.” (*emphasis added*) Arizona State Executive Order 2010-09, Establishing Law Enforcement Training for Immigration Laws, Apr. 23, 2010, *available at* [http://www.azgovernor.gov/dms/upload/EO\\_201009.pdf](http://www.azgovernor.gov/dms/upload/EO_201009.pdf).
114. Aaron Terrazas & Jeanne Batalova, Migration Policy Institute, “U.S. in Focus: The most up-to-date frequently requested statistics on Immigrants in the United States, 2008,” <http://www.migrationinformation.org/USFocus/display.cfm?ID=714#8>.
115. “Army Veteran Subjected to Intrusive Body Search By Detroit Police Settles Case,” ACLU of Michigan Newsletter, Spring 2009, at 1, <http://www.aclumich.org/sites/default/files/file/newsletters/spring2009newsletter.pdf>.
116. Jim Yardley, “Some Texans Say Border Patrol Singles Out Too Many Blameless Hispanics,” *New York Times*, January 26, 2000 (quoting Judge Hinojosa), <http://www.nytimes.com/2000/01/26/us/some-texans-say-border-patrol-singles-out-too-many-blameless-hispanics.html>.
117. David A. Harris, *Profiles in Injustice*, 98–99 (2003).
118. *Id.* at 102–06.
119. “Arab Travelers Alter Habits While Flying,” *Associated Press*, Sept. 11, 2002.
120. Lamberth Consulting, “Racial Profiling Doesn’t Work,” <http://www.lamberthconsulting.com/about-racial-profiling/racial-profiling-doesn-t-work.asp>.
121. *See* “Study Says Police Misuse Immigration-Inquiry Rule,” *supra* note 76.
122. *See* “The Persistence of Racial and Ethnic Profiling in the United States,” *supra* note 95.
123. Bill Dedman, “Words of Caution Airport Security: Memo Warns Against Use of Profiling as Defense,” *Boston Globe*, Oct. 12, 2001.
124. *Id.*
125. Professor David Harris, testimony before the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, “Ending Racial Profiling: Necessary for Public Safety and the Protection of Civil Rights,” June 17, 2010, <http://judiciary.house.gov/hearings/pdf/Harris100617.pdf> (hereinafter Harris testimony).
126. Anita Khashu, Police Foundation, “The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties XII” (2009), <http://policefoundation.org/indexStriking.html>; *see also* Press Release, ACLU of Florida, “Lake County Sheriff’s Office Investigation of Immigrant Mother’s Unlawful Arrest and Detention a Whitewash, Says ACLU” (April 2, 2009) (describing a case in Florida where local police, responding to an emergency call reporting domestic violence, assumed the authority to enforce immigration laws and did not follow Florida’s statutory requirements for dealing with domestic violence resulting in fear among victims and witnesses to domestic violence and other crimes in the community), [http://www.acluf.org/news\\_events/?action=viewRelease&emailAlertID=3725](http://www.acluf.org/news_events/?action=viewRelease&emailAlertID=3725).

127. As one commentator has suggested, the federal government could easily allay the fears of Arab immigrants who are here without authorization, by promising to use the information gathered through the registration process only to fight terrorism and not to enforce the immigration laws. *See* Sadiq Reza, “A Trap for Middle Eastern Visitors,” *Washington Post*, Jan. 10, 2003, <http://old.nyls.edu/pages/744.asp>.
128. *See* Harris testimony *supra* note 125, at 2.
129. *Id.* at 2–3.
130. *See* “Investigating the Christmas Day Terror Attack,” *supra* note 111.
131. Editorial, “Hindsight and Foresight,” *Fort Worth Star Telegram*, Sept. 20, 2001 (citing historians Debra LaFountaine and Pei P. Wang).
132. *See supra* note 9 and accompanying text.
133. ERPA 2001 – End Racial Profiling Act, HR2074/S.989/ (107<sup>th</sup> Congress, 1<sup>st</sup> Session) <http://www.gpo.gov/fdsys/pkg/BILLS-107s989is/pdf/BILLS-107s989is.pdf>.
134. Then-Senator Obama was a co-sponsor of ERPA in 2005 and again in 2007.
135. H.R. 5748, *available at* [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h5748ih.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h5748ih.txt.pdf).
136. *Id.* at 4. §2(6).
137. *Id.* at 8. §102(a)(b).
138. *Id.* at 19–20 § 602.
139. Hilary O. Shelton, testimony before the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, at 3, June 17, 2010, *available at* <http://judiciary.house.gov/hearings/pdf/Shelton100617.pdf>.
140. *See e.g.*, testimony of Deborah Ramirez before the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, June 17, 2010, <http://judiciary.house.gov/hearings/pdf/Ramirez100617.pdf>; testimony of Amardeep Singh before the House Judiciary Committee Subcommittee on the Constitution, Civil Rights and Civil Liberties, June 17, 2010, <http://judiciary.house.gov/hearings/pdf/Singh100617.pdf>.
141. “Wrong Then, Wrong Now: Racial Profiling Before and After September 11, 2001,” The Leadership Conference on Civil Rights Education Fund, at 34, [http://www.civilrights.org/publications/wrong-then/racial\\_profiling\\_report.pdf](http://www.civilrights.org/publications/wrong-then/racial_profiling_report.pdf); ACLU and Rights Working Group, “The Persistence of Racial and Ethnic Profiling in the United States,” Aug. 2009, at 69.
142. H.R. 2074/S. 989, 107<sup>th</sup> Congress, 1<sup>st</sup> Session, June 6, 2001, §§ 201 and 302.
143. H.R. 5748, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h5748ih.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h5748ih.txt.pdf), at 8, §201(b)(2)(3).
144. *Id.* at 9, §301(b)(2)(3).
145. *See, e.g.*, H.R. 2074/S. 989, 107<sup>th</sup> Congress, 1<sup>st</sup> Session, June 6, 2001, § 201; S.2138, 109<sup>th</sup> Congress, 1<sup>st</sup> Session Dec. 16, 2005, § 302; H.R. 4611, 110<sup>th</sup> Congress, 1<sup>st</sup> Session, Dec. 13, 2007, § 302.
146. H.R. 5748, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h5748ih.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h5748ih.txt.pdf), at 9, §201(b)(4).
147. *Id.*

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## *Notes*

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## *Notes*





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**Action Items: MOTION #139-10-15 2016 Legislative Priority: Federal and State Marriage Equality Holiday**

**SUBJECT: 2016 Legislative Priority: Federal and State Marriage Equality Holiday**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #139-10-15

I move that the Mayor and Council adopt the establishment of both a statewide and federal holiday recognizing the struggle for marriage equity as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.

**BACKGROUND:**

Please see attached motion form submitted by Councilmember Solomon.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

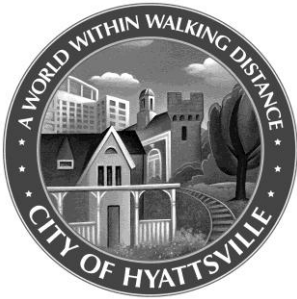
**STRATEGIC GOALS**

**Goal:** Goal 5 - Strengthen the City's Identity as a Diverse, Creative, and Welcoming Community

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/2/2015



## Council Agenda Form

|                                             |                                                |                |
|---------------------------------------------|------------------------------------------------|----------------|
| <b>MOTION # 139-10-15</b>                   |                                                | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>10/1/2015         | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/5/2015 |                |
| <b>SUBMITTED BY: CM Joseph Solomon</b>      |                                                |                |
| <b>DEPARTMENT: Hyattsville City Council</b> |                                                |                |

**TITLE OF MOTION: 2016 Legislative Priority: Federal and State Marriage Equality Holiday**

**RECOMMENDATION:**

*I move that the Mayor and Council adopt the establishment of both a statewide and federal holiday recognizing the struggle for marriage equity as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.*

**BACKGROUND:**

The Hyattsville City Council seeks to adopt FY2016 legislative priorities for discussion with State and County representation during a November 2015 Legislative breakfast.

The struggle for marriage equality in the United States dates back to 1970 when a Minnesota district court clerk refused to issue marriage license to Richard Baker and James McConnell. The Minnesota Supreme Court and United States Supreme Court, both sided with the clerk, dismissing the plaintiff's claim and affirming that the clerk could refuse gay couples a marriage license. (SOURCE: FREEDOM TO MARRY, INC)

Nearly half-a-century later, a lot has changed.

In 1996 the United States Congress passed the Defense of Marriage Act (DOMA) which defined the term "marriage" for all purposes under federal law as "only a legal union between one man and one woman as husband and wife," it was later signed into law by President Clinton.

On June 26, 2013, the U.S. Supreme Court issued a 5–4 decision declaring Section 3 of the Defense of Marriage Act to be unconstitutional "as a deprivation of the liberty of the person protected by the Fifth Amendment."

In addition to Federal hurdles to marriage equality, 26 of the 50 US States- through various constitutional amendments- sought to ban same-sex marriage, civil unions, and marriage-like contracts between same-sex couples.

On June 26, 2015, the U.S. Supreme Court issued a 5–4 decision that the fundamental right to marry is guaranteed to same-sex couples by both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

State of Maryland and United States of America as a whole should recognize June 26<sup>th</sup> as a date to reflect on the struggle for marriage equality across our country. Setting a statewide and/or federal holiday would not only recognize the importance of marriage equality, but also further demonstrate our state's and our nation's commitment to protecting all rights of all people, including those of the LGBTQ community.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

\_\_\_\_\_  
**Tracey E. Nicholson, City Administrator**

**STRATEGIC GOALS AND ACTIONS:**

Action 5.1 – Build connections among residents by developing programs, events, and celebrations accessible to all

**SUPPORTING DOCUMENTATION:**

1. <http://www.freedomtomarry.org/pages/history-and-timeline-of-marriage>
2. [https://en.wikipedia.org/wiki/List\\_of\\_former\\_U.S.\\_state\\_constitutional\\_amendments\\_banning\\_same-sex\\_unions\\_by\\_type](https://en.wikipedia.org/wiki/List_of_former_U.S._state_constitutional_amendments_banning_same-sex_unions_by_type)
3. <http://www.scotusblog.com/case-files/cases/windsor-v-united-states/>
4. <http://www.frc.org/understandingwindsor>

**CURRENT YEAR BUDGET IMPACT:**



**Action Items: MOTION #140-10-15 2016 Legislative Priority: Statewide Ban on Grand Juries in Police Shooting Cases**

**SUBJECT: 2016 Legislative Priority: Statewide Ban on Grand Juries in Police Shooting Cases**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #140-10-15

I move that the Mayor and Council affirm that it must be illegal for a police officer to profile a person on the basis race, religion, ethnicity or national origin by adopting the support and encouragement for a statewide racial profiling ban as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.

**BACKGROUND:**

Please see attached motion form submitted by Councilmember Solomon.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

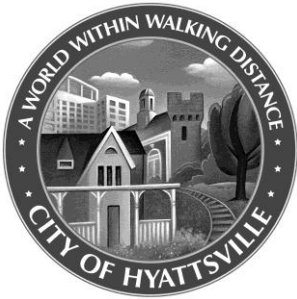
**Goal:** Goal 4 - Foster Excellence in All City Operations

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/2/2015





## Council Agenda Form

|                                             |                                                |                |
|---------------------------------------------|------------------------------------------------|----------------|
| <b>MOTION # 140-10-15</b>                   |                                                | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>10/2/2015         | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/5/2015 |                |
| <b>SUBMITTED BY:</b> CM Joseph Solomon      |                                                |                |
| <b>DEPARTMENT:</b> Hyattsville City Council |                                                |                |

**TITLE OF MOTION: 2016 Legislative Priority: Statewide Ban on Grand Juries In Police Shooting Cases**

**RECOMMENDATION:**

*I move that the Mayor and Council affirm that it must be illegal for a police officer to profile a person on the basis race, religion, ethnicity or national origin by adopting the support and encouragement for a statewide racial profiling ban as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.*

**BACKGROUND:**

The Hyattsville City Council seeks to adopt FY2016 legislative priorities for discussion with State and County representation during a November 2015 Legislative breakfast.

In August of 2015 the State of California became the first to ban grand juries in police shooting cases, the State of Maryland must not linger to far behind. The ban, which will go into effect next year, comes after grand juries failed to indict police officers who killed unarmed black men in Ferguson, Missouri, and Staten Island, New York, last year, heightening scrutiny of the process.

The United States stands almost alone in using a grand jury screening process before trial. According to the Bureau of Justice Statistics, U.S. attorneys prosecuted 162,000 federal cases in 2010, the most recent year for which we have data. Grand juries declined to return an indictment in 11 of them. There is not a lot of data on police shooting cases, however recent historical accounts suggest, grand juries frequently decline to indict law-enforcement officials. A recent Houston Chronicle investigation found that "police have been nearly immune from criminal charges in shootings" in Houston and other large cities in recent years. In Harris County, Texas, for example, grand juries haven't indicted a Houston police officer since 2004; in Dallas, grand juries reviewed 81 shootings between 2008 and 2012 and returned just one indictment. (SOURCE: FIVETHIRTYEIGHT)

The issue of accountability in the criminal justice system, especially when a police shooting takes place, has been at the center of many of the protests that have occurred across the country in the past year.

"The use of the criminal grand jury process, and the refusal to indict as occurred in Ferguson and other communities of color, has fostered an atmosphere of suspicion that threatens to compromise our justice system," state Sen. Holly Mitchell (D-Los Angeles).

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

**Tracey E. Nicholson, City Administrator**

**STRATEGIC GOALS AND ACTIONS:**

Goal 4 – Foster excellence in all City operations Action

4.1 – Provide prompt, effective, and efficient customer service

**SUPPORTING DOCUMENTATION:**

1. [http://www.huffingtonpost.com/entry/california-grand-juries-police\\_55cb517ee4b0923c12bebd7](http://www.huffingtonpost.com/entry/california-grand-juries-police_55cb517ee4b0923c12bebd7)
2. <http://www.motherjones.com/politics/2015/08/california-becomes-first-state-ban-grand-juries-police-shooting-cases>
3. California SB227
4. The Lifeboat Strategy - <https://books.google.com.co/books?id=mM5VSQI5L78C&pg=PT110&lpg=PT110&hl=es-419#v=onepage&q&f=false>

**CURRENT YEAR BUDGET IMPACT:**

**Senate Bill No. 227**

**CHAPTER 175**

An act to amend Sections 917 and 919 of the Penal Code, relating to grand juries.

[Approved by Governor August 11, 2015. Filed with  
Secretary of State August 11, 2015.]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 227, Mitchell. Grand juries: powers and duties.

Existing law authorizes a grand jury to inquire into all public offenses committed or triable within the county in which the grand jury is impaneled, sworn, and charged, and to present them to the court by indictment. Existing law requires a grand jury to inquire into willful or corrupt misconduct in office by a public officer in the county. Existing law also authorizes a member of a grand jury, if he or she knows or has reason to believe that a public offense has been committed, to declare it to his or her fellow jurors, who are then authorized by existing law to investigate it.

This bill would prohibit a grand jury from inquiring into an offense or misconduct that involves a shooting or use of excessive force by a peace officer, as specified, that led to the death of a person being detained or arrested by the peace officer, unless the offense was declared to the grand jury by one of its members, as described above.

*The people of the State of California do enact as follows:*

SECTION 1. Section 917 of the Penal Code is amended to read:

917. (a) The grand jury may inquire into all public offenses committed or triable within the county and present them to the court by indictment.

(b) Except as provided in Section 918, the grand jury shall not inquire into an offense that involves a shooting or use of excessive force by a peace officer described in Section 830.1, subdivision (a) of Section 830.2, or Section 830.39, that led to the death of a person being detained or arrested by the peace officer pursuant to Section 836.

SEC. 2. Section 919 of the Penal Code is amended to read:

919. (a) The grand jury may inquire into the case of every person imprisoned in the jail of the county on a criminal charge and not indicted.

(b) The grand jury shall inquire into the condition and management of the public prisons within the county.

(c) The grand jury shall inquire into the willful or corrupt misconduct in office of public officers of every description within the county. Except as provided in Section 918, this subdivision does not apply to misconduct that

involves a shooting or use of excessive force by a peace officer described in Section 830.1, subdivision (a) of Section 830.2, or Section 830.39, that led to the death of a person being detained or arrested by the peace officer pursuant to Section 836.

O



**Action Items: MOTION #141-10-15 2016 Legislative Priority: Statewide Body Cameras for Police Officers**

**SUBJECT: 2016 Legislative Priority: Statewide Body Cameras for Police Officers**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #141-10-15

I move that the Mayor and Council add the request for a statewide mandate body cameras for all police organizations in the State of Maryland with implementation requirements consistent with standards defined by: The American Civil Liberties Union, The Harvard Law Review, and The United States Department of Justice Community Oriented Police Services (COPS) Division as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.

**BACKGROUND:**

Please see attached motion form submitted by Councilmember Solomon.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

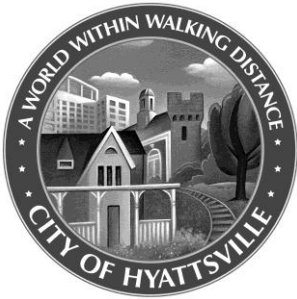
**Goal:** Goal 4 - Foster Excellence in All City Operations

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/2/2015





## Council Agenda Form

|                                                           |                                                |                |
|-----------------------------------------------------------|------------------------------------------------|----------------|
| <b>MOTION # 141-10-15</b>                                 |                                                | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>10/2/2015                       | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/5/2015 |                |
| <b>SUBMITTED BY:</b> CM Joseph Solomon, CM Robert Croslin |                                                |                |
| <b>DEPARTMENT:</b> Hyattsville City Council               |                                                |                |

**TITLE OF MOTION: 2016 Legislative Priority: Statewide Body Cameras for Police Officers**

**RECOMMENDATION:**

*I move that the Mayor and Council add the request for a statewide mandate body cameras for all police organizations in the State of Maryland with implementation requirements consistent with standards defined by: The American Civil Liberties Union, The Harvard Law Review, and The United States Department of Justice Community Oriented Police Services (COPS) Division as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.*

**BACKGROUND:**

The Hyattsville City Council seeks to adopt FY2016 legislative priorities for discussion with State and County representation during a November 2015 Legislative breakfast.

The Police Department began a Body Worn Cameras (BWCs) pilot program in November 2013. The Department was one of several agencies in the State to be included in a grant program sponsored by the Local Government Insurance Trust (LGIT). The City received 30 BWCs at no cost from LGIT. Policies and procedures were developed and approved by the City Attorney before the BWCs were deployed.

After 15 months of operation, it is the opinion of the Command Staff that the BWC program is a good tool to improve police services and build community trust thru enhanced transparency. Unfortunately, the pilot model of BWCs is problematic. It needs improvements in the area of reliability and video security. A better quality camera is needed.

Hyattsville City Council approved the request and added funding in the FY2016 budget for the procurement of new body cameras.

While Hyattsville has chosen to move forward, we require state guidance in the following areas:

- Inter-agency Policy
- Technology Standards
- Implementation Costs
- Freedom of Information Request

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

**Tracey E. Nicholson, City Administrator**

**STRATEGIC GOALS AND ACTIONS:**

Goal 4 – Foster excellence in all City operations Action

4.1 – Provide prompt, effective, and efficient customer service

**SUPPORTING DOCUMENTATION:**

1. ACLU - Police Body-Mounted Cameras
2. Black Harvard Law Review - Independent Lens
3. COPS - Recommendations and Lessons Learned
4. Harvard Law Review - Considering Police Body Cameras
5. Maryland Commission Regarding the Implementation of Use of Body Camera's By Law Enforcement Officers Materials - <http://goccp.maryland.gov/bodycameras/documents/body-cameras-materials-20150901.pdf>
6. Maryland Commission Regarding the Implementation of Use of Body Camera's By Law Enforcement Officers Final Report - [http://goccp.maryland.gov/bodycameras/documents/Body\\_Camera\\_Commission\\_FINAL.pdf](http://goccp.maryland.gov/bodycameras/documents/Body_Camera_Commission_FINAL.pdf)
7. MCR Working Document - <http://goccp.maryland.gov/bodycameras/documents/bodycameras-workingdocument.pdf>
8. MCR – Meeting August - <http://goccp.maryland.gov/bodycameras/documents/body-cameras-materials-20150804.pdf>
9. MCR – Meeting September - <http://goccp.maryland.gov/bodycameras/documents/body-cameras-materials-20150901.pdf>
10. Maryland General Assembly - Legislative Services – HB0308
11. Maryland General Assembly - Legislative Services – HB0533
12. Maryland General Assembly - Legislative Services – SB0482
13. Maryland General Assembly - Legislative Services – SB0628
14. PG Sentinel – Prince George's County Body Camera Costs

**CURRENT YEAR BUDGET IMPACT:**

# Police Body-Mounted Cameras: With Right Policies in Place, a Win For All

By Jay Stanley, ACLU Senior Policy Analyst  
October, 2013

## Introduction<sup>1</sup>

When a New York judge [found](#) that the NYPD's stop and frisk tactics violated the constitutional rights of New Yorkers, one of the remedies she ordered was for the department to begin testing wearable police cameras, sparking [debate](#) and discussion of the technology there.

These "on-officer recording systems" (also called "body cams" or "cop cams") are small, pager-sized cameras that clip on to an officer's uniform or sunglasses or are worn as a headset, and record audio and video of the officer's interactions with the public. We have heard reports of police body cameras being deployed in numerous cities, and one prominent manufacturer [told NBC](#) that it had sold them to "hundreds of departments."

The ACLU has commented on police body cameras in the media [several times](#) over the years (and in [stories](#) surrounding the stop and frisk ruling), but the ACLU's views on this technology are a little more complicated than can be conveyed through quotes in a news story.

Although we generally take a dim view of the proliferation of surveillance cameras in American life, police on-body cameras are different because of their potential to serve as a check against the abuse of power by police officers. Historically, there was no documentary evidence of most encounters between police officers and the public, and due to the volatile nature of those encounters, this often resulted in radically divergent accounts of incidents. 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.

We're against pervasive government surveillance, but when cameras primarily serve the function of allowing public monitoring of the government instead of the other way around, we generally regard that as a good thing. While we have opposed government video surveillance of public places, for example, we have supported the installation of video cameras on police car dashboards, in prisons, and during interrogations.

At the same time, body cameras have more of a potential to invade privacy than those deployments. Police officers enter people's homes and encounter bystanders, suspects, and victims in a wide variety of sometimes stressful and extreme situations.

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. Overall, we think they can be a win-win—but *only* if they are deployed within a framework of strong policies to ensure

<sup>1</sup> The author would like to thank Doug Klunder of the ACLU of Washington, who did much of the thinking behind the analysis set forth in this paper; Scott Greenwood of Ohio; and his colleagues at the national office, for their valuable feedback and advice.

they protect the public without becoming yet another system for routine surveillance of the public, and maintain public confidence in the integrity of those privacy protections. Without such a framework, their accountability benefits would not exceed their privacy risks.

On-officer cameras are a significant technology that implicates important, if sometimes conflicting, values. We will have to watch carefully to see how they are deployed and what their effects are over time, but in this paper we outline our current thinking about and recommendations for the technology. These recommendations are subject to change.

### Control over recordings

Perhaps most importantly, 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.

The primary question is how that should be implemented.

Purely from an accountability perspective, the ideal policy for body-worn cameras would be for continuous recording throughout a police officer’s shift, eliminating any possibility that an officer could evade the recording of abuses committed on duty. Of course, just as body cameras can invade the privacy of many innocent citizens, continuous deployment would similarly impinge on police officers when they are sitting in a station house or patrol car shooting the breeze — getting to know each other as humans, discussing precinct politics, etc. We have some [sympathy](#) for police on this; continuous recording might feel as stressful and oppressive in those situations as it would for any employee subject to constant recording by their supervisor. True, police officers with their extraordinary powers are not regular employees, and in theory officers’ privacy, like citizens’, could be protected by appropriate policies (as outlined below) that ensure that 99% of video would be deleted in relatively short order without ever being reviewed. But on a psychological level, such assurances are rarely enough. There is also the danger that the technology would be misused by police supervisors against whistleblowers or union activists — for example, by scrutinizing video records to find minor violations to use against an officer.

If the cameras do not record continuously, that would place them under officer control, which would create the danger that they could be manipulated by some officers, undermining their core purpose of detecting police misconduct. This has sometimes been an issue with patrol car “dashcams” — for example, in the case of two Seattle men who filed a claim for excessive force and wrongful arrest. Parts of the arrest were captured by a dashcam, but parts that should have been captured were [mysteriously missing](#). And with body cams, two Oakland police officers were [disciplined](#) after one of the officers’ cameras was turned off during an incident.

The balance that needs to be struck is to ensure that officers can’t manipulate the video record, while also ensuring that officers are not subjected to a relentless regime of surveillance without any opportunity for shelter from constant monitoring.

One possibility is that some form of effective automated trigger could be developed that would allow for minimization of recording while capturing any fraught encounters — based, for example, on detection of raised voices, types of movement, etc. When it comes to dashcams,

the devices are often configured to record whenever a car's siren or lights are activated, which provides a rough and somewhat (though not entirely) non-discretionary measure of when a police officer is engaged in an encounter that is likely to be a problem. That policy is not applicable to body cams, however, since there is no equivalent to flashing lights. And it's not clear that any artificial intelligence system in the foreseeable future will be smart enough to reliably detect encounters that should be recorded. In any case, it is not an option with today's technology.

If a police department is to place its cameras under officer control, then it must put in place tightly effective means of limiting officers' ability to choose which encounters to record. That can only take the form of a department-wide policy that mandates that police turn on recording during every interaction with the public.

And this requirement must have some teeth associated with it — not only a risk of disciplinary action but also perhaps an exclusionary rule for any evidence obtained in an unrecorded encounter (for police who have been issued the cameras, unless there is an exigency to justify the failure to record). Another means of enforcement might be to stipulate that in any instance in which an officer wearing a camera is accused of misconduct, a failure to record that incident would create an evidentiary presumption against the officer.

### **Limiting the threat to privacy from cop cams**

Most of the discussion around police recording has focused on its oversight potential. But that is only one of the significant interests implicated by recording. Equally important are the privacy interests and fair trial rights of individuals who are recorded. Ideally there would be a way to minimize data collection to only what was reasonably needed, but there's currently no technological way to do so.

Police body cameras mean that many instances of entirely innocent behavior (on the part of both officers and the public) will be recorded, with significant privacy implications. Perhaps most troubling is that some recordings will be made inside people's homes, whenever police enter — including in instances of consensual entry (e.g., responding to a burglary call, voluntarily participating in an investigation) and such things as domestic violence calls. In the case of dashcams, we have also seen video of particular incidents released for no important public reason, and instead serving only to embarrass individuals. Examples have included [DUI stops of celebrities](#) and ordinary individuals whose [troubled](#) and/or [intoxicated](#) behavior has been widely circulated and now immortalized online. The potential for such merely embarrassing and titillating releases of video is significantly increased by body cams.

Therefore it is vital that any deployment of these cameras be accompanied by good privacy policies so that the benefits of the technology are not outweighed by invasions of privacy. The core elements of such a policy follow.

### **Notice to citizens**

Most privacy protections will have to come from restrictions on subsequent retention and use of the recordings. There are, however, a couple of things that can be done at the point of recording.

- 1) Recording should be limited to uniformed officers and marked vehicles, so people know what to expect. An exception should be made for SWAT raids and similar planned uses of force when they involve non-uniformed officers.
- 2) Officers should be required, wherever practicable, to notify people that they are being recorded (similar to existing law for dashcams in some states such as Washington). One possibility departments might consider is for officers to wear an easily visible pin or sticker saying “lapel camera in operation” or words to that effect.
- 3) Although if the preceding policies are properly followed it should not be possible, it is especially important that the cameras not be used to surreptitiously gather intelligence information based on First Amendment protected speech, associations, or religion.

### **Recording in the home**

Because of the uniquely intrusive nature of police recordings made inside private homes, officers should be required to be especially sure to provide clear notice of a camera when entering a home, except in circumstances such as an emergency or a raid. Departments might also consider a policy under which officers ask residents whether they wish for a camera to be turned off before they enter a home in non-exigent circumstances. (Citizen requests for cameras to be turned off should themselves be recorded to document such requests.) Cameras should never be turned off in SWAT raids and similar police actions.

### **Retention**

Data should be retained no longer than necessary for the purpose for which it was collected. For the vast majority of police encounters with the public, there is no reason to preserve video evidence, and those recordings therefore should be deleted relatively quickly.

- Retention periods should be measured in weeks not years, and video should be deleted after that period unless a recording has been flagged. Once a recording has been flagged, it would then switch to a longer retention schedule (such as the three-year period currently in effect in Washington State).
- These policies should be posted online on the department’s website, so that people who have encounters with police know how long they have to file a complaint or request access to footage.
- Flagging should occur automatically for any incident:
  - involving a use of force;
  - that leads to detention or arrest; or
  - where either a formal or informal complaint has been registered.
- Any subject of a recording should be able to flag a recording, even if not filing a complaint or opening an investigation.
- The police department (including internal investigations and supervisors) and third parties should also be able to flag an incident if they have some basis to believe police misconduct has occurred or have reasonable suspicion that the video contains evidence of a crime. We do not want the police or gadflies to be able to routinely flag all recordings in order to circumvent the retention limit.
- If any useful evidence is obtained during an authorized use of a recording (see below), the recording would then be retained in the same manner as any other evidence gathered during an investigation.



- Back-end systems to manage video data must be configured to retain the data, delete it after the retention period expires, prevent deletion by individual officers, and provide an unimpeachable audit trail to protect chain of custody, just as with any evidence.

### **Use of Recordings**

The ACLU supports the use of cop cams for the purpose of police accountability and oversight. It's vital that this technology not become a backdoor for any kind of systematic surveillance or tracking of the public. Since the records will be made, police departments need to be subject to strong rules around how they are used. The use of recordings should be allowed only in internal and external investigations of misconduct, and where the police have reasonable suspicion that a recording contains evidence of a crime. Otherwise, there is no reason that stored footage should even be reviewed by a human being before its retention period ends and it is permanently deleted.

### **Subject Access**

People recorded by cop cams should have access to, and the right to make copies of, those recordings, for however long the government maintains copies of them. That should also apply to disclosure to a third party if the subject consents, or to criminal defense lawyers seeking relevant evidence.

### **Public Disclosure**

When should the public have access to cop cam videos held by the authorities? Public disclosure of government records can be a tricky issue pitting two important values against each other: the need for government oversight and openness, and privacy. Those values must be carefully balanced by policymakers. One way to do that is to attempt to minimize invasiveness when possible:

- Public disclosure of any recording should be allowed with the consent of the subjects, as discussed above.
- Redaction of video records should be used when feasible — blurring or blacking out of portions of video and/or distortion of audio to obscure the identity of subjects. If recordings are redacted, they should be discloseable.
- Unredacted, unflagged recordings should not be publicly disclosed without consent of the subject. These are recordings where there is no indication of police misconduct or evidence of a crime, so the public oversight value is low. States may need to examine how such a policy interacts with their state open records laws.
- Flagged recordings are those for which there is the highest likelihood of misconduct, and thus the ones where public oversight is most needed. Redaction of disclosed recordings is preferred, but when that is not feasible, unredacted flagged recordings should be publicly discloseable, because in such cases the need for oversight outweighs the privacy interests at stake.

### **Good technological controls**

It is important that close attention be paid to the systems that handle the video data generated by these cameras.

- Systems should be architected to ensure that segments of video cannot be destroyed. A recent case in Maryland illustrates the problem: surveillance video of an incident in

- which [officers](#) were accused of beating a student disappeared (the incident was also filmed by a bystander). An officer or department that has engaged in abuse or other wrongdoing will have a strong incentive to destroy evidence of that wrongdoing, so technology systems should be designed to prevent any tampering with such video.
- In addition, all access to video records should be automatically recorded with immutable audit logs.
  - Systems should ensure that data retention and destruction schedules are properly maintained.
  - It is also important for systems be architected to ensure that video is only accessed when permitted according to the policies we've described above, and that rogue copies cannot be made. Officers should not be able to, for example, pass around video of a drunk city council member, or video generated by an officer responding to a call in a topless bar, or video of a citizen providing information on a local street gang.

It is vital that public confidence in the integrity of body camera privacy protections be maintained. We don't want crime victims to be afraid to call for help because of fears that video of their officer interactions will become public or reach the wrong party. Confidence can only be created if good policies are put in place and backed up by good technology.

As the devices are adopted by police forces around the nation, studies should be done to measure their impact. Only very limited [studies](#) have been done so far. Are domestic violence victims hesitating to call the police for help by the prospect of having a camera-wearing police officer in their home, or are they otherwise affected? Are privacy abuses of the technology happening, and if so what kind and how often?

Although fitting police forces with cameras will generate an enormous amount of video footage and raises many tricky issues, if the recording, retention, access, use, and technology policies that we outline above are followed, very little of that footage will ever be viewed or retained, and at the same time those cameras will provide an important protection against police abuse. We will be monitoring the impact of cameras closely, and if good policies and practices do not become standard, or the technology has negative side effects we have failed to anticipate, we will have to reevaluate our position on police body cameras.



# INDEPENDENT LENS

*Toward  
Transparency,  
Accountability, &  
Effectiveness in  
Police Tactics*



# Independent Lens: Toward Transparency, Accountability, and Effectiveness in Police Tactics

## Model State Legislation for Body-Worn Cameras

The Harvard Black Law Students Association

Chike Croslin, Justin Dews, & Jaimie McFarlin  
*Model Legislation Drafting Committee*

April 2015

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## EXECUTIVE SUMMARY

Since the 1980s, many police departments have operated according to the notion of community policing — a philosophy that emphasizes close relationships characterized by mutual trust between police and communities as the foundation for proportionate, efficient, and effective police work. This emphasis on mutual trust notwithstanding, high-profile incidents of misconduct, high levels of complaints against police, and costly settlements and litigation have highlighted the divisions that exist between police and citizens and have spurred a national conversation on policing and police-community relations. This Report focuses on the viability and implementation of measures aimed at mending the evidently fractured relationships between police officers and communities across the nation. The Report argues that body-worn cameras, when appropriately integrated into existing police practices and supported by a detailed regulatory architecture, can be a key tool for reinvigorating community policing and reducing costs stemming from complaints, litigation, and settlements, as well as an important first step in mending relationships between law enforcement and communities nationwide.

*Police complaints, litigation, and settlements impose significant costs on municipalities and communities.* It is unquestionable that police misconduct, police complaints, and police-involved litigation and settlements are costly for municipalities and taxpayers.

- In 2013, Chicago paid \$84.6 million in police misconduct settlements, judgments, and legal fees.<sup>1</sup>
- According to Oakland Police Department expenditure records, the total legal costs of ongoing police officer misconduct totaled \$13,149,000 in fiscal year 2010–11, including approximately \$12,271,000 that was set aside to pay settlements stemming from police brutality, illegal searches, injuries, false arrests, and related civil-rights violations.<sup>2</sup>
- In Denver, settling police and sheriff claims has cost over \$16 million since 2004.<sup>3</sup>
- In 2011, New York spent \$119 million for police misconduct and civil-rights violations.<sup>4</sup> Claim payouts alleging abusive police conduct were \$136 million in 2010 according to the city comptroller's office.<sup>5</sup>

To the extent that use of body-worn cameras can curb police misconduct, reduce the incidence of complaints, and reduce the amounts spent on litigation and settlements, such use likely merits serious consideration. At least 63 law enforcement agencies nationwide already utilize body-worn cameras in some capacity.<sup>6</sup> In particular, the body-worn camera programs of Denver, Los Angeles, and New Orleans provide insight into current trends surrounding the adoption of cameras as their use expands in the United States.

*Legislation at the state level is the most appropriate vehicle for implementation of a body-worn camera program.* While local police departments continue to implement their own body-worn camera programs, piecemeal programming is

<sup>1</sup> Andy Shaw, *City Pays Heavy Price for Police Brutality*, CHICAGO SUN TIMES (Apr. 14, 2014), <http://politics.suntimes.com/article/chicago/city-pays-heavy-price-police-brutality/fri-04112014-1002pm>.

<sup>2</sup> Ali Winston, *Police-Related Legal Costs Spike in Oakland*, EAST BAY EXPRESS (June 27, 2012), <http://www.eastbayexpress.com/oakland/police-related-legal-costs-spike-in-oakland/Content?oid=3260236>; see also Abraham Hyatt, *Oakland Spent \$74 Million Settling 417 Police Brutality Lawsuits*, OAKLAND POLICE BEAT (Apr. 9, 2014), <http://oaklandpolicebeat.com/2014/04/oakland-spent-74-million-settling-417-police-brutality-lawsuits>.

<sup>3</sup> Jon Murray, *Denver Pays Millions to Settle Abuse Claims Against Police and Sheriff*, DENVER POST (Aug. 3, 2014), [http://www.denverpost.com/politics/ci\\_26266070/denver-pays-millions-settle-abuse-claims-against-police](http://www.denverpost.com/politics/ci_26266070/denver-pays-millions-settle-abuse-claims-against-police).

<sup>4</sup> Henry Goldman, *NYPD Abuse Increases Settlements Costing City \$735 Million*, BLOOMBERG (Sept. 4, 2014), <http://www.bloomberg.com/news/2012-09-04/nyc-police-abuse-joins-pothole-settlements-costing-735-million.html>.

<sup>5</sup> *Id.*

<sup>6</sup> LINDSAY MILLER & JESSICA TOLIVER, IMPLEMENTING A BODY-WORN CAMERA PROGRAM: RECOMMENDATIONS AND LESSONS LEARNED, DEPARTMENT OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES (2014) available at <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.



unable to take advantage of economies of scale, common best practices and minimum standards, and independent review from an outside governing body. On the other hand, although legislation at the federal level would likely produce the ultimate economies of scale, the current political climate in Congress makes securing passage of this legislation unlikely. State legislation can provide comprehensive guidance to municipal police departments, help formulate common minimum standards, and incorporate a funding mechanism (a distinct advantage over police department-run programs). Moreover, states implementing such programs may be able to take advantage of President Obama's proposed body-worn camera grant program, which encourages the passage of state legislation and the formulation of local policies regarding body-worn cameras through a fund-matching mechanism. In sum, comprehensive state legislation provides for the most effective and efficient implementation of body-worn camera technology.

*Body-worn camera programs are consistent with existing constitutional and statutory frameworks.* Due to the novelty of the technology, case law does not directly address several legal issues surrounding the state and federal constitutionality of body-worn camera programs. However, legal analysis reveals that state legislation regarding body-worn camera programs would survive judicial scrutiny as it relates to federal constitutional law on privacy and public surveillance. In some states — such as Massachusetts and Montana — the legislation would need to include a wiretapping waiver to meet the two-party consent threshold, a higher bar than federal wiretapping law currently imposes.

*Body-worn camera programs must account for any and all relevant policy considerations.* A plethora of policy considerations impact the adoption and administration of body-worn camera programs at the state level. In order to ensure state legislation of appropriate strength and comprehensiveness, the following points must be considered:

- **Funding.** — Legislation should not take the form of an unfunded mandate. Funding sources may vary from state to state, but the legislation should include quality, nonpartisan funding mechanisms that avoid disproportionate impact on lower-income citizens.
- **Scale.** — Because the needs of communities may differ greatly, the coverage scale of any given program must be considered prior to the rollout of body-worn cameras. Moreover, if funding is an issue for any particular state, the legislation should take that into account in determining the scale of any program.
- **Public Access to Recordings.** — States should consider the potential for interaction between body-worn camera statutes and public access statutes such as state “sunshine laws” and FOIA.
- **Privacy Concerns.** — Numerous privacy concerns emerge with any surveillance-related police activity or technology. In this case, some of the concerns include the specific policy details, such as in-home recording. Other privacy concerns center on particular legal requirements, such as affirmative warnings to civilians and the integration of body-worn camera use with wiretapping laws.
- **Camera Function.** — Functionality standards must strike a balance between the impulse to standardize in order to provide the benefits of a camera program to all on an equal basis and the desire to provide flexibility to individual police departments to tailor programs to their particular needs. On September 12, 2014, the Department of Justice released a report identifying promising practices and lessons learned from the field and produced a set of functionality guidelines for agencies interested in implementing a body-worn camera program. The standards discussed in this Report form the basis of the functionality sections of the model legislation proposed here and are worth considering in the implementation of any program.
- **Data Storage.** — The value of body-worn cameras is not only derived from the effect that the cameras have on police/citizen interactions but also from the evidentiary data that the devices produce. Minimum standards for retention time, filing and designation protocols, and management of the data are required to maximize the benefits of the new technology.

- **Oversight.** — Body-worn cameras can be misused. The camera can be switched off at key moments, and the evidence it produces can be manipulated. The legislation must consider what mixture of punitive and prescriptive measures are necessary to prevent such misuse and secure compliance with the purpose of the body-worn camera program.

While the model state legislation proposed in this Report addresses the majority of policy concerns at some level, it also reflects a conscious decision to allow flexibility for police department-specific protocols to shape the use of body-worn camera technology. Recognizing that not all issues can be addressed directly through legislation, legislative committees and executive bodies on both the state and local level must do their part by assisting police departments in enumerating and examining procedures during implementation and beyond.

*We must remain aware of the limitations of body-worn camera technology.* Body-worn cameras are an initial step toward injecting greater transparency and accountability into police/citizen interactions and can help to deter police misconduct. However, they are not a solution to all policing problems. Despite improving the quality of evidentiary data, they cannot ensure complete fairness in all aspects of the criminal justice system. For one, the potential impact of the audio/video evidence that cameras would provide has minimal bearing on the implicit bias that, as scholars have shown, has effects at all levels of the criminal justice system. Implicit bias is a positive or negative mental association that a person holds at an unconscious level and directs toward a person, thing, or group. Implicit biases need not map onto consciously-held opinions — a person may consciously express a neutral or positive opinion of a social group while unconsciously holding a negative opinion of that same group. Actors within the criminal justice system — jurors, for example — reviewing the video evidence of the cameras will still bring these biases to bear. While well-developed implementation programs that incorporate compliance measures, such as oversight and sanction provisions, can bolster the power of cameras as a deterrent, the next step on the path to effective community policing likely requires formulation of appropriate legal standards for review of the evidence that cameras produce and the formulation of a strategy to confront the implicit bias pervading the criminal justice system as a whole.

## CONTENTS

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This Report proposes a model state statute requiring state and municipal police departments to equip their officers with body-worn cameras. These cameras would record and create video evidence of most interactions between the public and law enforcement in the hopes that the existence and availability of audio-video evidence would enhance accountability for citizens and officers alike and mitigate hostilities between members of these groups. It is conceded that not all state legislatures would enact legislation of the sort proposed here. Yet even if our proposal were to form the basis of legislation in only *some* states, we are optimistic that community-police relations would improve across the country. The Report is divided into three Parts:

- **Part I** contains our analysis of the problems that a body-worn camera program may help to solve. Section A explains some of the issues surrounding the relationships between law enforcement and communities of color, examines community-police relations in high-crime areas, and discusses the monetized costs of complaints, litigation, and settlements stemming from interactions with communities inhabiting these and other areas. Section B turns to body-worn cameras and their potential impact as a best practice law enforcement policy, extrapolating from the typical behavioral effects of surveillance to estimate the potential effects of body-worn cameras. Section C examines the current state of body-worn camera programs in major cities around the country (and beyond) and reviews the legal landscape surrounding the issue, primarily focusing on wiretapping and Freedom of Information Act (FOIA) implications.
- **Part II** discusses the policy considerations informing our model state legislation: compliance and oversight, privacy concerns, funding, camera functionality, and data storage capability.
- **Part III** consists of the model state legislation itself, which incorporates the policy considerations reviewed in Part II.

## I. THE REPORT

### A. BODY-WORN CAMERAS ARE AN IMPORTANT MEANS OF REINVIGORATING COMMUNITY POLICING AND MENDING FRACTURED RELATIONSHIPS BETWEEN LAW ENFORCEMENT AND COMMUNITIES NATIONWIDE.

Over the past thirty years the notion of “community policing” has been proclaimed the most significant and progressive reform in policing philosophy.<sup>7</sup> “Community policing” refers to a mode of policing in which positive community-police relations — epitomized by mutual trust and collaboration between citizens and officers — are critical to building and maintaining safe communities.<sup>8</sup> For departments operating according to a community policing model, building and maintaining that trust is indispensable.

Community policing originated as police departments faced continuing problems with respect to communities of color. Since the 1970s, virtually every police department has faced allegations of racial discrimination, involving unjustified use of deadly force, racial profiling, excessive physical force, and/or failure to provide adequate police services.<sup>9</sup> These instances of institutional misconduct influence the “public’s perceptions of the fairness of police practices, as experienced by citizens in their personal encounters with police, [and] shape judgments of police legitimacy.”<sup>10</sup> Over time, continued instances of misconduct led to a major rethinking of the police role. Academic and policy research revealed that police are dependent on the members of the community for awareness of problems, awareness of the character and impact of police responses to those problems, and ultimately for their successful functioning as a department.<sup>11</sup> These insights were eventually incorporated into what we know today as “community policing.”<sup>12</sup> Widely embraced since the 1980s as a solution to poor police-community relations, community policing stresses a move away from paramilitary organizational structures and police isolation from the community and toward a rehabilitated role for the police — including greater trust building between police and community members in order to address persistent violence and crime.<sup>13</sup>

Community policing proceeds from the understanding that successful policing needs to be community-oriented, and that police departments need to develop the appropriate organizational and programmatic strategies to enhance relations with communities and their residents.<sup>14</sup> While community policing has come to refer to a wide variety of police initiatives,<sup>15</sup> it is most important to remember that “[a]t its core,

<sup>7</sup> Veena Dubal, *The Demise of Community Policing? The Impact of Post-9/11 Federal Surveillance Programs on Local Law Enforcement*, 19 ASIAN AM. L.J. 35, 35 (2012).

<sup>8</sup> The authors recognize that the idealizing notions of “community” are controversial in their own right. We do not assume the existence of a singular identifiable community view within inner-cities, and instead recognize that a diversity of opinion exists among residents of color regarding crime, police, and competing policy priorities. See, e.g., Alafair S. Burke, *Unpacking New Policing: Confessions of a Former Neighborhood District Attorney*, 78 WASH. L. REV. 985, 1005–1007 (2003) (noting that the term “community” is perhaps “imprecise” and potentially “idealized”). Our position is that our model legislation has relevance regardless of the diversity of opinion across neighborhoods and geographical areas, insofar as it promotes the ideals of transparency and accountability — broad principles of justice that have applicability anywhere.

<sup>9</sup> Samuel Walker, *Science and Politics in Police Research: Reflections on Their Tangled Relationship*, 593 ANNALS AM. ACAD. POL. & SOC. SCI. 137, 146 (2004).

<sup>10</sup> David A. Harris, *How Accountability-Based Policing Can Reinforce-or Replace-the Fourth Amendment Exclusionary Rule*, 7 OHIO ST. J. CRIM. L. 149, 163 (2009).

<sup>11</sup> *Id.* at 210.

<sup>12</sup> See Walker, *supra* note 9, at 146.

<sup>13</sup> See Dubal, *supra* note 7, at 35–36.

<sup>14</sup> See Walker, *supra* note 9, at 147.

<sup>15</sup> James Forman, Jr., *Community Policing and Youth as Assets*, 95 J. CRIM. L. & CRIMINOLOGY 1, 7 (2004) (noting that community policing “means different things to different people — public relations campaigns, shopfront and mini-police stations, rescaled patrol beats, liaison with ethnic groups, permission for the rank-and-file to speak to the press, Neighborhood Watch, foot patrols, patrol-detective

community policing is not a set of tactics, but instead is an organizational strategy for running a department.”<sup>16</sup> Even today, as local police become more embedded in the proliferation of national security initiatives,<sup>17</sup> both local and federal law enforcement officials continue to espouse community-policing principles and agree that police-community trust remains vital to the success of policing efforts.<sup>18</sup>

Implementation of a body-worn camera program integrates well with the strategies and goals of community policing.<sup>19</sup> The use of body-worn cameras generates trust in the minds of the public through enhanced transparency regarding the daily interactions of police with members of the community. Improvements in transparency also align with community policing’s call for law enforcement to work intimately with civil society and forge public-private partnerships.<sup>20</sup>

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## 1. IN MUNICIPALITIES ACROSS THE COUNTRY, RELATIONSHIPS BETWEEN LOCAL LAW ENFORCEMENT AND COMMUNITIES OF COLOR ARE BROKEN.

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Community policing not only offers ways for communities to mobilize against disorder and crime,<sup>21</sup> but also plays an integral role in supporting efforts to reduce incidents of police misconduct involving residents of color.<sup>22</sup> Currently, many individuals in Black and Latino communities perceive law enforcement officers in a negative light — much more so than whites.<sup>23</sup> Residents of communities of color often distrust police because of what they perceive as widespread racially discriminatory policing practices.<sup>24</sup> Police brutality harms police-community relations when the “victimized groups see a particular incident of excessive force as typical of the police and vent their anger against the continuation of th[at] discriminatory pattern of brutality.”<sup>25</sup> However, it is important to note that practitioners have found that residents of color do not dislike all individual law enforcement officials, but rather those whom they believe are abusive, disrespectful, and racist.<sup>26</sup>

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teams, and door-to-door visits by police officers” (citing David H. Bayley, *Community Policing: A Report from the Devil’s Advocate*, in *COMMUNITY POLICING: RHETORIC OR REALITY* 225, 225 (Jack Greene & Stephen D. Mastrofski eds., 1988)).

<sup>16</sup> See Forman, *supra* note 15, at 7.

<sup>17</sup> See generally Matthew C. Waxman, *Police and National Security: American Local Law Enforcement and Counterterrorism After 9/11*, 3 J. NAT’L SECURITY L. & POL’Y 377 (2009) (examining three national security law challenges resulting from greater involvement of state and local police agencies in protecting national security, especially in combating terrorism).

<sup>18</sup> See Dubal, *supra* note 7, at 36.

<sup>19</sup> See Harris, *supra* note 10, at 176 (explaining the role of body-worn cameras in bettering community-police relations).

<sup>20</sup> David Thacher, *Conflicting Values in Community Policing*, 35 LAW & SOC’Y REV. 765, 766 (2001).

<sup>21</sup> See Forman, *supra* note 15, at 2 (citing Dan M. Kahan, *Reciprocity, Collective Action, and Community Policing*, 90 CAL. L. REV. 1513, 1527–30 (2002); Tracey L. Meares, *Praying for Community Policing*, 90 CAL. L. REV. 1593 (2002)).

<sup>22</sup> See Forman, *supra* note 15; CHARLES OGLETREE ET AL., *BEYOND THE RODNEY KING STORY: AN INVESTIGATION OF POLICE CONDUCT IN MINORITY COMMUNITIES* 127–30 (1995); Anthony C. Thompson, *Stopping the Usual Suspects: Race and the Fourth Amendment*, 74 N.Y.U. L. REV. 956, 1010 (1999) (advocating “a race-conscious community policing model”).

<sup>23</sup> Carmen Solis et. al., *Latino Youths’ Experiences with and Perceptions of Involuntary Police Encounters*, 623 ANNALS AM. ACAD. POL. & SOC. SCI. 39, 41 (2009) (citing Ronald Weitzer & Steven Tuch, *RACE AND POLICING IN AMERICA: CONFLICT AND REFORM* (2006)); Darius Charney et al., *Suspect Fits Description: Responses to Racial Profiling in New York City*, 14 CUNY L. REV. 57, 67 (2010) (“When we ask them, ‘How many of y’all hate police officers,’ 99.9% of them raise their hands, ‘I hate police officers.’”); Carol A. Brook, *Racial Disparity Under the Federal Sentencing Guidelines*, 35 LITIG. 15, 15 (2008) (“Every fall I teach constitutional law to high school students from the Chicago Public Schools. The students are mostly African-American and Hispanic. When I ask them whether they believe the criminal justice system is fair to people of color, they mostly say no. My clients, also mostly African-American and Hispanic, say the same thing.”).

<sup>24</sup> See Solis, *supra* note 23, at 40–41.

<sup>25</sup> Rob Yale, *Searching for the Consequences of Police Brutality*, 70 S. CAL. L. REV. 1841, 1843 (1997) (citations omitted).

<sup>26</sup> See Charney, *supra* note 23, at 67 (2010); see also Yale, *supra* note 25, at 1842 (noting that “victims develop hostility toward police as they watch offending officers go unpunished”). According to the Christopher Commission, “a ‘problem group’ of officers use [sic] force, and are the subject of complaints alleging excessive or improper force, far more frequently than most other officers.” REPORT OF THE INDEPENDENT COMM’N ON THE L.A. POLICE DEP’T. 32, 35–39 (1991). In the Los Angeles County Sheriff’s Department, a



Body-worn camera policies provide a proactive response to civilian perceptions of systematic injustices. As the Police Foundation put it in a recent report:

Police administrators should proactively institute and enforce strong policies governing conduct, as well as systems to collect and analyze data relative to police-citizen contacts such as complaints, use of force incidents, and traffic stops. Such efforts would inform policy, guide recruitment and training, and build accountability necessary to restore and maintain public trust in the police. It is the lack of internal, systemic controls, and not “a few rotten apples,” that perpetuates problems of misconduct and abuse by police. Most of America’s police officers are honest, dedicated, hard-working public servants, and it is they, as well as the public they serve, who are victims of the “bad” cop.<sup>27</sup>

Body-worn camera legislation, particularly at the state level, would support efforts of departments to restore and maintain public trust in the police. Communities of color continuously request *better* policing—rather than aggressive policing—in their neighborhoods.<sup>28</sup> The use of camera technology is an innovative law enforcement practice designed to help fulfill the requests of diverse communities and to improve community-police relations.

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## 2. POLICE COMPLAINTS, LITIGATION, AND SETTLEMENTS IMPOSE SIGNIFICANT COSTS ON MUNICIPALITIES AND COMMUNITIES.

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Police misconduct imposes both social and financial costs. Social costs include the erosion of trust between community residents and police officers and the difficulty of building or rebuilding that trust in an environment characterized by uncertainty and animosity. Financial costs include those pecuniary losses brought about by legal entanglements, including complaints, litigation, and settlements. These pecuniary losses represent a major burden on taxpayers,<sup>29</sup> and are especially problematic for municipal governments, which are typically burdened with the fallout from police misconduct most directly.<sup>30</sup> As one researcher put it, “one agency of government (the police) perpetrates the harm, another agency defends it in court (the law department), and a third agency writes the check (the treasurer).”<sup>31</sup> These costs and their relationship to local and municipal governments are discussed in more detail below.

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### SURVEY OF THE COSTS OF POLICE MISCONDUCT FOR MUNICIPALITIES

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Reducing incidents of police misconduct and excessive force saves local governments money that could be reinvested in law enforcement.<sup>32</sup> In 2013, Chicago paid \$84.6 million in police misconduct settlements, judgments, and legal fees.<sup>33</sup> According to Oakland Police Department expenditure records, the total legal costs of ongoing police officer misconduct totaled \$13,149,000 in fiscal year 2010–11. Most of this, approximately \$12,271,000, was set aside to pay settlements stemming from police brutality, illegal searches,

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“group of 62 [were] responsible for nearly 500 separate Force/Harassment investigations.” JAMES G. KOLTS & STAFF, L.A. CNTY. SHERIFF’S DEPT 160 (1992).

<sup>27</sup> DAVID WEISBURD ET AL., POLICE FOUND., THE ABUSE OF POLICE AUTHORITY: A NATIONAL STUDY OF POLICE OFFICERS’ ATTITUDES 11 (2001), available at <http://www.policefoundation.org/sites/pf-test1.drupalgardens.com/files/AOAFull.pdf>.

<sup>28</sup> See Solis, *supra* note 23, at 43.

<sup>29</sup> Yale, *supra* note 25, at 1844.

<sup>30</sup> See Harris, *supra* note 10, at 157 (“In the typical municipal government in the United States, the agency that does the damage does not pay for the damage.”).

<sup>31</sup> *Id.* (footnote omitted).

<sup>32</sup> See Yale, *supra* note 25, at 1845.

<sup>33</sup> Shaw, *supra* note 1.

injuries, false arrests, and related civil-rights violations.<sup>34</sup> In Denver, settling police and sheriff claims cost \$10 million from 2002 to 2011.<sup>35</sup>

In 2011, New York spent \$119 million for police misconduct and civil-rights violations.<sup>36</sup> Claim payouts alleging abusive police conduct increased 46% from 2006 to 2010, to \$136 million in 2010, according to the city comptroller's office.<sup>37</sup> According to a June 2011 report, there were 8,104 claims filed against New York police that year, a record high.<sup>38</sup> Civil-rights claims against the police and other city departments totaled 2,657 in fiscal 2010, a 35% increase over the previous year.<sup>39</sup>

Although these steep payments rarely come directly from *departmental* budgets,<sup>40</sup> the impact they have on *municipal* budgets is blistering. By deterring the misconduct of citizens and officers alike, and by producing concrete evidence to more efficiently test the legitimacy of complaints, the use of body-worn cameras can alleviate the burden on states and municipalities by reducing the costs of complaints, settlements, and litigation. Viewing the matter from this angle reveals that in funding body-worn camera programs, states and municipalities can save themselves astronomical costs. In turn, this means that states would be able to redirect money presently earmarked to resolve the legal entanglements of police misconduct or complaints toward a body-worn camera initiative. In other words, not only does a body-worn camera program promise to increase police accountability, but it also promises to pay for itself over time.

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### 3. CURRENT LAW ENFORCEMENT STRATEGIES FOR CONSTITUTIONAL COMPLIANCE ARE INEFFICIENT AND WASTE VALUABLE RESOURCES.

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Fourth Amendment compliance is critical to trustworthy, reliable, and efficient policing.<sup>41</sup> In the search and seizure context, “the Fourth Amendment exclusionary rule, generally stated, excludes evidence from criminal trials when that evidence is obtained as a direct result of police conducting an illegal search or seizure in violation of the Fourth Amendment.”<sup>42</sup> As such, the exclusionary rule is designed to deter future police misconduct.<sup>43</sup> In an effort to support the aims of the Fourth Amendment, body-worn cameras can help to ensure better compliance with these requirements.<sup>44</sup>

<sup>34</sup> Winston, *supra* note 2; see also Hyatt, *supra* note 2.

<sup>35</sup> Joel Warner, *Settling Police and Sheriff Claims Cost Denver \$10 Million Since 2002*, *ACLU Finds*, WESTWORD (Sept. 4, 2011), [http://blogs.westword.com/latestword/2011/05/excessive\\_force\\_lawsuits\\_denver\\_10\\_million\\_2002.php](http://blogs.westword.com/latestword/2011/05/excessive_force_lawsuits_denver_10_million_2002.php).

<sup>36</sup> Goldman, *supra* note 4.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*; see also Op-Ed, *The Cost of Police Brutality*, N.Y. TIMES, (Apr. 22, 1995), <http://www.nytimes.com/1995/04/22/opinion/the-cost-of-police-brutality.html>.

<sup>40</sup> See Harris, *supra* note 10, at 181 (recommending that “any damage awards resulting from police misconduct lawsuits must be payable only out of the budget of the police department itself”); Rachel M. Cohen, *City Coffers, Not Police Budgets, Hit Hard By the High Cost of Brutality*, AM. PROSPECT (Sept. 26, 2014), <http://prospect.org/article/city-coffers-not-police-budgets-hit-hard-high-cost-brutality>.

<sup>41</sup> This section of the Report focuses on the exclusion of evidence based on violations of the Fourth Amendment. Ensuring constitutional compliance for law enforcement involves “several different rules and theories for exclusion[,] based on the type and nature of the governmental misconduct at issue and the rights thereby transgressed.” Eugene Milhizer, *The Exclusionary Rule Lottery*, 39 U. TOL. L. REV. 755, 755 (2008); see *id.* (noting suppression can result from violations of the Sixth Amendment, Fourteenth Amendment, and other constitutional or statutory violations).

<sup>42</sup> Matthew Allan Josephson, *To Exclude or Not to Exclude: The Future of the Exclusionary Rule After Herring v. United States*, 43 CREIGHTON L. REV. 175, 179 (2009) (citing *Weeks v. United States*, 232 U.S. 383, 398 (1914)).

<sup>43</sup> *Davis v. United States*, 131 S. Ct. 2419, 2426 (2011) (“The rule’s sole purpose, we have repeatedly held, is to deter future Fourth Amendment violations.”); *Herring v. United States*, 555 U.S. 135, 144 (2009) (“As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence.”); see also Thomas K. Clancy, *The Fourth Amendment’s Exclusionary Rule As A Constitutional Right*, 10 OHIO ST. J. CRIM. L. 357 (2013) (noting the purpose of the exclusionary rule).

<sup>44</sup> See Harris, *supra* note 10, at 178 (explaining the role of body-worn cameras in bettering community-police relations).

Research suggests that current constitutional compliance strategies are inefficient and can waste resources. Indeed, there are several “costs” associated with Fourth Amendment protections, including the costs of complying with the amendment’s reasonableness standard (securing a warrant, conducting additional investigations to secure probable cause, etc.) and the societal costs of “forgone arrests and convictions.”<sup>45</sup> Nonetheless, the current legal rule works to mitigate the cost of Fourth Amendment compliance by releasing law enforcement officials from strict adherence to the amendment’s requirements. To this end, officers are allowed to weigh the Fourth Amendment requirements in a given situation and then proceed with the lowest cost route.<sup>46</sup>

The discretionary approach to lowering policing “costs” does not lead to effective constitutional compliance. Observational studies of officer behavior have shown, using conservative estimates, that police violate the Constitution in 30% of the searches or seizures they conduct.<sup>47</sup> Moreover, the vast majority of these unconstitutional searches or seizures —97% —produce no evidence.<sup>48</sup> As a result, in such instances where no evidence is obtained, police misconduct goes undeterred because there is no use of the exclusionary rule as a shield against the offending officer’s unconstitutional actions. This outcome illustrates the need for an out-of-court deterrent that can reduce the incidences of the constitutional violations in the first instance. Body-worn cameras could, if used within a suitable framework of rules, go a long way toward ensuring that police follow search and seizure standards.<sup>49</sup>

## B. POLICE DEPARTMENT USE OF BODY-WORN VIDEO CAMERAS FOR EFFECTIVE LAW ENFORCEMENT

Law enforcement agencies increasingly agree that the use of body-worn camera technology is associated with several benefits.<sup>50</sup> To begin with, body-worn cameras aid officers in collecting evidence,<sup>51</sup> and some videos can be used as effective tools for training new recruits in the police force.<sup>52</sup> Camera recordings of interactions between citizens and the police can deter abuses of power<sup>53</sup> and provide transparency during periods of instability in community relations. Furthermore, research has shown that body cameras not only reduce the use of excessive force by police officers but also significantly reduce complaints by members of the community.<sup>54</sup> Overall, research suggests that the use of body-worn cameras by police officers “encourage[s]

<sup>45</sup> William J. Stuntz, *The Political Constitution of Criminal Justice*, 119 HARV. L. REV. 780, 793 (2006).

<sup>46</sup> Elizabeth Canter, *A Fourth Amendment Metamorphosis: How Fourth Amendment Remedies and Regulations Facilitated the Expansion of the Threshold Inquiry*, 95 VA. L. REV. 155, 203 (2009).

<sup>47</sup> David A. Harris, *Picture This: Body-Worn Video Devices (Head Cams) As Tools for Ensuring Fourth Amendment Compliance by Police*, 43 TEX. TECH L. REV. 357, 363 (2010) (citing Jon B. Gould & Stephen D. Mastrofski, *Suspect Searches: Assessing Police Behavior Under the U.S. Constitution*, 3 CRIMINOLOGY & PUB. POL’Y 315, 331 (2004)) [hereinafter Harris, *Picture This*].

<sup>48</sup> *Id.*

<sup>49</sup> See Harris, *supra* note 10, at 178 (“Video and audio recording equipment . . . [i]f used as part of a suitable framework of rules, go a long way toward ensuring that police follow search and seizure standards.”).

<sup>50</sup> See Press Release, Int’l. Assoc. of Chiefs of Police, IACP Leads the Way on Body-Worn Camera Policies (June 9, 2014), <http://www.theiacp.org/ViewResult?SearchID=2414> (noting a growing number of law enforcement agencies adopting body-worn cameras and the benefits for resolving complaints, creating compelling evidence, and influencing police behavior); MICHAEL D. WHITE, U.S. DEPT’ OF JUSTICE, POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE 6 (2014), *available at* <https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>.

<sup>51</sup> Harris, *supra* note 10, at 178; see also John Simerman, *Federal Judge Presses NOPD on Use of Body, Car Cameras*, THE ADVOCATE (Sept. 29, 2014), <http://theadvocate.com/news/neworleans/10357896-148/federal-judge-presses-nopd-on> (“The cameras also are expected to help the consent decree monitors assess the accuracy of police reporting of incidents and of the information they write on field interview cards — an area where the monitoring team . . . has found ‘a stunning lack of consistency.’”).

<sup>52</sup> WHITE, *supra* note 50, at 10.

<sup>53</sup> *Id.*

<sup>54</sup> See *id.* at 6 (“discussing several of the empirical studies that documented substantial decreases in citizen complaints”).

lawful and respectful interactions between police and suspects”<sup>55</sup> and that body cameras can help rebuild the fractured trust between police departments and the communities they serve.

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### FINDINGS FROM RIALTO, CALIFORNIA

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From February 2012 to July 2013, a Cambridge University study examined the effects of “wearable” video cameras on patrol officers’ compliance rates in Rialto, California.<sup>56</sup> Rialto’s randomized controlled study offered encouraging findings: after cameras were introduced in February 2012, public complaints against officers plunged 88% compared with the previous 12 months.<sup>57</sup> Officers’ use of force fell by 60%.<sup>58</sup>

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### FINDINGS FROM MESA, ARIZONA

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The Mesa Police Department conducted a program evaluation of “on-officer” body-worn cameras from October 2012 to September 2013.<sup>59</sup> In this study, 50 police officers equipped with body-worn cameras were compared to 50 demographically similar officers who did not wear body-worn cameras.<sup>60</sup> The pilot study yielded a 40% decrease in complaints and a 75% decrease in use-of-force incidents across study officers.<sup>61</sup>

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### FINDINGS FROM PLYMOUTH, ENGLAND

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In a pilot program in Plymouth, England from 2005 and 2006, more than three hundred officers used fifty body-worn camera units.<sup>62</sup> The government-commissioned report evaluating the study found six key benefits of the devices:

- Creating evidence for the courts that is “far more accurate than was previously possible . . . and [minimizing] doubts as to what was done or said by any person present”;
- Increasing police officer efficiency by decreasing manual record keeping;
- Reducing public order offenses due to the presence of the camera;
- Assisting in the prosecution of domestic violence cases;
- Detailing the record of officers who deployed their firearm; and
- Increasing the number of complainants later reconsidered and withdrawn after review of the video.<sup>63</sup>

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<sup>55</sup> Andrew Grossman, *Judge Orders NYPD to Add Cameras to Officers’ Gear*, WALL ST. J., Aug. 12, 2013, *available at* <http://online.wsj.com/article/SB10001424127887324085304579009131128679174.html?mod=c2tw>; *Floyd v. City of New York*, 959 F. Supp. 2d 668, 685 (S.D.N.Y. 2013) (ordering the New York Police Department to institute a trial program requiring the use of body-worn cameras in one precinct per borough).

<sup>56</sup> TONY FARRAR, POLICE FOUND., SELF-AWARENESS TO BEING WATCHED AND SOCIALLY-DESIRABLE BEHAVIOR: A FIELD EXPERIMENT ON THE EFFECT OF BODY-WORN CAMERAS ON POLICE USE OF FORCE, *available at* <http://www.policefoundation.org/sites/g/files/g798246/f/201303/The%20Effect%20of%20Body-Worn%20Cameras%20on%20Police%20Use-of-Force.pdf>.

<sup>57</sup> *Id.* at 8.

<sup>58</sup> *Id.*

<sup>59</sup> ALLYSON ROY, ON-OFFICER BODY CAMERA SYSTEM: PROGRAM EVALUATION AND RECOMMENDATIONS (2013), *available at* <http://urbanillinois.us/sites/default/files/attachments/officer-video-cameras-roy.pdf>.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> POLICE & CRIME STANDARDS DIRECTORATE, HOME OFFICE OF THE U.K., GUIDANCE FOR THE POLICE USE OF BODY-WORN VIDEO DEVICES 6 (July 2007), *available at* <http://library.college.police.uk/docs/homeoffice/guidance-body-worn-devices.pdf>; *see also* Harris, *supra* note 10, at 178 (describing the study and its findings).

<sup>63</sup> POLICE & CRIME STANDARDS, *supra* note 62, at 7–8.

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## FINDINGS FROM PHOENIX, ARIZONA

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Starting in April 2013, the Phoenix Police Department equipped 56 officers with body-worn cameras and compared them to 50 control officers for one year. The study examined the effects of body-worn cameras on police officer complaints, as well as their impact on citizen-officer interactions.<sup>64</sup> According to preliminary results, self-reported data indicated that most officers were comfortable wearing body-worn cameras, yet did not believe they should be adopted for all frontline personnel in the department.<sup>65</sup> Also, self-reported police officer productivity increased for officers wearing body-worn cameras, while self-reported complaints against officers decreased by 60% during the study period. Official records also indicated a 44% decrease in complaints against officers.<sup>66</sup>

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## FINDINGS FROM SAN DIEGO, CALIFORNIA

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The San Diego Police Department conducted a two-phase approach to implementing its body-worn camera program.<sup>67</sup> Phase One began on January 6, 2014 with the deployment of 300 cameras in a field test concluding on March 7, 2014.<sup>68</sup> The second phase and implementation of the full program began June 30, 2014, with an additional 300 cameras deployed.<sup>69</sup> Comparing the complaints and allegations from the first six months of 2014 — before the implementation of the program in those districts with the last six months — San Diego noted a 40.54% reduction in complaints against the police and a 59.76% reduction in allegations.<sup>70</sup> In a comparison of use of force tactics from November to January of the previous year, the department saw a 46.5% reduction in personal body weapon usage and a 30.5% reduction in chemical agent usage.<sup>71</sup> While the raw data supporting those percentage reductions were not included in the summary sheet to the city council, the March 3, 2015 executive summary of the program concluded, “[a]lthough only implemented for a relatively short period of time, the results are very promising, showing a reduction in citizen complaints, allegations, and a reduction of some use of force applications.”<sup>72</sup>

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## EFFECTS OF VIDEO SURVEILLANCE ON CHANGING BEHAVIOR

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The behavioral dynamics that explain the complaints and use of force trends (as described above) in the body-worn camera pilot programs are by no means clear.<sup>73</sup> The decline in complaints and use of force may be tied to improved citizen behavior, improved police officer behavior, or a combination of the two.<sup>74</sup> Given the lack of solid empirical evidence that parses out the causation trends more minutely, we rely on already-existing psychological and behavioral research to predict the implications of large-scale police surveillance.<sup>75</sup> In particular, research concerning public surveillance of different types provides insight into the likely behavioral effects of cameras and video recording. Specifically, surveillance acts as (1) a deterrent mechanism and (2) a means of curtailing anonymity to trigger self-awareness.

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<sup>64</sup> Dennis P. Rosebaum et al., *Attitudes Toward the Police: The Effects of Direct and Vicarious Experience*, 8 POLICE Q. 343 (2005).

<sup>65</sup> WHITE, *supra* note 50.

<sup>66</sup> Charles Katz, & Mike Kurtenbach, *Deploying Officer Body-Worn Cameras in Phoenix*, OFFICE OF JUSTICE PROGRAMS DIAGNOSTIC CENTER (Aug. 8, 2014), <https://www.ojpdagnosticcenter.org/blog/deploying-officer-body-worn-cameras-phoenix>.

<sup>67</sup> COUNCIL ACTION EXECUTIVE SUMMARY SHEET, CITY OF SAN DIEGO (2015), *available at* [http://docs.sandiego.gov/councilcomm\\_agendas\\_attach/2015/psln\\_150318\\_2.pdf](http://docs.sandiego.gov/councilcomm_agendas_attach/2015/psln_150318_2.pdf).

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> WHITE, *supra* note 50.

<sup>74</sup> *Id.*

<sup>75</sup> See Stephen Rushin, *The Judicial Response to Mass Police Surveillance*, 2011 U. ILL. J.L. TECH. & POL’Y, 281, 299 (extrapolating from behavioral research in predicting the effects of automated license review tactics).



**(1) Deterrence.** An analogy between traffic cameras and body-worn cameras provides insight as to the possible deterrent function of the proposed legislation. In the traffic violation context, evidence of a psychological link between the perceived likelihood of sanctions and criminal deterrence has been observed in instances where visible police surveillance decreases the likelihood that an individual will commit a traffic violation.<sup>76</sup> Specifically, two psychological deterrent effects have been found to manifest themselves in relation to police surveillance: on-view effects and general halo effects.<sup>77</sup> Under the on-view effect, individuals are less likely to break the law when in *direct* view of policing surveillance.<sup>78</sup> For example, a driver is less likely to speed or drive through a red light while in the direct purview of a known speeding or red-light traffic camera. The halo effect describes a person's likelihood to engage in less illegal behavior *in general* after witnessing the presence of police surveillance; the individual not only avoids illegal behavior in the vicinity of the surveillance, but also avoids illegal behavior generally because of the observed surveillance.<sup>79</sup>

The similarity of the causative dynamic in the type of study reviewed above to the body-worn camera context makes it possible to hazard some projections. The behavior of citizens may change when the police officer gives an affirmative warning that the citizen is being filmed. The behavior of the officer may also change, as he or she knows that his or her actions are also being recorded, albeit less directly due to the vantage point of the camera. The halo effect may also occur with body-worn cameras, as officers may behave in a different manner when they know that, because of departmental policies ensuring the availability and impartial review of camera evidence, their actions will be subject to increased transparency and accountability.

Memory effects, a third insight from the traffic study, describe situations in which “individuals are less likely to engage in illegal behavior in a certain location when they have previously seen police surveillance at that location in the past.”<sup>80</sup> Although our model legislation calls for body-worn cameras to be worn during all police-citizen interactions, even if some officers do not wear body-worn cameras, memory effects may still occur. Both citizens and police officers may behave as if a body camera were deployed in a particular situation because they have become used to cameras being deployed in other, similar situations.

Ultimately, the strength of a deterrence mechanism is derived from the potential for meaningful enforcement. Meaningful enforcement in turn requires clear, predictable, and meaningful legal standards. This means that body-cameras can take us only so far as the law does — while body-worn cameras can produce a unique evidentiary record, the ability of cameras to produce desirable behaviors and encourage avoidance of undesirable ones depends on the robustness of the legal standards governing the conduct captured on video. The more that legal standards defer to officer discretion and avoid close scrutiny of officer conduct that from the perspective of citizens may be questionable, the less effective cameras designed to deter that questionable conduct will be — since officers will fail to perceive any significant probability of meaningful sanction. The erosion of the deterrent function of the exclusionary rule is an example of this dynamic. As previously noted, “the Fourth Amendment exclusionary rule, generally stated, excludes evidence from criminal trials when that evidence is obtained as a direct result of police conducting an illegal search or seizure in violation of the Fourth Amendment.”<sup>81</sup> Yet, as the law of search and seizure becomes more deferential to the discretion of law enforcement and less concerned with aligning officers' behavioral incentives with ethical standards through close scrutiny of officer conduct, the more the exclusionary rule's deterrent function vis-à-vis misconduct is undermined.<sup>82</sup> To avoid this outcome in the body-worn camera context and to capture the full

<sup>76</sup> *Id.* at 297 (citing Talib Rothengatter, *The Effects of Police Surveillance and Law Enforcement on Driver Behaviour*, 2 CURRENT PSYCHOL. REV. 349, 351 (1982)).

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Josephson, *supra* note 42.

<sup>82</sup> See Tracey Maclin & Jennifer Rader, *No More Chipping Away: The Roberts Court Uses an Axe to Take Out the Fourth Amendment Exclusionary Rule*, 81 MISS. L.J. 1183, 1227 (2012) (positing that the Supreme Court is reassessing the exclusionary rule in a manner that

benefits of a body-worn camera program, one must attend not only to the technical aspects of implementing but also to areas of substantive law pertaining to review of officer conduct.

**(2) Decrease in anonymity.** The second projected effect of body-worn cameras, a decrease in anonymity, similarly affects both civilians and officers. This effect has been found to counteract ‘deindividuation,’ a psychological state usually found in the electronic surveillance context “where, under conditions of anonymity, people become less-self regulated and thus more likely to commit certain crimes.”<sup>83</sup> Deindividuation theory potentially supports the use of body-worn cameras as measures to decrease anonymity, which can lower the likelihood of criminal activity by increasing the likelihood that perpetrators will be identified with that activity.<sup>84</sup> In a slightly more attenuated sense than the deterrence theory, body-worn cameras may create conditions for decreased anonymity for both the officer and the civilian. For the police officer in particular, the personalized visual and audio recording of their civilian interactions may decrease aggressive, dangerous, or reckless behavior.<sup>85</sup>

Similarly, philosopher Jeffrey Reiman states that “[w]hen you know you are being observed, you naturally identify with the outside observer’s viewpoint, and add that alongside your own viewpoint on your action.”<sup>86</sup> Anecdotes suggest that officers on duty in areas under surveillance are more concerned about cameras monitoring the police officer rather than the public. According to one officer, “Cops weren’t thrilled with it. They were watching the cameras to see if they were being watched instead of watching the street.”<sup>87</sup> Generally, law enforcement officers are aware of how they are perceived on film. Chief Superintendent Cullen of New South Wales said, “After testing out body-worn cameras, the overwhelming response from officers was that the cameras increased their professionalism because they knew that everything they said and did was being recorded.”<sup>88</sup> Decreasing anonymity can have positive effects on law enforcement interactions with civilians.

While decreasing anonymity may bring benefits, it may also bring significant privacy costs. Given the ability of body-worn cameras to decrease anonymity of the civilian in particular, deployment of this public surveillance measure must be coupled with strong policies surrounding data retention, notice procedures, specified uses of the camera, and minimally invasive public disclosure. Body-worn camera policy must address “the tension between [the cameras’] potential to invade privacy and their strong benefit in promoting police accountability.”<sup>89</sup>

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will erode all of its value). Candace C. Kilpinen, *Herring v. United States: A Threat to Fourth Amendment Rights?*, 44 VAL. U. L. REV. 747, 756 (2010) (evaluating *Herring v. United States* and suggesting “an underlying intent to eliminate the exclusionary rule.”); Eleanor De Golian, *Davis and the Good Faith Exception: Pushing Exclusion to Extinction?*, 63 MERCER L. REV. 751, 766 (2012) (explaining that *Davis v. United States* “arguably weakened the good faith exception, potentially paving the way for an end to the exclusionary rule”).

<sup>83</sup> Rushin, *supra* note 75, at 295 (citing Leon Festinger et al., *Some Consequences of De-individuation in a Group*, 47 J. ABNORMAL & SOC. PSYCHOL. 382, 389 (1952)).

<sup>84</sup> *Id.* at 296.

<sup>85</sup> *Id.* (citing Edward Diener et al., *Effects of Deindividuation Variables on Stealing Among Halloween Trick-or-Treaters*, 33 J. PERSONALITY & SOC. PSYCHOL. 178, 178 (1976) (discussing Festinger’s findings that “when identification of group members decreased” members were more likely to take part in unacceptable behavior)); Patricia A. Ellison et al., *Anonymity and Aggressive Driving Behavior: A Field Study*, 10 J. SOC. BEHAVIOR & PERSONALITY 265, 270–71 (1995) (discussing how the anonymity of being in a vehicle “facilitate[s] aggressive behavior”); Jurgen Rehm et al., *Wearing Uniforms and Aggression: A Field Experiment*, 17 EUROPEAN J. SOC. PSYCHOL. 357, 358 (1987) (stating that “decreased personal identifiability leads to usually proscribed behavior”).

<sup>86</sup> Jeffrey H. Reiman, *Driving to the Panopticon: A Philosophical Exploration of the Risks to Privacy Posed by the Highway Technology of the Future*, 11 SANTA CLARA COMPUTER & HIGH TECH. L. J. 27, 38 (1995). According to Reiman, “[t]o the extent that a person experiences himself as subject to public observation, he naturally experiences himself as subject to public review. As a consequence, he will tend to act in ways that are publicly acceptable.” *Id.* at 41.

<sup>87</sup> Jennifer Mulhern Granholm, *Video Surveillance on Public Streets: The Constitutionality of Invisible Citizen Searches*, 64 U. DET. L. REV. 687, 688–89 (1987).

<sup>88</sup> Miller et al., *supra* note 6.

<sup>89</sup> ACLU, *Police Body-Mounted Cameras: With Right Policies in Place, a Win For All* (Oct. 9, 2013), <https://www.aclu.org/technology-and-liberty/police-body-mounted-cameras-right-policies-place-win-all>.

## C. THE CURRENT STATE OF COPS AND CAMERAS

In the last few years, metropolitan police departments have displayed a remarkable trend towards adoption of body-worn camera technology. In this section, we review evidence of this trend in select metropolitan centers across the United States and beyond. Although this list is certainly not exhaustive, we believe it is sufficiently comprehensive to serve as a snapshot of the extent of developments to date.

### 1. SURVEY OF MUNICIPAL POLICE DEPARTMENTS AND BODY-WORN CAMERAS

**Baltimore.** The *Baltimore Sun* reports that the City Council is considering a bill (sponsored by City Council President Jack Young and Councilman Warren Branch) to require members of the Baltimore Police Department (BPD) to wear body cameras in response to the events in Ferguson and to Baltimore's own recent experience with police brutality.<sup>90</sup> If enacted, the less-than-two-page bill would ultimately require all 3,000 of Baltimore's sworn police officers to wear cameras to record audio and video of their interactions with the public. As currently written, the bill would be phased in over a year, with new patrol hires being provided cameras immediately. After that first year has passed, *all* officers would be required to wear cameras. However, the bill does not explicitly address the cost of implementing the program, or any of the other myriad policy considerations bearing on deployment of body-worn cameras.<sup>91</sup> BPD estimates that deployment of the cameras could require \$7 million up front with a \$2 million operating cost,<sup>92</sup> while the Mayors' office has estimated the cost to be around \$10 million.<sup>93</sup>

**Washington, D.C.** The *Washington Post* reports that the city's Metropolitan Police Department (MPD) began a six-month \$1 million dollar pilot program on October 1, 2014, outfitting 165 officers with body cameras located on the eyeglass frame, collar, or front of the shirt.<sup>94</sup> The program is designed to test five different camera models in each of the city's seven police districts.<sup>95</sup> Under departmental policy, officers are required to turn on the camera as soon as they receive a call for service or other request for assistance, and will need to leave it on until the call is finished.<sup>96</sup> Meanwhile, video that is not retained for investigative purposes will be deleted after 90 days.<sup>97</sup> Cathy L. Lanier, Chief of Police, has listed implementation of a pilot project "to test the use of body cameras" as one of her "top priorities" since at least February of 2014.<sup>98</sup> She views the cameras as "a tool . . . to establish a record of police actions,"<sup>99</sup> and considers that "[t]hese records can help to protect the public in cases of officer misconduct . . . [and] protect[] officers from spurious complaints."<sup>100</sup> Implementation of the pilot project also follows on the heels of a recommendation by the Police Complaints Board, which, in a publicly available report directed toward the mayor and Chief of Police, identified several benefits likely to be derived from a body-worn camera program. Those benefits include:

<sup>90</sup> Luke Broadwater & Yvonne Wenger, *City Council Members Seek Body Cameras for Police*, BALT. SUN (Sept. 22, 2014), [http://articles.baltimoresun.com/2014-09-22/news/bs-md-ci-police-cameras-20140922\\_1\\_body-cameras-police-brutality-baltimore-police-officer](http://articles.baltimoresun.com/2014-09-22/news/bs-md-ci-police-cameras-20140922_1_body-cameras-police-brutality-baltimore-police-officer).

<sup>91</sup> See Bill 14-0443, City of Baltimore City Council (2014).

<sup>92</sup> Lisa Robinson, *Baltimore Bill Addresses Police Body Cameras*, WBALTV (Sept. 23, 2014), <http://www.wbalte.com/news/baltimore-mayor-talks-body-cameras-for-officers/28185080>.

<sup>93</sup> Broadwater & Wenger, *supra* note 90.

<sup>94</sup> Mike DeBonis & Victoria St. Martin, *D.C. Police Will Wear Body Cameras as Part of Pilot Program*, WASH. POST (Sept. 24, 2014), [http://www.washingtonpost.com/local/crime/dc-police-will-wear-body-cameras-as-part-of-pilot-program/2014/09/24/405f7f5c-43e7-11e4-b437-1a7368204804\\_story.html](http://www.washingtonpost.com/local/crime/dc-police-will-wear-body-cameras-as-part-of-pilot-program/2014/09/24/405f7f5c-43e7-11e4-b437-1a7368204804_story.html).

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Letter from Cathy L. Lanier, Chief of Police, Metropolitan Police Dep't, to Tommy Wells, Chairperson, District Council Comm. on the Judiciary and Pub. Safety, 37 (Feb. 10, 2014), *available at* [http://dccouncil.us/files/performance\\_oversight/Resubmission\\_FINAL\\_MPD\\_Response\\_With\\_Attachments\\_Perf\\_Hrg\\_02\\_20\\_14.pdf](http://dccouncil.us/files/performance_oversight/Resubmission_FINAL_MPD_Response_With_Attachments_Perf_Hrg_02_20_14.pdf).

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

- **Reducing Misconduct Complaints through Improved Police-Citizen Encounters.** Citing the Rialto study, the Board notes that “when officers and citizens are being recorded, both are less likely to engage in the type of conduct that leads to complaints.”<sup>101</sup> The Board estimates that “[t]he use of a body-worn camera system by MPD should be able to reduce the incidence of complaint-generating events and potentially help to foster a culture of more polite and respectful interactions between police and the public.”<sup>102</sup>
- **Facilitating Citizen Complaint Resolution.** The Board emphasizes that “[v]ideo and audio recordings of police-citizen interactions would provide additional evidence for use in investigating and resolving complaints of police misconduct . . . that would . . . be objective and remain accurate over time . . . [and] could also speed the resolution of complaints” by helping investigators to make more accurate findings.<sup>103</sup> In particular, many complaints are currently resolved by a “credibility determination as between the complainant and one or more of the officers involved.”<sup>104</sup> Objective evidence would help investigators shape better interview questions, which will help sort out officers who have violated the law or department policy from those who have not misconducted themselves.<sup>105</sup> The cameras would especially help with five types of allegations: (1) use of demeanor or tone that is insulting, demeaning, or humiliating; (2) issuing a bad ticket; (3) using threats; (4) using profanity; and (5) unlawfully stopping a vehicle.<sup>106</sup> These five account for “over one third of all allegations that the [Office of Police Complaints (OPC)] must resolve,” and so improving the speed with which assessments can be made about the validity of allegations will have an impact on a “substantial percentage” of the cases that OPC handles.<sup>107</sup> Moreover, other frequently made allegations like excessive or unnecessary force; unlawful stops, searches, and frisks; and unlawful arrests could be made easier to prove or disprove, to the extent that cameras can capture not only what the officer said and did, but “also what they observed prior to taking action.”<sup>108</sup>
- **Officer Training.** Body camera recordings might be used to correct the behavior of individual officers or for remedial training.<sup>109</sup> Moreover, even when officers behave in accordance with policy but still generate complaints, supervisors can gain new insight as to how duties could have been fulfilled without generating a complaint, which gives MPD the ability to “improve the service it provides and further reduce the number of future complaints.”<sup>110</sup>
- **Reducing Civil Liability.** The idea is that fewer incidents of police misconduct, improved investigations, and more effective training will result at some point in a decrease in the number of suits against the District for police officer actions.<sup>111</sup> Moreover, the video evidence might resolve disputes over facts and encourage settlements, as well as deter the filing of frivolous claims.<sup>112</sup>
- **Improving the Criminal Justice System.** Cameras also have the potential to improve other aspects of the criminal justice system at large. In particular, “devices should capture objective evidence relating to whether a confession was voluntary, a search was consented to or justified, or a physical description

<sup>101</sup> POLICE COMPLAINTS BD., ENHANCING POLICE ACCOUNTABILITY THROUGH AN EFFECTIVE ON-BODY CAMERA PROGRAM FOR MPD OFFICERS 3 (2014), *available at* <http://policecomplaints.dc.gov/sites/default/files/dc/sites/office%20of%20police%20complaints/publication/attachments/Final%20policy%20rec%20body%20camera.pdf>.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 3–4.

<sup>106</sup> *Id.* at 4.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 4.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 5.

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

matched a 'lookout,' among other scenarios."<sup>113</sup> The cameras can also be used to jog officers' memories of an incident and/or to verify the accuracy of written reports and statements about an incident.<sup>114</sup>

**New Orleans.** New Orleans began implementing a body-worn camera program in April of 2013.<sup>115</sup> The program was a voluntary addition to the requirements of a consent decree concluded between Mayor Mitch Landrieu and the Department of Justice (DOJ) after widespread DOJ findings of police misconduct in the wake of Hurricane Katrina.<sup>116</sup> The program aims to create an independent and unbiased record of events during police encounters.<sup>117</sup> To effectuate the program, the police department entered into a 5-year contract which included 420 cameras (320 box-like AXON cameras and 100 of the sleeker and more flexible AXON Flex cameras), replacements to broken devices, and digital storage on Evidence.com for about \$290,000 a year.<sup>118</sup> Despite these innovations, recent reports of ineffective management of the city's *dashboard* camera program (mandated by the consent decree) have cast doubt on the management of the body-worn camera program. The court-appointed monitor in charge of overseeing compliance with the consent decree found that only 34% of all use-of-force events were actually recorded by dashboard cameras, meaning that in all others either no video was shot, no video was preserved, or it could not be determined whether any recording had been made.<sup>119</sup> These findings are especially troubling for what they may imply in terms of management of the *body-worn* camera program. Indeed, management concerns are especially poignant in light of the recent shooting of a 26-year-old man during a traffic stop that was not caught on camera because the officer switched off her body-worn camera just prior to the incident.<sup>120</sup>

**New York.** Independent of the judge-ordered trial run stemming from the stop-and-frisk controversy, NYPD is planning to roll out a test program for the use of body-worn cameras in certain locations.<sup>121</sup> The city is planning to deploy 60 cameras to certain high-crime precincts (Harlem; Northeastern Staten Island (where Eric Garner was suffocated); South Bronx; Brooklyn (East New York); and Jamaica, Queens) in all five boroughs.<sup>122</sup> Officers will participate voluntarily, and the department aims to have at least one officer wearing a camera on each shift at the selected precincts.<sup>123</sup> The program began this fall, but it is not known how long it will last. The cost of beginning it totals \$60,000.<sup>124</sup>

**New Jersey.** According to the *Wall Street Journal (WSJ)*, Governor Chris Christie signed legislation on September 10, 2014 that required local police departments to install video cameras in newly purchased patrol cars or to equip officers with body cameras while they are on their beats.<sup>125</sup> According to *WSJ*, New Jersey is the first state to mandate use of these cameras statewide. Critics worry that local police departments are adopting these cameras without rules, and that this bill amounts to an unfunded mandate. The bill does not

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 6.

<sup>115</sup> Juliet Linderman, *NOPD Implements Mandatory Body Cameras for Field Officers*, TIMES-PICAYUNE (Apr. 2, 2014),

[http://www.nola.com/crime/index.ssf/2014/04/nopd\\_unveils\\_mandatory\\_body\\_ca.html](http://www.nola.com/crime/index.ssf/2014/04/nopd_unveils_mandatory_body_ca.html).

<sup>116</sup> Brendan McCarthy, *Sweeping NOPD Reform Strategy Outlined in Federal Consent Decree*, TIMES-PICAYUNE (July 24, 2012),

[http://www.nola.com/crime/index.ssf/2012/07/federal\\_consent\\_decree\\_outline.html](http://www.nola.com/crime/index.ssf/2012/07/federal_consent_decree_outline.html).

<sup>117</sup> Jim Mustian, *Body Cameras to Record All NOPD Public Interactions*, THE ADVOCATE (Apr. 7, 2014),

<http://www.theneworleansadvocate.com/home/8799320-172/body-cameras-to-record-all>.

<sup>118</sup> *Id.*

<sup>119</sup> Ken Daley, *Cameras Not On Most of the Time When NOPD Uses Force, Monitor Finds*, TIMES-PICAYUNE (Sept. 4, 2014),

[http://www.nola.com/crime/index.ssf/2014/09/cameras\\_not\\_on\\_most\\_of\\_the\\_tim.html](http://www.nola.com/crime/index.ssf/2014/09/cameras_not_on_most_of_the_tim.html).

<sup>120</sup> *Officer Involved in Monday Shooting Had Body Cam Turned Off*, WVUE FOX 8 (Aug. 18, 2014),

<http://www.fox8live.com/story/26283883/officer-involved-in-monday-shooting-had-body-cam-turned-off>.

<sup>121</sup> J. David Goodman, *New York Police Officers to Start Using Body Cameras in a Pilot Program*, N.Y. TIMES (Sept. 4, 2014),

[http://www.nytimes.com/2014/09/05/nyregion/new-york-police-officers-to-begin-wearing-body-cameras-in-pilot-program.html?\\_r=0](http://www.nytimes.com/2014/09/05/nyregion/new-york-police-officers-to-begin-wearing-body-cameras-in-pilot-program.html?_r=0).

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*; see also Henry Goldman, *NYC to Test Body-Worn Cameras for Police, De Blasio Says*, BLOOMBERG (Dec. 4, 2014),

<http://www.bloomberg.com/news/articles/2014-12-03/nyc-to-test-body-worn-video-cameras-for-police-de-blasio-says>.

<sup>125</sup> Heather Haddon, *N.J. Mandates Cameras for Its New Police Cars*, WALL ST. J. (Sept. 11, 2014), <http://online.wsj.com/articles/n-j-mandates-cameras-for-its-new-police-cars-1410488158>.



come with any additional authorized spending, although it does include heightened fines for DWI, the proceeds of which are to be put towards purchasing the new cameras. According to *WSJ*, the State Office of Legislative Services estimated that this would raise about \$577,000.<sup>126</sup>

- **Relevant Statutory Language:** “[. . .] Every new or used municipal police vehicle purchased, leased, or otherwise acquired on or after the effective date of P.L. , c. (C. ) (pending before the Legislature as this bill) which is primarily used for traffic stops shall be equipped with a mobile video recording system. As used in this section ‘mobile video recording system’ means a device or system installed or used in a police vehicle or worn or otherwise used by an officer that electronically records visual images depicting activities that take place during a motor vehicle stop or other law enforcement action.”<sup>127</sup>

**Philadelphia.** Police Commissioner Charles Ramsey has indicated that he hopes to begin a body-worn camera pilot program in Philadelphia by the end of 2014 or by early 2015.<sup>128</sup> Although details remain scant, Commissioner Ramsey has indicated that “a small number of officers” would be equipped with the cameras and that much policy development surrounding video retention and operating procedure will need to occur going forward.<sup>129</sup>

**Denver.** According to the *Denver Post*, Denver began evaluating the use of body-worn cameras in early 2013, eventually implementing an ongoing six-month pilot program for officers patrolling District 6, an area of the city with a high volume of activity.<sup>130</sup> The study is being administered by Taser International and researchers from the University of Cambridge.<sup>131</sup> Based on the successes seen so far in Denver, on August 27, 2014, Chief of Police Robert White announced plans to equip 800 officers, including all patrol and traffic officers, with body cameras in 2015.<sup>132</sup> Such a task will cost an estimated \$1.5 million, an expense that the City Council still must approve.<sup>133</sup> If approved, officers would wear the cameras on their glasses or lapels, and all footage would be stored in the cloud.<sup>134</sup>

**Los Angeles.** The Los Angeles Police Department (LAPD) launched a pilot program to test the use of three different types of body-worn cameras worn on the belt, collar or sunglasses of about 30 officers as early as January 2014.<sup>135</sup> The \$1.3 million in funding for the trial, soon to expand to about 600 cameras, was secured by way of private donations, arranged by Police Commission President Steve Soboroff.<sup>136</sup> Notable donators include, *inter alia*, Director Steven Spielberg and the Los Angeles Dodgers.<sup>137</sup> It has been reported that Soboroff hopes that after the first two trial years the Los Angeles City Council would provide funds to fully expand the project and maintain it over the long term.<sup>138</sup> The Los Angeles County Sheriff's Department has also launched its own pilot program to test four types of body-worn cameras, one of which can be clipped onto sunglasses, caps, helmets or collars, and the rest of which are attached to the officers' shirts.<sup>139</sup>

<sup>126</sup> *Id.*

<sup>127</sup> Act of Sept. 10, 2014, ch.54, P.L. 2014, *available at* [http://www.njleg.state.nj.us/2014/Bills/PL14/54\\_.PDF](http://www.njleg.state.nj.us/2014/Bills/PL14/54_.PDF) (mandating use of mobile video recording devices for all police vehicles in New Jersey).

<sup>128</sup> Tony Hanson, *Philadelphia Police to Begin Testing Officer-Worn Video Cameras*, CBS (Aug. 15, 2014), <http://philadelphia.cbslocal.com/2014/08/15/philadelphia-police-to-begin-testing-officer-worn-video-cameras/>.

<sup>129</sup> *Id.*

<sup>130</sup> Kirk Mitchell, *Denver Police Are Asking for 800 Body Cameras for Officers*, DENVER POST (Aug. 27, 2014), [http://www.denverpost.com/news/ci\\_26417279/denver-police-are-asking-800-body-cameras-officers?source=infinite](http://www.denverpost.com/news/ci_26417279/denver-police-are-asking-800-body-cameras-officers?source=infinite).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> *Los Angeles Police Department Officers Begin Wearing Body Cameras*, ABC7 (Jan. 15, 2014), <http://abc7.com/archive/9395264/>.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.*

<sup>138</sup> Joel Rubin, *Dodgers' Big Gift Moves LAPD Closer to On-Body Video Cameras*, L.A. TIMES (Oct. 1, 2013), <http://www.latimes.com/local/la-me-dodgers-lapd-20131002-story.html>.

<sup>139</sup> Cindy Chang, *L.A. County Sheriff's Deputies Test 4 Types of Body Cameras*, L.A. TIMES (Sept. 21, 2014), <http://www.latimes.com/local/la-me-sheriff-body-cameras-20140922-story.html>.

**London.** Citing relatively recent events such as the killing of Mark Duggan, which triggered the 2011 London riots, on May 8, 2014 the Metropolitan Police announced a pilot project in which 500 cameras were distributed to officers for use in 10 London Boroughs at a cost of £815,000<sup>140</sup> — a trial advertised to be the world’s largest.<sup>141</sup> Police officials lauded the potential for transparency and accountability that the cameras bring, and noted that a failure to switch on the cameras at the appropriate times will be treated as a disciplinary offense,<sup>142</sup> though no officer will have their camera running at all times because of the level of data storage that such a policy would require.<sup>143</sup> Finally, although suspects cannot decline to be recorded, victims are afforded that right.<sup>144</sup>

**Toronto.** Since at least September 2014, there have been plans to test the use of body cameras among Toronto police officers.<sup>145</sup> Beginning mid-December, 100 cameras were deployed on officers across the city as part of a pilot project.<sup>146</sup> While no decisions have yet been made about permanent use of the technology, police officials are hopeful that the cameras will lead to better and more objective evidence of the circumstances surrounding police encounters.<sup>147</sup>

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## 2. LEGAL LANDSCAPE

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Three significant legal implications must be considered before the implementation of overarching body-worn camera legislation: (1) federal and state constitutional law regarding privacy and public surveillance<sup>148</sup>; (2) FOIA and similar state laws regarding the data created by body-worn cameras; and (3) the storage and use of the data as evidence.

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### CONSTITUTIONAL LAW ON PRIVACY AND SURVEILLANCE

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The Fourth Amendment protects citizens against unreasonable searches and seizures of their persons, houses, papers and effects.<sup>149</sup> However, it was not until *Katz v. United States*<sup>150</sup> that the Court rejected the idea that an unreasonable search only occurred when there was a physical trespass into the home.<sup>151</sup> Instead, the Court expanded Fourth Amendment protections to situations that engendered a reasonable expectation of privacy.<sup>152</sup> However, the extension of the reasonable expectation of privacy to public spaces was limited. The *Katz* Court stated that “[w]hat a person exposes to the public . . . is not a subject of Fourth Amendment protection.”<sup>153</sup> In his concurrence, Justice Harlan articulated a two-part test to determine whether an individual’s expectation of privacy was reasonable: (1) the person exhibited an actual (subjective) expectation of privacy and (2) the expectation is one that society is prepared to recognize as reasonable.<sup>154</sup> Justice Harlan

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<sup>140</sup> About \$1 million U.S. Dollars. FX Exchange Rate *available at* <http://eur.fxexchangerate.com/usd/815000-currency-rates.html>.

<sup>141</sup> Josh Halliday, *Met Police Trial of Body-Worn Cameras Backed by David Davis*, THE GUARDIAN (May 8, 2014), <http://www.theguardian.com/uk-news/2014/may/08/police-london-issued-body-worn-cameras>.

<sup>142</sup> *Id.*

<sup>143</sup> *Metropolitan Police Officers Start Wearing Body Cameras*, BBC (May 8, 2014), <http://www.bbc.com/news/uk-england-london-27313500>.

<sup>144</sup> *Id.*

<sup>145</sup> Maryam Shah, *Toronto Police to Test Body-Mounted Cameras*, TORONTO SUN (Sept. 22, 2014), <http://www.torontosun.com/2014/09/22/toronto-police-body-cameras-coming-in-november#>.

<sup>146</sup> Maryam Shah, *Toronto Police Prepare for Body Camera Pilot Project*, TORONTO SUN (Oct. 4, 2014), <http://www.torontosun.com/2014/10/04/toronto-police-prepare-for-body-camera-pilot-project#>.

<sup>147</sup> *Id.*

<sup>148</sup> The general principle of American surveillance law is that surveillance is legal unless forbidden. Neil M. Richards, *The Dangers of Surveillance*, 126 HARV. L. REV. 1934, 1942 (2013) Although American law governing surveillance is piecemeal, the Fourth Amendment provides the most relevant protection for the purposes of law enforcement tactics.

<sup>149</sup> U.S. CONST. amend. IV.

<sup>150</sup> 389 U.S. 347 (1967).

<sup>151</sup> Marc Jonathan Blitz, *Video Surveillance and the Constitution of Public Space: Fitting the Fourteenth Amendment to a World That Tracks Image and Identity*, 82 TEX. L. REV. 1349, 1368 (2004).

<sup>152</sup> *Id.* at 1368.

<sup>153</sup> *Katz*, 389 U.S. at 351.

<sup>154</sup> *Id.* at 361 (Harlan, J., concurring).

further explained that activities that an individual exposes to the “plain view” of outsiders are not protected because this signifies the person’s lack of intent to keep his actions private.<sup>155</sup> Under this rubric of individual intent, a conversation in a telephone booth could not be intercepted without warrant because the booth’s occupant is entitled to assume that when he closes the door the telephone booth temporarily becomes a private place where the expectation of privacy is recognized as reasonable.<sup>156</sup>

Most courts have followed Justice Harlan’s test when defining the scope of the reasonable expectation of privacy.<sup>157</sup> The line of cases that followed *Katz* clarified that almost any action exposed to a third party could defeat a reasonable expectation of privacy.<sup>158</sup> Indeed, courts have almost always found the Fourth Amendment inapplicable where a defendant has complained of being videotaped in public.<sup>159</sup> Further, under current Fourth Amendment jurisprudence, a police officer is free to observe a person or activity when there is no reasonable suspicion of criminality, as long as the activity does not amount to a search or seizure.<sup>160</sup> Taken together, there is a strong presumption that body cameras capturing videos in a public space viewable to third-parties would not amount to a constitutional violation.

In private spaces, the filming officer would have to be in compliance with Fourth Amendment search and seizure requirements to avoid constitutional issues surrounding the filming of civilian interactions.<sup>161</sup> With a valid search warrant, body camera recordings of individuals in a private setting would mitigate, but not eviscerate,<sup>162</sup> constitutional concerns.<sup>163</sup>

#### WIRETAPPING STATUTES

The federal wiretapping statute<sup>164</sup> most related to body-worn cameras is included in the Wiretap Act<sup>165</sup>, a portion of the USA Patriot Act of 2001<sup>166</sup> amending the Electronic Communications Privacy Act of 1986 (“ECPA”).<sup>167</sup> Notably, silent video surveillance is not covered under ECPA.<sup>168</sup> Audio recording included in

<sup>155</sup> *Id.*

<sup>156</sup> *See id.*; *see also* United States v. Taketa, 923 F.2d 665, 677 (9th Cir. 1991) (noting that “[p]ersons may create temporary zones of privacy within which they may not reasonably be videotaped . . . even when that zone is a place they do not own or normally control”).

<sup>157</sup> Blitz, *supra* note 151, at 1369.

<sup>158</sup> I. Bennett Capers, *Crime, Surveillance, and Communities*, 40 FORDHAM URB. L.J. 959, 965 (2013).

<sup>159</sup> Blitz, *supra* note 151, at 1378; *see also* Christopher Slobogin, *Public Privacy: Camera Surveillance of Public Places and the Right to Anonymity*, 72 MISS. L.J. 213, 270 (2002) (“Under this caselaw, it would be difficult to argue that monitoring an individual with a camera is a seizure.”). For examples of cases, *see* United States v. McIver, 186 F.3d 1119, 1125–26 (9th Cir. 1999) (holding that images captured by a government agent’s installation of a hidden video camera placed on public, national forest lands, which are open to the public, do not violate the Fourth Amendment); *Taketa* 923 F.2d at 677 (“Video surveillance does not in itself violate a reasonable expectation of privacy. Videotaping of suspects in public places, such as banks, does not violate the fourth amendment; the police may record what they normally may view with the naked eye.”).

<sup>160</sup> *See* Texas v. Brown, 460 U.S. 730, 738 n.4 (1983).

<sup>161</sup> *See also* J. Amy Dillard, *Big Brother Is Watching: The Reality Show You Didn’t Audition for*, 63 OKLA. L. REV. 461, 502 (2011) (“[T]he Supreme Court’s decision in *Kyllo v. United States* suggests that the use of technology in general . . . to enhance surveillance can affect the Fourth Amendment analysis of a potential search.”).

<sup>162</sup> United States v. Torres, 751 F.2d 875, 883 (7th Cir. 1984) (“[A] search could be unreasonable, though conducted pursuant to an otherwise valid warrant, by intruding on personal privacy to an extent disproportionate to the likely benefits from obtaining fuller compliance with the law. ‘[T]here can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails.’”) (quoting *Camara v. Municipal Court*, 387 U.S. 523, 536–37 (1967)).

<sup>163</sup> United States v. Cuevas-Sanchez, 821 F.2d 248 (5th Cir. 1987) (video surveillance of home constituted search, warrant required).

<sup>164</sup> For a comprehensive history of American surveillance law, *see generally* Daniel J. Solove, *Reconstructing Electronic Surveillance Law*, 72 GEO. WASH. L. REV. 1264, 1270–78 (2004).

<sup>165</sup> 18 U.S.C. §§ 2510–2522 (2012).

<sup>166</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

<sup>167</sup> Electronic Communications Privacy Act of 1986, Pub. L. No. 99-508, 100 Stat. 1848. The statute was originally enacted as the Omnibus Crime Control and Safe Streets Act of 1968. Pub. L. No. 90-351, § 802, 82 Stat. 212 (current version at 18 U.S.C. §§ 2510-2520 (2012)).

<sup>168</sup> *See, e.g.*, United States v. Falls, 34 F.3d 674, 680 (8th Cir. 1994); United States v. Koyomejian, 970 F.2d 536, 540 (9th Cir. 1992); United States v. Biasucci, 786 F.2d 504, 508 (2d Cir. 1986).

the video surveillance recommended for a body-worn camera statute would not fall under the statutory protection of the Wiretap Act because the recording would be in a public space, not implicating the protections of the statute or the Fourth Amendment.

Even after passing the constitutional standard for visual public surveillance, every state, except Vermont, and the United States government has criminalized some forms of nonconsensual interception of oral communications through electronic recording devices.<sup>169</sup> However, the statutes vary on three important provisions:

- (1) [W]hether criminal punishment requires a surreptitious or otherwise concealed recording or whether open recording is still prohibited;
- (2) Whether the consent of one party to the conversation, typically the recording party, insulates the recorder from criminal liability or whether the interception remains illicit absent the consent of all parties to the communication; and
- (3) Whether the statute's penalties apply when the party recorded owns no "reasonable expectation of privacy" or is otherwise exempted by virtue of the party's status as a public official or police officer.<sup>170</sup>

While the federal wiretapping statute set a floor on wiretapping restrictions, many of the states have more narrowly regulated the use of wiretapping within their borders. The federal statute prohibits the interception and disclosure of any oral, wire, or electronic communication unless the recorder is a party to the communication, or one party to the communication offers their consent prior to being recorded.<sup>171</sup> Courts have interpreted the statute to punish the recording of oral communication only where the recorded party demonstrated an objective and subjective expectation of privacy—in keeping with *Katz*.<sup>172</sup>

However, some states have forgone the reasonable expectation of privacy standard in their wiretapping statutes and require that all parties consent to be recorded. Both requirements represent a bar that goes beyond what the federal legislation mandates. The two states that require all-party consent are Massachusetts and Montana.<sup>173</sup> Despite these stringent requirements, the statutes in both states only apply to recordings made in secret.<sup>174</sup>

**Massachusetts.** The Massachusetts statute applies to law enforcement officials, unless they obtain a court order to investigate an enumerated list of crimes committed in furtherance of an organized criminal enterprise.<sup>175</sup>

**Montana.** The Montana statute contains an exception for public employees who record an interaction while performing their official duties.<sup>176</sup> Despite the exception, the state's supreme court has noted that the constitutional right to privacy that Montana's citizens are given under the state constitution narrows the range

<sup>169</sup> Jesse Harlan Alderman, *Police Privacy in the iPhone Era?: The Need for Safeguards in State Wiretapping Statutes to Preserve the Civilian's Right to Record Police Activity*, 9 FIRST AMEND. L. REV. 487, 489 (2011). Although Vermont does not have a wiretapping statute, the state's supreme court "has held that the state constitution's privacy provision protects individuals from certain types of wiretapping or illicit recording." *Id.* at 489 n.3.

<sup>170</sup> *Id.* at 490.

<sup>171</sup> 18 U.S.C. §§ 2511(2)(c)–(d) (2012).

<sup>172</sup> Alderman, *supra* note 169, at 493.

<sup>173</sup> In the 2013, the Montana Supreme Court in *State v. Dugan*, 303 P.3d 755 (Mont. 2013), partially struck down the state's privacy in communication law. *See id.* at 772. The court decided that the statute's prima facie provision was unconstitutionally overbroad. *Id.*

<sup>174</sup> Mass Gen. Laws ch. 272 § 99(B); Mont. Code Ann. § 45-8-213(1)(c), *invalidated in part by* Dugan, 303 P.3d.

<sup>175</sup> *Id.* § 99(D)–(N).

<sup>176</sup> Mont. Code Ann. § 45-8-213(1)(c)(1).

of warrantless searches that may be under the federal constitution<sup>177</sup>— a holding that implies that an unwarranted police recording of communications may still violate the state constitution.<sup>178</sup>

**Illinois.** Until March 2014, Illinois had the most restrictive wiretapping statute in the country. The Illinois Eavesdropping Act<sup>179</sup> imposed criminal penalties on any person, including police officers, who used an eavesdropping device to record part or all of any conversation unless the recorder had gained the consent of all parties.<sup>180</sup> The statute defined “conversation” as “any oral communication between [two] or more persons regardless of whether one or more of the parties intended their communication to be of a private nature under circumstances justifying that expectation.”<sup>181</sup> Further, the statute applied to both open and secret recordings.<sup>182</sup> Finally, the Illinois law provided a narrow exception for police who obtained a court order and for any person who recorded a meeting under the state’s Open Meetings Statute.<sup>183</sup>

However, the Illinois Supreme Court ruled the statute unconstitutional in *People v. Melongo*.<sup>184</sup> The court reasoned that since the statute as written deemed all conversation to be private and, as a result, not subject to recording absent the consent of all parties, even the participants had no expectation of privacy, thus criminalizing a wide range of innocent conduct in recording conversations.<sup>185</sup> The court said that the statute criminalized, for example, “a loud argument on the street, a political debate on a college quad, yelling fans at an athletic event, or any conversation loud enough that the speakers should expect to be heard by others;” none of which implicated privacy concerns but the recording of which was made a crime under the law.<sup>186</sup> Therefore, the Illinois Supreme Court held that the recording provision of the statute was unconstitutional on its face because a “substantial number of its applications” violated the First Amendment.<sup>187</sup>

Taken together, the Massachusetts statute, the Montana statute, and the unconstitutional Illinois statute provide guideposts for how to draft legislation that will meet state constitutional challenges.

#### IMPLICATIONS OF THE FREEDOM OF INFORMATION ACT AND STATE SUNSHINE LAWS ON VIDEO SURVEILLANCE

FOIA applies to records of the federal government’s Executive Branch and does not apply to the records of, among other entities, state or local government agencies.<sup>188</sup> As a result, each state has their own open record laws that govern the disclosure process for information kept by their respective governments. A number of states explicitly define public records to include audiovisual recordings. For example, in California, a public record includes “every . . . means of recording upon any tangible thing any form of communication or representation, including . . . words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.”<sup>189</sup> In contrast to the explicit wording in the above statute, many other states’ definitions of public records can be read to include audiovisual recordings. As an example, Delaware’s open records statute defines a public record as:

<sup>177</sup> *State v. Goetz*, 191 P.3d 489, 494 (Mont. 2008).

<sup>178</sup> Alderman, *supra* note 169, at 509.

<sup>179</sup> 720 Ill. Comp. Stat. §§ 5/14-1–2, *invalidated by* *People v. Melongo*, 6 N.E.3d. 120 (Ill. 2014).

<sup>180</sup> *Id.* § 5/14-2(a)(1)(A).

<sup>181</sup> *Id.* § 5/14-1(d).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* § 5/14-2(b).

<sup>184</sup> 6 N.E.3d. 120 (Ill. 2014).

<sup>185</sup> *Id.* at 126.

<sup>186</sup> *Id.*

<sup>187</sup> *Id.* at 127.

<sup>188</sup> *FOIA Reference Guide*, DEP’T. OF JUSTICE (Jan. 2010), <http://www.justice.gov/oip/departments-justice-freedom-information-act-reference-guide-january-2010>.

<sup>189</sup> Cal Gov’t Code § 6252(g); *see also id.* § 6252(e).



[I]nformation of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced.<sup>190</sup>

Although the definitions for what constitutes a public record vary among the states, the language generally falls between that of the California and Delaware open records laws.

Like FOIA, many of the states' open records statutes contain exemptions to what government records must be available for disclosure. Every state statute contains an exemption for the release of police records; however, some states provide exemptions that are broader than others. On the more restrictive end of the spectrum, Pennsylvania's open records statute creates a broad exemption for agency records that relate to or result in a criminal investigation.<sup>191</sup> On the other extreme, Arizona's open records law generally allows for the release of police records. Under the statute, "[p]ublic records and other matters in the custody of any officer shall be open to inspection by any person at all times during office hours."<sup>192</sup> Despite the large gap in these two forms of statutory language, most states' open records laws tend toward exempting police records that relate to active investigations.<sup>193</sup>

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### 3. VIDEO FOOTAGE AS EVIDENCE

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One of the most significant questions asked by opponents of surveillance systems is "[w]hat will the police department do with the film?"<sup>194</sup> Data management is an issue most fittingly addressed by municipal police departments adhering to state-promulgated standards, as the large amounts of organizing, filing, and designation will likely be handled by the recording officer. However, the interdepartmental sharing of video data and the use of video footage in court are issues addressed in other contexts and by case law.

Movies and videos are admissible in evidence on the same evidentiary basis as photographs.<sup>195</sup> Generally, strict proof of the chain of custody for video evidence is not necessary in many courts;<sup>196</sup> the proponent may establish the chain of custody through testimony.<sup>197</sup> While body-worn cameras typically upload the footage directly to the database minimizing chain of custody issues, consistent with the purpose of a body-worn camera program to create transparency and accountability, a state statute may require a stronger chain of custody requirements to ensure proper uploading and consistency in procedures. When an arrest is made on the basis of video evidence, the film is admissible at the trial of the suspect who was filmed.<sup>198</sup> Courts have been willing to admit the filmed evidence in criminal cases where the officer had probable cause to believe that a crime had been committed.<sup>199</sup>

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<sup>190</sup> 29 Del. C. § 10002(l).

<sup>191</sup> 65 P.S. Public Officers § 67.708(b)(16).

<sup>192</sup> A.R.S. § 39-121.

<sup>193</sup> CHRISTINE BECKETT, PRIVATE EYES: CONFIDENTIALITY ISSUES AND ACCESS TO POLICE INVESTIGATION RECORDS, REPORTERS COMM. FOR FREEDOM OF THE PRESS 2 (2010) ("Most states . . . have provisions that ongoing investigations into criminal conduct exempt.").

<sup>194</sup> Granholm, *supra* note 87, at 706.

<sup>195</sup> Hon. James P. Flannery, Jr., *Using Videos at Trial: The Big Picture What Foundation Is Needed to Introduce A Video at Trial in Illinois? Are Videos Subject to Discovery? What Special Rules Apply to Day-in-the-Life and Surveillance Videos?* *The Author*, 95 ILL. B.J. 642, 643 (2007).

<sup>196</sup> 2 LAW OF ELECTRONIC SURVEILLANCE § 7:59 (citing *People v. Taylor*, 956 N.E.2d 431, 440 (Ill. 2011)).

<sup>197</sup> *Id.* (citing *Wells v. State*, 604 So. 2d 271, 277 (Miss. 1992); *State v. Day*, 447 S.E.2d 576, 579 (W. Va. 1994)).

<sup>198</sup> Granholm, *supra* note 87, at 706–07 (citing *People v. Barker*, 300 N.W.2d 648 (Mich. Ct. App. 1980); *People v. Heading*, 197 N.W.2d 325 (Mich. Ct. App. 1972); *People v. Mines*, 270 N.E.2d 265 (Ill. App. Ct. 1971)). *See generally* 16 AM. JUR. PROOF OF FACTS 3d 493 (1992) ("Case law thus regularly supports the proposition that duly verified videotapes are admissible in evidence on the same basis as motion picture films and subject to the same rules applicable to photographic evidence generally.") (citations omitted); Annotated, *Admissibility of Visual Recording of Event or Matter Giving Rise to Litigation or Prosecution*, 41 A.L.R. 4TH 812, § 16 (1985).

<sup>199</sup> *Id.*

The state's duty to preserve potentially useful evidence in criminal cases arises under the Fourteenth Amendment's guarantee of due process.<sup>200</sup> However, this duty is extremely limited under the Constitution, as "a defendant must show that evidence was destroyed in bad faith by showing that it was potentially useful, and therefore its destruction deprived the defendant of due process."<sup>201</sup> When the exculpatory value of the evidence is apparent (a higher bar than *Youngblood's* "potentially useful" standard), the defendant need not establish good faith.<sup>202</sup> Under state constitutions, many jurisdictions hold that good or bad faith is not dispositive of whether a defendant received due process of law.<sup>203</sup>

Similarly, the statute should also consider civil litigation implications of data retention policies.<sup>204</sup> Specific retention policies for video evidence can comply with other routine destruction of evidence doctrines in that state,<sup>205</sup> which would limit the collection of indiscriminate data<sup>206</sup> and eradicate indefinite retention.<sup>207</sup> Because a major benefit to body-worn cameras is providing an evidentiary record for citizen complaints, the statute of limitations requirements should influence video retention policies. The statutory mandate for deletion of video footage must work in concert with the timeline for filing an action under applicable statutes of limitations for a police civil rights action.<sup>208</sup> The retention guidelines mandated by state legislation must strike a balance between the value of the evidence for litigation and privacy concerns.

<sup>200</sup> See *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988) ("[U]nless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law."). In the Federal context with some overlap in state courts, six distinct doctrines control the destruction of evidence by the prosecution: (1) the spoliation inference; (2) Constitutional limits on evidence destruction; (3) The Jencks Act; (4) Federal Rule of Criminal Procedure 16; (5) the supervisory powers of the courts over police and prosecutor; and (6) Common law or constitutional tort. JAMIE S. GORELICK ET AL., DESTRUCTION OF EVIDENCE, § 6.1 Routine Destruction of Evidence: Introduction (2014).

<sup>201</sup> Catherine Greene Burnett, *"If Only": Best Practices for Evidence Retention in the Wake of the DNA Revolution*, 52 S. TEX. L. REV. 335, 339 (2011) (citing *Youngblood*, 488 U.S. at 58). *Youngblood* has evolved in "at least ten states [that] have either explicitly or implicitly rejected the bad-faith standard of due process analysis . . . in favor of a totality-of-circumstances, multi-factor balancing test that shifts focus from the conduct of the police to the nature of the evidence including its materiality and impact on the defense case." *Id.* at 344.

<sup>202</sup> *California v. Trombetta*, 467 U.S. 479, 489 (1984).

<sup>203</sup> Norman C. Bay, *Old Blood, Bad Blood, and Youngblood: Due Process, Lost Evidence, and the Limits of Bad Faith*, 86 WASH. U.L. REV. 241, 287 (2008) (noting that in the decade following *Youngblood*, ten states, either explicitly or implicitly, spurned *Youngblood's* bad faith standard in interpreting due process under their own constitutions) (citations omitted); see also 40 A.L.R. 5th 113 (citing *State v. Morales*, 657 A.2d 585 (Conn. 1995)).

<sup>204</sup> GORELICK, *supra* note 200 at § 8.1 ("[C]avalier operation of document-destruction programs carries grave risks. Organizations make themselves vulnerable to sanctions when they fail to suspend their programs and destroy evidence relevant to pending, imminent, or reasonably foreseeable litigation. They also expose themselves to sanctions when they destroy records systematically requested in the course of litigation customary to their lines of business.").

<sup>205</sup> See generally *United States v. Gomez*, 191 F.3d 1214, 1219 (10th Cir. 1999) ("[D]estruction of evidence in accordance with an established procedure precludes a finding of bad faith absent other compelling evidence.") (quoting *United States v. Deaner*, 1 F.3d 192, 202 (3d Cir. 1993)); *State v. Casselman*, 114 P.3d 150, 154 (Idaho Ct. App. 2005) (finding that police who destroy evidence while acting according to procedure are, at most, negligent); *State v. Schexnayder*, 685 So.2d 357, 366 (La. Ct. App. 1996) (use of "standard operating procedures" in handling evidence not bad faith); *Patterson v. State*, 741 A.2d 1119, 1129 (Md. 1999) (following "standard police procedure" not bad faith); *State v. Hall*, 768 P.2d 349, 350 (Nev. 1989) (stating that there is no bad faith where a chemist saved a blood sample "for a reasonable period of time and then disposed of it in accordance with his routine practice and for a legitimate purpose"); *State v. Wittenbarger*, 880 P.2d 517, 522 (Wash. 1994) ("[C]ompliance with . . . established policy regarding the evidence at issue . . . [is] determinative of good faith.").

<sup>206</sup> See N.H. Rev. Stat. § 236:130 and Me. Rev. Stat. 29-A, § 2117-A (limiting the collection of indiscriminate data from Automatic License Plate Recognition technology); see also *Rushin*, *supra* note 75, at 286 (discussing legislative efforts to limiting the collection of indiscriminate data from Automatic License Plate Recognition technology); *Cuevas-Sanchez*, 821 F.2d at 251 ("This type of surveillance provokes an immediate negative visceral reaction: indiscriminate video surveillance raises the spectre of the Orwellian state.").

<sup>207</sup> Jack M. Balkin, *The Constitution in the National Surveillance State*, 93 MINN. L. REV. 1, 25 n.61 (2008) (noting that our surveillance and information privacy laws say little about data retention and that much of what they say provides incentives for indefinite retention) (citations omitted).

<sup>208</sup> Michael E. Rosati, *Wrestling with Technology in the Defense of Police Civil Rights and Liability*, in REPRESENTING MUNICIPALITIES IN LITIGATION 6, 2013 WL 9703 (2013).

## CAMERA PERSPECTIVE BIAS &amp; IMPLICIT BIAS

A complex issue surrounding video footage as evidence occurs when film is treated as a “depiction of reality.”<sup>209</sup> The power of visual evidence<sup>210</sup> in criminal outcomes is apparent, as “[s]tudies have shown that the mere presence of a photograph at trial (even a neutral one) significantly increases the conviction rate compared to when no photos are shown (up to 38% from only 8.8%).”<sup>211</sup> Both implicit bias and camera perspective bias influence the evidentiary value of video footage.

**Camera Perspective Bias.** “Camera perspective bias” is a problematic feature of video footage in the evidentiary record. A recent New York Times article articulated concerns that body cameras may more closely mirror the officer’s subjective experience than the victim’s. This might potentially lead individuals reviewing the footage to inadvertently disregard officers’ aggressive behavior. As the article explains:

In a series of experiments led by the psychologist G. Daniel Lassiter of Ohio University, mock juries were shown exactly the same interrogation, but some saw only the defendant, while others had a wider-angle view that included the interrogator. When the interrogator isn’t shown on camera, jurors are significantly less likely to find an interrogation coercive, and more likely to believe in the truth and accuracy of the confession that they hear — even when the interrogator explicitly threatens the defendant.<sup>212</sup>

Visual jurisprudence<sup>213</sup> and its role in fact-based justice have been similarly questioned:

As viewers, we may think we are getting the whole picture, but every camera frames its own point of view. With equal certainty we may believe in the digital images that we see, but how can we be sure of their basis in reality?<sup>214</sup>

Because a body-worn camera is of necessity pointed outwards, away from the police officer, policy or statutory tools are limited in their ability to address camera perspective bias resulting from body-camera use. However, limiting officer discretion regarding the on-off switch can prevent some of the drawbacks of camera framing because policies can ensure that the video captures the entirety of the police-citizen interaction from start to finish.<sup>215</sup>

**Implicit Bias.** Current science “demonstrates that disparate treatment can result not only from the deliberate application of consciously endorsed prejudiced beliefs, but also from the unwitting and uncorrected influence of implicit attitudes and associations in the social-perception process.”<sup>216</sup> The foremost diagnostic of unconscious bias finds that most people have an implicit bias against members of traditionally disadvantaged

<sup>209</sup> Jessica Silbey, *Cross-Examining Film*, 8 U. MD. L.J. RACE, RELIGION, GENDER & CLASS 17 (2008).

<sup>210</sup> Richard K. Sherwin, *Visual Jurisprudence*, 57 N.Y.L. SCH. L. REV. 11, 15 (2013) (“[I]mages do not merely add to words. They are transformative, both qualitatively and quantitatively, which is to say, both in terms of the content that they display and the efficacy of emotion and belief that they evoke.”).

<sup>211</sup> *Id.* at 30 (2013) (citing D.A. Bright & J. Goodman-Delahunty, *Gruesome Evidence and Emotion: Anger, Blame, and Jury Decision-Making*, in LAW AND HUMAN BEHAVIOR 183 (2006)).

<sup>212</sup> *Can a Jury Believe What It Sees?*, N.Y. TIMES (July 13, 2014), [http://www.nytimes.com/2014/07/14/opinion/videotaped-confessions-can-be-misleading.html?\\_r=0](http://www.nytimes.com/2014/07/14/opinion/videotaped-confessions-can-be-misleading.html?_r=0) (citing G. Daniel Lassiter et al., *Videotaped Interrogations and Confessions: A Simple Change in Camera Perspective Alters Verdicts in Simulated Trials* 87 J. APPLIED PSYCH. 867 (2002)).

<sup>213</sup> Visual jurisprudence is the vast array of visual evidence or the production of argument using visual structures such as charts, drawings, digital simulations, computer displays, or videos.

<sup>214</sup> Sherwin, *supra* note 210, at 14.

<sup>215</sup> *Id.* at 24 n.49 (“As legendary cinematographer Haskell Wexler once put it, when the camera turns on—beginning at one discrete point in time and ending in another—reality is changed.” (citing Conference, *Visual Evidence VII*, U.C.L.A. (Aug. 20, 1999))); *see also*, e.g., DON IHDE, TECHNOLOGY AND THE LIFE WORLD 42, 46 (1990) (discussing the extent to which we are situated in the world, and see as a particularly situated person from a particular vantage, toward others otherwise situated).

<sup>216</sup> Linda Hamilton Krieger & Susan T. Fiske, *Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment*, 94 CAL. L. REV. 997, 1034 (2006).

groups.<sup>217</sup> Not only are implicit biases pervasive, but they are “especially problematic, because they can produce behavior that diverges from a person’s avowed or endorsed beliefs or principles.”<sup>218</sup>

In evaluating video footage and the evidentiary record, this same bias is implicated.<sup>219</sup> As exemplified in the Supreme Court’s evaluation of dashboard camera footage in *Scott v. Harris*, the recordings of police search and seizure conduct might not impress all viewers the same way.<sup>220</sup> Some judges viewing the images may tend to see the police actions as justified, even if others would not.<sup>221</sup> Without having some correction for implicit bias, body-worn cameras might not actually influence Fourth Amendment compliance in litigation outcomes.<sup>222</sup> More importantly, evaluators of the footage may consider the video and themselves to be “objective” without understanding that internal biases play an important role in any evaluation.<sup>223</sup>

In the criminal justice context, correcting for implicit bias through litigation is difficult within the confines of current antidiscrimination law.<sup>224</sup> For example in racial profiling cases, the Fourth Amendment’s standard of reasonable suspicion allows for implicit bias to go unchecked and unpunished. Claims of discrimination would be litigated under the Equal Protection clause, which requires the claimants to show intentional discrimination.<sup>225</sup> Implicit bias and evidence of intentional discrimination are incompatible.<sup>226</sup>

Because implicit bias pervades the criminal justice system, corrective measures can be taken through legal standards that consider the shortcomings of visual evidence. In order to capture the maximum benefits from body-worn cameras, “[w]e need to incorporate new visual benchmarks into the rhetoric of law in order to cope with the epistemological, ontological, and metaphysical quandaries that accompany law’s migration to the screen.”<sup>227</sup> Legislatures should pay close attention to the best available evidence about people’s actual evaluations of video evidence in light of legal rules.<sup>228</sup> While the data created by body-worn cameras create a stronger evidentiary record for criminal and civil litigation, the applicable laws in the proceeding must also recognize the limitations of this video evidence. Overall, the benefits of the data from body-worn cameras as evidence may be limited due to its form as video evidence and the pervasiveness of implicit bias.

<sup>217</sup> Christine Jolls & Cass R. Sunstein, *The Law of Implicit Bias*, 94 CAL. L. REV. 969 (2006).

<sup>218</sup> Anthony G. Greenwald & Linda Hamilton Krieger, *Implicit Bias: Scientific Foundations*, 94 CAL. L. REV. 945, 951 (2006).

<sup>219</sup> Silbey, *supra* note 209, at 37 (noting the partiality and bias inherent in all film).

<sup>220</sup> See Nicole E. Negowetti, *Judicial Decisionmaking, Empathy, and the Limits of Perception*, 47 AKRON L. REV. 693, 733 (2014) (discussing *Scott v. Harris* as another Fourth Amendment case in which the Supreme Court had to “slosh its way through the factbound morass of reasonableness” and describing the justices differing views of the footage) (citations omitted).

<sup>221</sup> See generally, Dan M. Kahan, et. al., *Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837 (2009).

<sup>222</sup> See Harris, *Picture This*, *supra* note 47, at 367–68.

<sup>223</sup> “Technological advances that can put appellate judges in shoes that very much resemble those of jurors and trial judges raise questions about whether appellate courts should defer to judges and juries as they traditionally have done . . . .” Joan Steinman, *Appellate Courts As First Responders: The Constitutionality and Propriety of Appellate Courts’ Resolving Issues in the First Instance*, 87 NOTRE DAME L. REV. 1521, 1524 (2012). See generally, Dan M. Kahan et al., *supra* note 221, at 841–42. (critiquing the Supreme Court’s circumvention of jury’s role as a result of its interpretation of police dashboard video).

<sup>224</sup> Jolls & Sunstein, *supra* note 217, at 996 n.45 (citing voluminous scholarly literature critiquing existing antidiscrimination law, both constitutional and statutory, for its general failure to address the problem of implicit bias).

<sup>225</sup> See *Whren v. United States*, 517 U.S. 806, 813 (1996) (“But the constitutional basis for objecting to intentionally discriminatory application of laws is the Equal Protection Clause, not the Fourth Amendment.”).

<sup>226</sup> See Kami Chavis Simmons, *Beginning to End Racial Profiling: Definitive Solutions to an Elusive Problem*, 18 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 25, 29 (2011) (substantiating these claims is extremely difficult especially in light of *Whren* and its allowance of race-neutral reasons to stop suspects).

<sup>227</sup> Sherwin, *supra* note 210, at 38.

<sup>228</sup> Jolls & Sunstein, *supra* note 217, at 972.

## II. INCORPORATING POLICY CONSIDERATIONS INTO STATE LEGISLATION

A legislative mandate cannot address all of the deep contours of body-worn camera policy in its implementation phase. However, it is important to create a common core to address the minimum standards that police departments must meet to obtain the benefits and reduce the costs of body-worn cameras. Additionally, delegating authority, such as through the creation of a commission and independent ombudsmen, produces flexibility to create and facilitate standards appropriate for individual police departments without jeopardizing the core of the initiative.

### POLICY CONSIDERATIONS

The model state legislation presented in this document addresses the majority of policy concerns at some level, but also reflects a conscious decision to allow flexibility for police department-specific protocols to shape use of the technology. Recognizing that not all issues can be addressed directly through the legislation, legislative committees and executive bodies on both the state and local level must fulfill their duties by assisting police departments in enumerating and examining procedures during execution stages.

#### 1. FUNDING

Law enforcement's use of body-worn cameras implicates myriad policy concerns. Policy concerns surrounding funding and scalability are particularly relevant following a White House initiative to purchase 50,000 body-worn cameras.<sup>229</sup>

As with other public sector organizations, the 2008 economic crisis impacted police departments across the country. Many states and municipalities cut their budgets deeply in response to the economic headwinds that the recession caused, and police departments were not spared from the spending reductions. Police organizations have estimated that as many as 15,000 police officers lost their jobs in the years following the Great Recession.<sup>230</sup> Even though the economy is growing and tax revenue is increasing, spending needs have been anticipated to outpace revenue growth.<sup>231</sup> This fiscal reality means that, absent a concurrent increase in revenue, states will not have extra room to increase spending on new ventures that could be deemed non-essential expenditures. The upshot of all this is that states cannot afford to be subject to unfunded or underfunded mandates in their implementation of police-worn body cameras.

Given the political difficulty of raising taxes, some current legislation calls for an increase in fees and penalties as a means of financing the purchase, maintenance, and update of body-cameras. A policy considered by this Report (but not adopted) was an increase in the fees charged to sex offenders and in the fees and penalties associated with other, more mundane activities, such as parking tickets or driver's license renewals. This policy was modeled on the proposed New Jersey legislation that mandates police body-worn cameras.<sup>232</sup> Ultimately, however, we determined that this option implicated at least two significant equality concerns: (1) there is a concern that even if legislation looks to increase the penalties for offenses devoid of police discretion (such as parking tickets), a disproportionate number of the individuals who will come into contact with police officers will be low-income residents of color; (2) there is a concern that any increase in fees

<sup>229</sup> *Fact Sheet: Strengthening Community Policing*, WHITE HOUSE (Dec. 01, 2014)

<http://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing>.

<sup>230</sup> THE IMPACT OF THE ECONOMIC DOWNTURN ON AMERICAN POLICE AGENCIES, DEP'T OF JUSTICE 13 (2011).

<sup>231</sup> See *State Budget Actions FY 2013 and FY 2014*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/fiscal-policy/state-budget-actions-fy2013-and-fy2014.aspx> (last visited Nov. 30, 2014).

<sup>232</sup> S.B. 2518, 216th Leg (N.J. 2014), available at [http://www.njleg.state.nj.us/2014/Bills/S3000/2518\\_I1.HTM](http://www.njleg.state.nj.us/2014/Bills/S3000/2518_I1.HTM).



would be borne most heavily by low-income residents of all ethnic backgrounds who already struggle to cover fees and penalties at their current level. While states will have various options for a funding mechanism, one possible solution to the above mentioned issues is to limit the number of individuals who would be subject to any increased penalties used to fund body-worn camera legislation. Specifically, increased penalties could only be applied to individuals with incomes above two-hundred percent of the federal poverty limit; those offenders whose incomes fall below two-hundred percent of the federal poverty level would only be subject to current penalties.

Finally, another potential source of funds for states to administer body-worn camera programs is President Obama's Body Worn Camera Partnership Program. The President's proposal would provide a fifty percent match to states or localities that purchase body-worn cameras and data storage.<sup>233</sup> The program would provide \$75 million over three years to help purchase 50,000 body-worn cameras.<sup>234</sup>

### SCALE

In order to maximize returns while trying to keep costs low, policymakers might be attracted to adjusting the scale of camera programs by concentrating camera deployment in high-crime areas and in areas with high rates of citizen complaints, based on the theory that targeting such areas will yield the greatest return on state or municipal investment in terms of deterring and disposing of baseless citizen complaints and improving officer conduct. Moreover, confining deployment of cameras to these areas might also reduce the number of cameras that need to be purchased as well as the amount of data requiring storage, which in turn might help to alleviate some of the strain on state, municipal, and departmental budgets.

Despite these attractions, there is reason to be wary of this "targeting" approach. Below we set out several factors that weigh against adopting such an approach to camera deployment:

- **The primary goal of implementing a body-worn camera program is to improve police-citizen interactions for *all*.** The proposed legislation accompanying this Report is premised on the idea that all stakeholders — communities, departments, municipalities, and states alike — stand to benefit from integrating body-worn cameras into police practice as a regular and expected part of everyday policing. This regularization cannot occur in a "targeting" scenario, where cameras are deployed essentially as an extraordinary tool reserved for the "worst" communities.
- **The "targeting" approach might stigmatize targeted communities.** To the extent that communities are targeted based on some undesirable characteristic, over time body-worn cameras may come to be viewed as a source of stigma. Should they be viewed this way, communities may shun them as indicative of undesirability, which would disrupt the regularization of camera use. The issue of stigma may be particularly problematic if the basis for targeting results in the deployment of cameras at higher rates in communities of color, where stigmatization based on other characteristics may already be a concern. Note also that despite their many benefits, body-worn cameras do impose costs in the form of reductions of privacy and potential for misuse. To the extent that a "targeting" approach might concentrate these costs in certain communities, there may be a sense that deployment of body-worn cameras constitutes a sort of punishment; a sentiment that would likely contribute to resentment toward body-worn camera programs.
- **The "targeting" approach would hold members of targeted communities to a higher behavioral standard than that to which members of other communities are held.** The use of body-worn cameras effectively sets a new behavioral standard for citizens and officers alike. Faced with the

<sup>233</sup> *Fact Sheet: Strengthening Community Policing*, *supra* note 229.

<sup>234</sup> *Id.*

knowledge that their conduct is being memorialized in an audio/video recording, citizens and officers are motivated to behave in as professional and/or courteous a manner as possible. While this is a chief benefit of a camera program, a certain degree of inequity comes into play if members of other communities are not held to the same standard. To put it bluntly, it hardly seems fair that the mistakes or misconduct of some citizens would be memorialized in a recording that can be used against them, while the mistakes or misconduct of citizens in other communities are not. In as far as the selective deployment of body-worn cameras has the potential for this sort of inequity, we find it problematic.

It is in light of the foregoing concerns that the legislation proposed in this Report would impose an obligation on *all* officers to utilize body-worn cameras. Although we recognize that many departments have initiated pilot programs in particular areas under their jurisdiction, we recommend that the implementation of full-scale programs include a requirement for officers in *all* areas to use cameras in the regular course of their duty.

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## 2. PUBLIC ACCESS TO RECORDINGS

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Compliance with the federal and state constitutions is arguably the floor for policy considerations surrounding public access to video recordings.

In some jurisdictions, municipal police departments deny public requests for body-camera video footage when departments claim the footage is not part of the public record.<sup>235</sup> Furthermore, the police claim that the footage is not admissible in court, which diminishes the statute's goals of ensuring transparency and the availability of thorough evidence.<sup>236</sup> The degree to which footage should actually be viewable by public records request or in a courtroom is currently being debated across the country, including in Ohio,<sup>237</sup> Washington,<sup>238</sup> and Colorado.<sup>239</sup> The need for transparency must be weighed against both legitimate police and citizen concerns about making every interaction recorded by the police a matter of public record.

A statutory mandate is a means to decide just how broadly accessible the footage will be. Any state statute, along with municipal policies, should counter the work of some police departments to keep footage out of people's hands when the footage is needed most.

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## 3. PRIVACY CONCERNS

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The third issue concerns the matter of the "legitimizing role of crime prevention," or as other critics have posited, "To what extent does crime prevention legitimise impinging on any interests of privacy or anonymity in public space?"<sup>240</sup> While the purpose of the mandatory use of police body cameras is intended to increase officer accountability, use of the cameras may have consequences that implicate the privacy interests of the public. While an increase in public surveillance in itself is not unconstitutional, a growth in the surveillance state is the most direct negative consequence that may result from increasing use of police body cameras.

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<sup>235</sup> Sara Libby, *Even When Police Do Wear Cameras, Don't Count on Seeing the Footage*, THE ATLANTIC (Aug. 18, 2014), <http://www.citylab.com/crime/2014/08/even-when-police-do-wear-cameras-you-cant-count-on-ever-seeing-the-footage/378690/>.

<sup>236</sup> *Id.*

<sup>237</sup> Jeremy Pelzer, *Could Cleveland Police Keep Body-Camera Footage Secret? Ohio Law Is Unclear*, CLEVELAND.COM (Oct. 16, 2014), [http://www.cleveland.com/open/index.ssf/2014/10/could\\_cleveland\\_police\\_keep\\_bo.html](http://www.cleveland.com/open/index.ssf/2014/10/could_cleveland_police_keep_bo.html).

<sup>238</sup> Op-Ed, *What Limits Should Go on Police Body Cam Footage?*, NEWS TRIB., (Nov. 19, 2014), [http://www.thenewtribune.com/2014/11/19/3495634\\_what-limits-should-go-on-police.html?rh=1](http://www.thenewtribune.com/2014/11/19/3495634_what-limits-should-go-on-police.html?rh=1).

<sup>239</sup> Noelle Phillips, *Citizens Question Denver Police Oversight of Body Camera Footage*, DENVER POST (Sept. 7, 2014), [http://www.denverpost.com/news/ci\\_26483675/citizens-question-denver-police-oversight-body-camera-footage](http://www.denverpost.com/news/ci_26483675/citizens-question-denver-police-oversight-body-camera-footage).

<sup>240</sup> See A. von Hirsch, *The Ethics of Public Television Surveillance*, in ETHICAL AND SOCIAL PERSPECTIVES ON SITUATIONAL CRIME PREVENTION 59–76 (A. von Hirsch, D. Garland & A. Wakefield eds., 2000).

Further, increased surveillance caused by the proliferation of police body cameras would disproportionately impact low-income and communities of color in which there are already heavy police presences.

The Rialto study confirmed that policy concerns such as privacy and data security are better addressed through state legislation than through piecemeal policies implemented by individual police departments.<sup>241</sup> The model legislation proposed here contemplates ways to mitigate surveillance concerns. The model legislation also contemplates the proliferation of body-worn cameras by confining their use to sworn officers. This means that agencies such as parking enforcement would not be allowed to operate body-worn cameras. Most significantly, the model legislation clearly details the circumstances in which a body-worn camera *must* be turned on. To account for creative interpretations arrived at through use of the interpretative canons of construction, inclusive words like “including” and “such as” were left out to make it clear that the legislation presents an *exclusive list* of moments when a body-worn camera should be activated. As such, police officers are not at liberty to have their cameras on at all times and in all places, a fact which somewhat mitigates the concern of ubiquitous surveillance.

Another privacy concern is related to access to the recorded material once it is created. Even with restrictions on the circumstances when police officers are mandated to record their interaction with civilians, ready public access to the recorded material would be detrimental to the privacy interests of those civilians involved in the interaction as well as those of the citizens who were captured on video but were *not* involved in the interaction. Because material recorded by the police is considered a public record, it is subject to open records statutes that allow the public to request government material. The model legislation seeks to address this issue by including a provision that adds material recorded by police body-worn cameras to the list of exemptions that states’ open records statutes include. However, this exemption would not prevent requests for the recorded material from the individuals who were primary participants in an interaction with the police.

#### AFFIRMATIVE WARNING?

Related to privacy concerns, under a body-worn camera regime it is important for citizens to know that their interactions with police officers will be recorded.<sup>242</sup> As such, police officers with body-worn cameras should notify the civilians with whom they are interacting about the use of the camera during the interaction. There are a number of considerations that support the issuance of an affirmative warning before the use of a body-worn camera. As a matter of privacy policy, citizens should be made aware when their actions can be captured on film and potentially viewed at a later time. Given that some states require that all parties must give their consent before being recorded, it is important that any statute regulating the recording of police-civilian interactions deals with the requirements for consent to be recorded found in the states’ wiretapping laws. Finally, an affirmative warning can have a positive effect on police interactions. Lieutenant Harold Rankin, who oversaw the body-worn camera program in Mesa agrees, “When our officers encounter a confrontational situation, they’ll tell the person that the camera is running. That’s often enough to deescalate the situation.”<sup>243</sup>

<sup>241</sup> See J. David Goodman, *New York Police Officers to Start Using Body Cameras in a Pilot Program*, N.Y. TIMES (Sept. 4, 2014), [http://www.nytimes.com/2014/09/05/nyregion/new-york-police-officers-to-begin-wearing-body-cameras-in-pilot-program.html?\\_r=0](http://www.nytimes.com/2014/09/05/nyregion/new-york-police-officers-to-begin-wearing-body-cameras-in-pilot-program.html?_r=0) (“So far, departments around the country have been largely on their own in drafting policies over basic questions, like when the cameras should be turned on.”); see also Devin Coldewey, *Cop Watch: Who Benefits When Law Enforcement Gets Body Cams?*, NBC NEWS (Aug. 19, 2013), <http://www.cnbc.com/id/100971859> (“While the cameras seem to impact police and citizen behaviors when on, exactly when they’re on varies by police department. Some are automatic, others are triggered at the discretion of the officer, which can raise questions about what officers choose to record — or not.”).

<sup>242</sup> U.S. v. Falls, 34 F.3d 674, 680 (8th Cir. 1994) (noting that “silent video surveillance . . . results in a very serious, some say Orwellian, invasion of privacy”).

<sup>243</sup> Miller et al., *supra* note 6.

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## WIRETAPPING LAWS

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Language in body-worn camera legislation can exempt the program from regulations that states have placed on most recordings.

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### 4. CAMERA FUNCTION

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Legislation of general applicability mandating the use of body-worn camera technology must mediate between two seemingly conflicting impulses. On the one hand, it seems fundamental that the aim of any legislation mandating the use of body-worn cameras should be to improve access to quality policing for *all*. This suggests that a certain amount of standardization is necessary across departments — to ensure that preexisting resource differentials do not translate into over-large disparities in program quality that would concentrate the program’s benefits in more resource-rich jurisdictions while leaving less-endowed jurisdictions able to capture comparatively few. However, it is also important to recognize relevant differences across jurisdictions and to maintain enough flexibility in the language of the legislation to allow individual departments to tailor aspects of their program to their own unique challenges. In order to mediate between the impulse to standardize and the impulse to maintain flexibility, the model act presented in this Report selects a *minimum core* set of obligations regarding camera functionality and camera program management. The minimum core reflects those program characteristics that are viewed as reasonably necessary to obtaining the benefits of a body-worn camera program anywhere. These include items such as minimum resolution, night vision, battery runtime, camera focal width, and memory size, and appropriate legislation should require adherence to certain technical standards for each of these. Meanwhile, certain other decisions — such as the precise model to be purchased by individual police departments, and what features above and beyond the minimum core that those police departments may wish to deploy to meet the unique challenges of their jurisdictions — remain within departmental discretion.

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### 5. DATA STORAGE

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One of the more important policy considerations is data storage and retention. Increased surveillance with video cameras “amplifies concerns that if not properly regulated, the collection of personal surveillance data could present two unique threats of police abuse: the potential for unscrupulous fishing expeditions and the use of data for ulterior, nefarious purposes.”<sup>244</sup> Stemming from that high-level apprehension, storage issues, such as how long and who has access to the recordings must also be considered. Furthermore, state record retention laws dictate how long recordings must be stored based on the type of content and how or whether it is used in court.<sup>245</sup> This is one of the most important policy items for an agency to consider, as this can be a significant cost to a department. Not only must the data be protected and backed up regularly, but it must be accessible to all parties involved. Some data need to be retained forever; other data can be deleted quickly.

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<sup>244</sup> Rushin, *supra* note 75, at 301.

<sup>245</sup> See e.g., COMMONWEALTH OF MASSACHUSETTS, MASSACHUSETTS STATEWIDE RECORDS RETENTION SCHEDULE (AS AMENDED THROUGH AUGUST 2012) (2012), *available at* <http://www.sec.state.ma.us/arc/arcpdf/0211.pdf> (requiring use of force reports and videos to be retained for 10 years, all murder and rape evidence to be retained for 50 years, and other evidence to be retained for 6 years after the case and any appeal have closed); STATE OF FLORIDA, GENERAL RECORDS SCHEDULE GS2 FOR LAW ENFORCEMENT, CORRECTIONAL FACILITIES, AND MEDICAL EXAMINERS (2015), *available at* <http://dos.myflorida.com/media/693578/gso2.pdf> (requiring video recordings of patrol units to be retained for 30 days unless they become part of an applicable Criminal Investigative Records item, which would trigger the applicable retention standards); STATE OF NORTH CAROLINA, NORTH CAROLINA RECORDS RETENTION AND DISPOSITION SCHEDULE: COUNTY SHERIFF’S OFFICE (2008), *available at* [http://www.ncdcr.gov/Portals/26/PDF/schedules/Sheriff\\_Schedule\\_2008.pdf](http://www.ncdcr.gov/Portals/26/PDF/schedules/Sheriff_Schedule_2008.pdf) (requiring dashboard camera video to be destroyed after 30 days, unless other another applicable record series applies, such as Case History File: Felonies, Case History File: Misdemeanors, or Citizen Complaints/Administrative Investigation Record). See generally Brittany Ericksen, *Evidence Retention Laws: A State-By-State Comparison*, VICTIMSOFCRIME.ORG (Aug. 21, 2013), <http://victimsofcrime.org/docs/default-source/dna-resource-center-documents/evidence-retention-check-chart-9-5.pdf?sfvrsn=2> (documenting state retention laws for evidence in particular criminal investigations).

Even video of standard officer interactions may be retained for a default period of time to cover potential performance complaints. Generally, recordings must be managed by thorough department-level policies that align with the standards of the legislature or commissioned body.

### RETENTION TIME

Retention policies should be uniform across the state. The ACLU recommends that the back-office data storage system for video evidence must be secure and accessible to lawyers and defendants — and yet also automatically delete recordings of no interest after 30 days.<sup>246</sup> As previously articulated, retention policies should be influenced by the goals of transparency and accountability (by considering statute of limitations implications) as well as the legal restraint of evidence destruction law. Lastly, some benefits of the aggregation of data can also be considered when drafting retention policies. The aggregation of the video data may assist in increased police statistics and reporting on the police-citizen interactions. The mandatory incident reporting included in our model legislation augments other efforts to increase transparency and accountability through the mandatory documentation of police-civilian interactions.

### FILING AND DESIGNATION

A robust set of procedures governing the filing of audio/video recordings and the categorization of those recordings according to the sort of incident that they document is crucial to obtaining the full benefits of a body-worn camera program. Points particularly worthy of consideration include the need to account for and maintain the integrity of the chain of custody, the need to store and categorize recordings as soon as possible after the events they capture occur (while memories are still fresh), the need to secure recordings from tamper, release, or unauthorized access and distribution, and the need to secure data pertinent to potentially controversial officer-involved events from the individual officers involved, both to ensure that audio/video evidence is preserved and to protect the integrity and legitimacy of the camera program and the police department as a whole. In the model legislation accompanying this Report, we address these concerns by including provisions within the minimum core standards that require departments to (1) adopt written policies ensuring prompt storage and categorization immediately after each shift, (2) adopt written policies to prevent tampering and unauthorized access, and (3) adopt policies requiring individual officers' supervisors to take responsibility for footage immediately after any incident with an officer that results in a person's bodily harm or death.

Evidentiary restrictions for body-worn camera data can address the potential for officers to use body-worn cameras as a way to conduct extensive surveillance. While legislation can require extensive use of the body-worn cameras to record during an officer's shift, limiting the use of the data can offset extensive public surveillance that would greatly expand police power. Although not provided for in this model legislation, evidentiary rules must limit the availability of the footage for specific instances, including but not limited to civilian complaints, officer disciplinary proceedings, and motions to suppress.

### RELEASING RECORDED DATA

With certain limited exceptions, body-worn camera video footage should be made available to the public upon request, demonstrating transparency and openness in police interactions with members of the community. Exemptions to public disclosure, as expressed in departmental guidelines, should include footage taken inside private home and images of juveniles' faces. Other than exceptions enumerated in department policy, other footage should be released as requested by the public.

<sup>246</sup> Paul Marks, *Police, Camera, Action*, NEW SCIENTIST, Oct. 23, 2013, 21–22.



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## 6. COMPLIANCE & OVERSIGHT

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Although body-worn cameras can be an important accountability measure, their benefits can be undermined if body-worn cameras are used to extend the power of police officers. Put frankly, “Police cameras are useless if not used properly.”<sup>247</sup> Body cameras have the potential to protect people from the police, but they are not going to solve the underlying problems of oversight and abuse. Without proper oversight and implementation, body cameras could become just another tool used against the public citizenry.

One of the most difficult issues with body-worn camera legislation is the manual nature of the “on-off” switch. While one might wish to give discretion to the officer when his or her safety is in jeopardy, life-threatening situations are the types of instances where it would be useful to have a video record. Similarly, the manipulation of the “on-off” switch could allow an officer to shape the narrative of their interaction. For example, an officer could turn the camera on only after the civilian with whom he is interacting became aggressive, allowing the officer to justify his use of force without providing context regarding the source of the aggression. The model legislation contemplates such manipulation and requires officers to turn on their cameras at the beginning of a list of specified interactions and to detail why their cameras were turned off if done so during an interaction. These provisions were included to mitigate officer discretion in the use of their cameras.

Even when discretion is limited, current policies still require an officer to turn on his audio-video recording device. Under New Orleans Police Department policy, the body-worn cameras must be turned on for most interactions with the public, including traffic stops, vehicle pursuits, arrests, emergency responses, pedestrian checks, domestic violence calls and DWIs. This sharply contrasts with the policies and technologies associated with the majority of dashboard cameras, which record when the emergency lights of the police vehicle are used.<sup>248</sup> Automation would limit discretion, and ensure complete compliance with an “on-off” mandate. Through statutory mandate, a policy that limits police discretion for activation of surveillance technologies like body-worn cameras may reduce racial or ethnic profiling.<sup>249</sup>

The New Orleans Police Department again provides guidance for possible disciplinary actions when individual police officers are out of compliance with the body-worn camera procedures. New Orleans relies on a tiered disciplinary system for officers who fail to activate the cameras, based in part on what happens during the incident. For instance, officers who fail to turn on the cameras and end up using force could face major consequences, including dismissal. Police unions have cautioned against immediate strict discipline, instead recommending the ramping up of discipline over time: “[Police officers] still haven’t gotten to the point where it’s automatic, muscle memory: You get out of the car, you turn on the camera. Eventually that’ll just be a habit, and some of these things don’t become a problem.”<sup>250</sup>

To ensure department-wide compliance, a statute can mandate tools such as an independent review board, a citizen review board, or ombudsmen. When body-worn cameras and dashboard cameras are included in consent decrees following legislation, the court is able to appoint a monitor to review and report on outcomes and compliance. Regardless of the chosen review method, the compliance mechanism must

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<sup>247</sup> Ken Daley, *Cameras Not on Most of the Time When NOPD Uses Force, Monitor Finds*, TIMES-PICAYUNE (Sept. 4, 2014) [http://www.nola.com/crime/index.ssf/2014/09/cameras\\_not\\_on\\_most\\_of\\_the\\_tim.html](http://www.nola.com/crime/index.ssf/2014/09/cameras_not_on_most_of_the_tim.html) (citing NEW ORLEANS CONSENT DECREE MONITOR: THIRD QUARTERLY REPORT 2:12-CV-01924-SM-JCW, Document 400-1 (Aug. 31, 2014) available at [http://media.nola.com/crime\\_impact/other/NOPD-DECREE-0814-REPORT.pdf](http://media.nola.com/crime_impact/other/NOPD-DECREE-0814-REPORT.pdf)).

<sup>248</sup> See, e.g., James Chilton, *City Officers: Dash-cams Valuable for Police, Public*, WYO. TRIB. EAGLE (Aug. 27, 2014), [http://www.wyomingnews.com/articles/2014/08/28/news/20local\\_08-28-14.txt#.VRi81x5kuE](http://www.wyomingnews.com/articles/2014/08/28/news/20local_08-28-14.txt#.VRi81x5kuE) (“[I]n-car cameras begin recording any time a patrol car activates its emergency lights, though the cameras can also be programmed to operate under a variety of other conditions based on time of day or vehicle location.”).

<sup>249</sup> See Rushin, *supra* note 75, at 298 (discussing the benefits of automated license plate readers in the traffic stop context).

<sup>250</sup> See Simerman, *supra* note 51.

maintain independence from the police departments to ensure objectivity in reviewing the reports, evidence, and actions of the officers.

## CONCLUSION

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While body-worn cameras are an important tool in the fight to end police misconduct and brutality and to reduce the costs of complaints and litigation, it is important to understand that cameras alone cannot be the ultimate solution. Video evidence is not always sufficient to ensure accountability — for citizens or for officers. Take the case of Eric Garner: although the inappropriate actions of the officer responsible for his death were caught on tape, the grand jury nevertheless failed to find sufficient evidence to indict that officer.<sup>251</sup> Surely, the mere existence of video evidence is not enough.

Yet the role of video evidence cannot be underappreciated. One must never forget that only because there *is* video of the interaction that resulted in Garner's death do citizens enjoy such clarity as to the events of that day. Indeed, commentators from all sides of the ideological spectrum have agreed that the nonindictment was a mistake<sup>252</sup> — agreement that is rare in today's hyperpolarized political environment, and which would not have been possible without the clarity produced by video of the incident. We submit that while cameras are no panacea, they are certainly a first step toward the progress that our communities, our officers, and our nation deserve.

We hope that the bipartisan outrage sparked by the Eric Garner incident and by other sobering incidents across the country can create the room necessary to institute reforms that may have a significant impact on policing issues. We have humbly sought to contribute to that reform through the Report and model legislation presented here. We hope that our efforts will not be in vain.

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<sup>251</sup> Josh Sanburn, *Behind the Video of Eric Garner's Deadly Confrontation With New York Police*, TIME (July 22, 2014) <http://time.com/3016326/eric-garner-video-police-chokehold-death/>.

<sup>252</sup> Danny Vinik, *Why the Left and Right Are Both Angry at Eric Garner's Death*, NEW REPUBLIC (Dec. 4, 2014), <http://www.newrepublic.com/article/120479/eric-garners-death-refocuses-attention-laws-police-brutality>.

### III. MODEL STATE LEGISLATION

#### Section I — *Purpose and Definitions*

1. **Purpose or Legislative Declarations.** This bill aims to provide a framework for integrating audio-video technologies into policing in a way that supports the effectiveness of the community-policing model. It aims to improve interactions between police and members of the community by encouraging civility in officer–citizen interactions and by providing objective evidence of police–citizen encounters with a view towards:
  - 1.1. Protecting officers from unfounded citizen complaints;
  - 1.2. Protecting citizens from potential officer misconduct.
2. **Definitions.**
  - A. Personal audio-video recording device
    1. Personal audio-video recording devices are small video cameras—typically attached to an officer’s clothing, helmet, or sunglasses—that can capture, from an officer’s point of view, video and audio recordings of activities, including traffic stops, arrests, searches, interrogations, and critical incidents such as officer-involved shootings.
  - B. Community policing
    1. Community policing is a philosophy that emphasizes close relationships characterized by mutual trust between police and communities as the foundation for proportionate, efficient, and effective police work. The philosophy entails a police management style and set of operational strategies that make use of police–community partnerships and account for community needs, all while recognizing that the powers of law enforcement are democratically derived from the values of the community.
  - C. Police Officer (“officer”)
    1. Police Officer is a member of the [Insert State] State Police, a sheriff, a deputy sheriff, a city police officer or a law enforcement officer employed by a service district established under [insert relevant state statute].
    2. For the purposes of this statute, police officer shall not include:
      - a) Employees of the police department who solely or primarily engage in parking enforcement and are not equipped with firearms or;
      - b) Crossing guards who are not equipped with firearms.
  - D. Malfunction
    1. Any inability of the personal audio-video recording device for any technical reason to record audio, video, or both.

#### Section II — *Interdepartmental Commission*

- A. This governing statute creates the [Insert State] interdepartmental commission on personal audio-video recording devices (“the Commission”).

- B. Appointment — The Commission shall consist of a representative appointed by each of the following member departments and agencies:
  - 1. [Department of Public Safety]
  - 2. [Department of Health]
  - 3. [Attorney General]
  - 4. [Comptroller]
  - 5. [Office of the Governor]
- C. Term — Representatives shall serve six (6) year terms. No representative shall serve more than a total of twelve (12) years. Vacancies occurring on the Commission shall be filled for the unexpired term by the same appointing department that made the original appointment. Representatives shall serve until their successors are appointed and qualified.
- D. Procedure — The governor shall designate one of the representatives to be the chairperson of the Commission. A majority vote of three representatives of the Commission shall be required for any action of the Commission. The Commission may adopt rules to govern its proceedings and may provide for such officers other than the chairperson as it may determine. The Commission shall meet at least twice each quarter, and also shall meet on call of its chairperson or any three members of the Commission. Members of the Commission attending meetings of such Commission, or attending a subcommittee meeting thereof authorized by such Commission, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in subsections of [Insert State Reimbursement Statute], and amendments thereto.
- E. Appointment of Ombudsman — The Commission must appoint an ombudsman to review the complaints of citizens who have exhausted administrative remedies within a police department regarding the release of audio-video recordings. The ombudsman shall periodically review a police department's handling of audio-visual recording materials at a time to be determined by the ombudsman. The ombudsman is entitled to employ support staff to execute her or his statutory obligations.
- F. Staff — The Commission may also employ such other staff and attorneys as it determines, within amounts appropriated to the Commission, all of whom shall be in the unclassified service and shall receive compensation fixed by the Commission and not subject to approval by the governor.
- G. Reporting — The Commission shall submit a triennial report including recommendations in relation to the Minimum Core Standards to the governor and to the legislative coordinating council on or before December 1 of the required year. The legislative coordinating council shall transmit such report and recommendations to the legislature.
- H. Funding Formula — The Commission shall set the funding formula as established in Section IV(4).
- I. Access to Recordings — At its disposal, the Commission shall have access to all audio and video recordings generated by the audio-visual recording devices of each Police Department.

### Section III — *Implementation*

- 1. **General Obligation.** Each Police Officer in this State must be equipped with a personal audio-video recording device. Each Police Department with primary enforcement authority over any jurisdiction

within this state must undertake to establish a plan or program effective to carry out the foregoing obligation in accordance with Subsection 2 below.

1.1. **Applicability to [current state wire-tapping statutes].**

- (A) All uses of an officer's personal audio-video recording device must be made in plain view of the civilian or civilians who are being recorded during an interaction with the officer.
- (B) Officers using personal audio-visual recording devices must inform the civilian or civilians who are being recorded that the audio and visual content of the interaction is being captured on film. An officer who uses a personal audio-visual recording device is considered to have given his or her consent to being recorded. Within two (2) months of the passage of this legislation, the Commission shall draft the statement of notification to be used by officers in each jurisdiction within the state.
- (C) If a civilian does not want his or her interaction with an officer captured on a personal audio-video recording device, and the civilian audibly denies his or her consent to be filmed, the officer or officers interacting with the civilian shall turn-off their personal audio-video recording device after having provided the reason for turning off the personal audio-video recording device in accordance with Section III(2.2)(D)(e).
- (D) An officer will not be required to obtain a warrant to record an interaction with civilian who has given his or her consent to be recorded.
  - a. Refusal of consent to be recorded cannot in and of itself create probable cause or reasonable suspicion to search or arrest.

1.2. **Exception to [state's current open records statute]**

- (A) All audio-visual recordings that are captured during an interaction between a civilian or civilians and an officer or officers are subject to the government records disclosure exceptions that are provided in [section of the relevant state open records law]
- (B) This exception shall not be applied to civilians filmed in the captured interaction, their legal representatives, or family members who intend to use the captured interaction in a legal action against the filming officer or department.

2. **Minimum Core Standards.** This subsection describes the basic standards to which the specifications of personal audio-video devices and the programs governing or establishing rules, regulations, or procedures with regard to the use of such devices must adhere.

2.1. All personal audio-video recording devices in use in this State must meet the following standards:

- (A) **Picture Quality/Resolution.** The resolution should be at least 640 x 480 pixels.
- (B) **Frame Rate.** The frame rate should be at least 25 frames per second.
- (C) **Battery Runtime.** The camera should be equipped with a battery that permits the device to record continuously for at least 3 hours. All officers should also be equipped with a spare battery and/or a means of recharging the camera while on duty.
- (D) **Camera Focal Width.** The camera must employ a wide point of view.



- (E) **Memory Specifications.** At the lowest quality setting, the camera's storage capacity must permit at least 3 hours of recording.
- (F) **Night Visibility.** The camera should have a low lux rating and/or an IR illuminator for recording targets in low light.

However, the responsibility for deciding the specific model or models of audio-video device to employ, and/or what features in excess of the Minimum Core Standards said devices are to have, rests with individual police departments. In the absence of manifestly absurd decisions or actions, or decisions or actions that have the aim or effect of contradicting, nullifying, lessening, or rendering less potent any of the obligations imposed by this statute, or decisions or actions that have the aim or effect of contradicting, impairing, or frustrating any part of this statute's object and purpose, decisions or actions of the police department made in the discharge of this responsibility are to be accorded significant deference.

2.2. All programs within police departments governing or establishing rules, regulations, or procedures with regard to the use of personal audio-video recording devices must meet the following standards:

- (A) Cameras must be deployed at the beginning of an interaction if police officers are engaged in or responding to any of the following:
  - a. Primary response (patrol in vehicle or during bicycle or motorcycle patrol)
  - b. Self-initiated public contacts/foot patrol
  - c. Emergency Response
  - d. Vehicle or Site Searches
  - e. SWAT
  - f. Police officers engaged in taking citizens into custody
  - g. Traffic stops
  - h. Suspicious vehicle stops
  - i. Suspicious person stops
  - j. Motor-vehicle accident scenes
  - k. During all interrogations of suspected criminals or persons of interest
  - l. While in the process of an arrest
  - m. Vehicle pursuits
  - n. Crimes in progress

Cameras must also be deployed whenever so ordered by a supervisor.

- (B) Within the policy of the individual police department, police officers may be given discretion to not record in instances:
  - a. Involving sensitive crimes including rape and sexual assault
  - b. Involving a fully-unclothed civilian
  - c. Involving a need to protect the identity of an officer in an undercover capacity and
  - d. Involving a need to protect the identity of a confidential informant.
- (C) Training — Personal audio-video recording device training is to be provided for all Police Officers, Supervisors, Record Management/Evidence personnel, and all other personnel who may use or otherwise be involved with police-operated personal audio-video recording devices.
- (D) Compliance:

- a. Malfunction — Individual police departments shall set a policy regarding technical malfunctions that shall ensure as little interruption in recording as possible. The policy shall require that police officer whose personal audio-video recording device fails to record shall report the malfunction to the supervisor immediately at the time the device has malfunctioned.
- b. Upload — Individual police departments shall set a policy requiring that police officers shall upload the data from their personal audio-video recording devices each working day within two hours of the end of the officer's shift.
- c. Classification — Individual police departments shall apply already existing policies regarding traditional evidence to evidence derived from the use of personal audio-video recording devices. Individual police departments shall require that the use of the personal audio-video recording device be included in all incident reports.
- d. Incident Report — Individual police departments shall apply already existing policies regarding documentation of civilian-police interactions and additional policies as the department sees fit. An officer shall note the following in his/her report:
  - i. Whether audio or video evidence was gathered relating to the events described in the report.
  - ii. Any malfunction occurring during the situation that is the subject of the report.
  - iii. Any instances of deactivation as required by section (e) below.
- e. Deactivation — Before a personal audio-video recording device has been turned off in an instance where policy and statute require the device to record, the reason for not using the personal audio-video recording device must be articulated verbally on-camera. If the officer is unable to verbally articulate his/her reason, then the officer shall file a written report expressing his/her reason for switching the device off within two hours of the end of the officer's shift when the incident occurred or include that reason within the regularly filed written incident report describing an interaction with a civilian. This verbal or written articulation shall be reviewed by both the supervising officer and the ombudsman for the department.
- f. Internal audit — Policies shall include the requirement of periodic, random monitoring of video footage generated by personal audio-video recording devices by each agency's internal audit unit.
- g. Disciplinary Measures — Policies shall include, but not be limited to, disciplinary measures for:
  - i. Failure to wear a personal audio-video recording device while on duty
  - ii. Failure to properly maintain the personal audio-video recording device during a shift
  - iii. Failure to keep the personal audio-video recording device on during an interaction with a civilian in accordance with this statute

- iv. Failure to produce written or verbal communication of reason for not turning on the personal audio-video recording device or turning the personal audio-video recording device off during a civilian interaction, as mandated by the incident report requirement of this statute
    - v. Any other breaches of departmental policies as enumerated within the departmental policies.
  - h. In disciplinary proceedings, including civilian or citizen review boards, judicial proceedings, or arbitration, the fact-finder may adopt a negative inference against the officer in cases in which the officer's personal audio-video recording device is turned off during an interaction with a civilian, except where the officer's action is provided for under Section III.2.2(B) of this statute, provided that all requirements of that Section are met.
- 2.3. All programs within police departments governing or establishing rules, regulations, or procedures with regard to the data storage of video and audio recordings derived from the use of personal audio-video recording devices must meet the following standards and must have their specific policies be approved by the Commission on a biennial basis:
- (A) All rules, regulations, procedures, or policies respecting the storage of or access to data obtained through use of body-worn cameras should be made available in written form to all officers and staff within each department.
  - (B) Policies should require data to be downloaded from the body-worn camera by the end of the shift in which the camera was used, and audio/video recordings should be appropriately tagged and stored according to the type of event captured.
  - (C) Policies should clearly require an officer's supervisor to take physical custody of the camera and assume responsibility for downloading the data contained therein in cases of officer-involved shootings, in-custody deaths, or other incidents involving the officer that result in a person's bodily harm or death.
  - (D) Policies should clearly state where body-worn camera videos are to be stored.
  - (E) Policies should specifically require the retention of the recorded data in compliance with all relevant laws and adequately preserve evidentiary chain of custody.
  - (F) Policies should require the deletion of the recorded data after thirty (30) calendar days if civil contact is made but no enforcement action is taken or complaint has been filed.
  - (G) Policies should include specific measures to prevent data tampering, deleting, and copying.
  - (H) Policies should clearly describe the circumstances in which supervisors will be authorized to review an officer's body-worn camera footage.
  - (I) Policies should include specific measures for preventing unauthorized access or release of recorded data.
  - (J) Policies should specifically account for and enumerate those situations in which data might be made available to other departments for evidentiary purposes.
  - (K) Policies shall include clear and consistent protocols for releasing recorded data
    - a. externally to the public and the news media
    - b. for easy accessibility to lawyers and defendants
    - c. for easy accessibility to citizen review boards

- (L) Each department's policy must be in compliance with [insert State]'s public disclosure laws.

Individual police departments shall promulgate their personal audio-video recording device policies within three (3) months of the enactment of this statute.

However, the responsibility for deciding where on the body the audio-video device is to be mounted, as well as the appropriateness of using the device in other citizen-police interactions apart from those listed in the Minimum Core Standards above, rests with individual police departments. In the absence of manifestly absurd decisions or actions, or decisions or actions that have the aim or effect of contradicting, nullifying, lessening, or rendering less potent any of the obligations imposed by this statute, or decisions or actions that have the aim or effect of contradicting, impairing, or frustrating any part of this statute's object and purpose, these decisions are to be accorded significant deference.

## Section IV — *Funding*

### 1. Initial appropriation

- A. The legislature shall appropriate [insert dollar amount] in order to carry out the purposes of this legislation. The appropriation shall be from the state's [name of general fund].
  - B. The appropriated funds shall be disseminated to municipalities through a grant program created from the funds, which shall be dedicated to implementation of police-operated personal audio-video recording devices statewide. The use of the funds shall be limited to the following:
    - i. The procurement of police-operated personal audio-video recording device;
    - ii. Training on the use of police-operated personal audio-video recording device;
    - iii. Maintenance and repair of the police-operated personal audio-video recording device;
    - iv. Costs related to the storage of the audio-visual data that is kept according to the standards set out in Section III(2)(2.2), including but not limited to,
      1. Data systems that contain the audio-visual information and
      2. The salary of any individuals who may be hired to monitor, archive, or classify the data that is received, including but not limited to an ombudsman.
2. **Subsequent appropriations.** The legislature shall continue to appropriate an amount sufficient to carry out the purposes of this legislation in subsequent budget years. These subsequent appropriations shall be disseminated in the manner and for the purposes specified in Section IV(1)(B) above.
3. **Funding Formula**
- A. The size of the grants from the Fund shall be determined by a funding formula to be drafted by the Commission as set forth above in Section II — *Interdepartmental Commission*.
    - i. The formula shall be used for the initial appropriation.
    - ii. The formula must take into account the population size of the municipalities over which each Police Department has jurisdiction, so that larger municipalities will receive funding in accordance with their size relative to other incorporated areas in

the state. To take account for population changes, the formula shall be modified in conjunction with the national census.

- iii. Six (6) months after the passage of this Bill, a funding formula shall be promulgated.



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INSTITUTE FOR  
RACE & JUSTICE

HARVARD LAW SCHOOL

# Implementing a Body-Worn Camera Program

Recommendations and Lessons Learned

Attachment: COPS - Recommendations and Lessons Learned (1292 : 2016 Legislative Priority: Statewide Body Cameras for Police Officers)



**COPS**

Community Oriented Policing Services  
U.S. Department of Justice



POLICE EXECUTIVE  
RESEARCH FORUM

Packet Pg. 181



# Implementing a Body-Worn Camera Program

Recommendations and Lessons Learned

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The Internet references cited in this publication were valid as of the date of publication. Given that URLs and websites are in constant flux, neither the author(s) nor the COPS Office can vouch for their current validity.

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# Letter from the PERF Executive Director

The recent emergence of body-worn cameras has already had an impact on policing, and this impact will only increase as more agencies adopt this technology. The decision to implement body-worn cameras should not be entered into lightly. Once an agency goes down the road of deploying body-worn cameras—and once the public comes to expect the availability of video records—it will become increasingly difficult to have second thoughts or to scale back a body-worn camera program.

A police department that deploys body-worn cameras is making a statement that it believes the actions of its officers are a matter of public record. By facing the challenges and expense of purchasing and implementing a body-worn camera system, developing policies, and training its officers in how to use the cameras, a department creates a reasonable expectation that members of the public and the news media will want to review the actions of officers. And with certain limited exceptions that this publication will discuss, body-worn camera video footage should be made available to the public upon request—not only because the videos are public records but also because doing so enables police departments to demonstrate transparency and openness in their interactions with members of the community.

Body-worn cameras can help improve the high-quality public service expected of police officers and promote the perceived legitimacy and sense of procedural justice that communities have about their police departments. Furthermore, departments that are already deploying body-worn cameras tell us that the presence of cameras often improves the performance of officers as well as the conduct of the community members who are recorded. This is an important advance in policing. And when officers or members of the public break the law or behave badly, body-worn cameras can create a public record that allows the entire community to see what really happened.

At the same time, the fact that both the public and the police increasingly feel the need to videotape every interaction can be seen both as a reflection of the times and as an unfortunate commentary on the state of police-community relationships in some jurisdictions. As a profession, policing has come too far in developing and strengthening relationships with its communities to allow encounters with the public to become officious and legalistic. Body-worn cameras can increase accountability, but police agencies also must find a way to preserve the informal and unique relationships between police officers and community members.

This publication, which documents extensive research and analysis by the Police Executive Research Forum (PERF), with support from the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS Office), will demonstrate why police departments should not deploy body-worn cameras carelessly. Moreover, departments must anticipate a number of difficult questions—questions with no easy answers because they involve a careful balancing of competing legitimate interests, such as the public's interest in seeing body-worn camera footage versus the interests of crime victims who would prefer not to have their images disseminated to the world.

One of the most significant questions departments will face is how to identify which types of encounters with members of the community officers should record. This decision will have important consequences in terms of privacy, transparency, and police-community relationships. Although recording policies should provide officers with guidance, it is critical that policies also give officers

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

a certain amount of discretion concerning when to turn their cameras on or off. This discretion is important because it recognizes that officers are professionals and because it allows flexibility in situations in which drawing a legalistic “bright line” rule is impossible.

For example, an officer at a crime scene may encounter a witness who would prefer not to be recorded. By using discretion, the officer can reach the best solution in balancing the evidentiary value of a recorded statement with the witness’s reluctance to be recorded. The decision may hinge on the importance of what the witness is willing to say. Or perhaps the witness will agree to be recorded by audio but not video, so the officer can simply point the camera away from the witness. Or perhaps the witness will be willing to be recorded later, in a more private setting. By giving officers some discretion, they can balance the conflicting values. Without this discretion, body-worn cameras have the potential to damage important relationships that officers have built with members of the community. This discretion should not be limitless; instead, it should be guided by carefully crafted policies that set specific parameters for when officers may use discretion.

If police departments deploy body-worn cameras without well-designed policies, practices, and training of officers to back up the initiative, departments will inevitably find themselves caught in difficult public battles that will undermine public trust in the police rather than increasing community support for the police.

This publication is intended to serve as a guide to the thoughtful, careful considerations that police departments should undertake if they wish to adopt body-worn cameras.

Sincerely,



Chuck Wexler, Executive Director  
Police Executive Research Forum



# Letter from the COPS Office Director

Dear colleagues,

One of the most important issues currently facing law enforcement is how to leverage new technology to improve policing services. Whether using social media to engage the community, deploying new surveillance tools to identify suspects, or using data analysis to predict future crime, police agencies around the world are implementing new technology at an unprecedented pace.

Body-worn cameras, which an increasing number of law enforcement agencies are adopting, represent one new form of technology that is significantly affecting the field of policing. Law enforcement agencies are using body-worn cameras in various ways: to improve evidence collection, to strengthen officer performance and accountability, to enhance agency transparency, to document encounters between police and the public, and to investigate and resolve complaints and officer-involved incidents.

Although body-worn cameras can offer many benefits, they also raise serious questions about how technology is changing the relationship between police and the community. Body-worn cameras not only create concerns about the public's privacy rights but also can affect how officers relate to people in the community, the community's perception of the police, and expectations about how police agencies should share information with the public. Before agencies invest considerable time and money to deploy body-worn cameras, they must consider these and other important questions.

The COPS Office was pleased to partner with the Police Executive Research Forum (PERF) to support an extensive research project that explored the numerous policy and implementation questions surrounding body-worn cameras. In September 2013, the COPS Office and PERF hosted a conference in Washington, D.C., where more than 200 law enforcement officials, scholars, representatives from federal agencies, and other experts gathered to share their experiences with body-worn cameras. The discussions from this conference, along with interviews with more than 40 police executives and a review of existing body-worn camera policies, culminated in the recommendations set forth in this publication.

*Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* offers practical guidance as well as a comprehensive look at the issues that body-worn cameras raise. I hope you find that the wide range of perspectives, approaches, and strategies presented in this publication are useful, whether you are developing your own body-worn camera program or simply wish to learn more about the topic. The goal of the COPS Office and PERF is to ensure that law enforcement agencies have the best information possible as they explore this new technology; therefore, we encourage you to share this publication, as well as your own experiences, with other law enforcement practitioners.

Sincerely,



Ronald L. Davis, Director

Office of Community Oriented Policing Services





# Acknowledgments

PERF would like to thank the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS Office) for supporting this research into body-worn cameras. We are thankful to COPS Office Director Ronald Davis and Principal Deputy Director Joshua Ederheimer for recognizing the increasingly important role this technology plays for law enforcement agencies across the globe. We are also grateful to our program managers at the COPS Office, Helene Bushwick and Katherine McQuay, for their support and encouragement throughout the project.

We would also like to thank the law enforcement agencies that participated in our survey on body-worn cameras. Their thoughtful responses guided our research and the agenda for the executive session in Washington, D.C., in September 2013. We are also grateful to the more than 200 police chiefs, sheriffs, scholars, and other professionals who participated in our executive session (see appendix B for a list of participants). These leaders provided valuable information about their experiences with body-worn cameras and prompted an insightful discussion regarding the issues these cameras raise.

We are especially thankful for the more than 40 police executives who shared their body-worn camera policies with PERF and who participated in interviews with PERF staff. Their candid assessments of how this technology has impacted their agencies shaped the findings and recommendations found in this publication.

Finally, credit is due to PERF staff members who conducted the survey, prepared for and hosted the executive session, conducted interviews, and helped write and edit this publication, including Jessica Toliver, Lindsay Miller, Steve Yanda, and Craig Fischer.



# Introduction

## State of the field and policy analysis

Over the past decade, advances in the technologies used by law enforcement agencies have been accelerating at an extremely rapid pace. Many police executives are making decisions about whether to acquire technologies that did not exist when they began their careers—technologies like automated license plate readers, gunshot detection systems, facial recognition software, predictive analytics systems, communications systems that bring data to officers' laptops or handheld devices, GPS applications, and social media to investigate crimes and communicate with the public.

For many police executives, the biggest challenge is not deciding whether to adopt one particular technology but rather finding the right mix of technologies for a given jurisdiction based on its crime problems, funding levels, and other factors. Finding the best mix of technologies, however, must begin with a thorough understanding of each type of technology.

Police leaders who have deployed body-worn cameras<sup>1</sup> say there are many benefits associated with the devices. They note that 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. In addition, given that police now operate in a world in which anyone with a cell phone camera can record video footage of a police encounter, body-worn cameras help police departments ensure events are also captured from an officer's perspective. Scott Greenwood of the American Civil Liberties Union (ACLU) said at the September 2013 conference:

The average interaction between an officer and a citizen in an urban area is already recorded in multiple ways. The citizen may record it on his phone. If there is some conflict happening, one or more witnesses may record it. Often there are fixed security cameras nearby that capture the interaction. So the thing that makes the most sense—if you really want accountability both for your officers and for the people they interact with—is to also have video from the officer's perspective.

The use of body-worn cameras also raises important questions about privacy and trust. What are the privacy issues associated with recording victims of crime? How can officers maintain positive community relationships if they are ordered to record almost every type of interaction with the public? Will members of the public find it off-putting to be told by an officer, "I am recording this encounter," particularly if the encounter is a casual one? Do body-worn cameras also undermine the trust between officers and their superiors within the police department?

In addition to these overarching issues, police leaders must also consider many practical policy issues, including the significant financial costs of deploying cameras and storing recorded data, training requirements, and rules and systems that must be adopted to ensure that body-worn camera video cannot be accessed for improper reasons.

*"Because technology is advancing faster than policy, it's important that we keep having discussions about what these new tools mean for us. We have to ask ourselves the hard questions. What do these technologies mean for constitutional policing? We have to keep debating the advantages and disadvantages. If we embrace this new technology, we have to make sure that we are using it to help us do our jobs better."*

– Charles Ramsey, Police Commissioner,  
Philadelphia Police Department

1. Body-worn cameras are small video cameras—typically attached to an officer's clothing, helmet, or sunglasses—that can capture, from an officer's point of view, video and audio recordings of activities, including traffic stops, arrests, searches, interrogations, and critical incidents such as officer-involved shootings.

## Project overview

Even as police departments are increasingly adopting body-worn cameras, many questions about this technology have yet to be answered. In an effort to address these questions and produce policy guidance to law enforcement agencies, the Police Executive Research Forum (PERF), with support from the U.S. Department of Justice's Office of Community Oriented Policing Services (COPS Office), conducted research in 2013 on the use of body-worn cameras. This research project consisted of three major components: an informal survey of 500 law enforcement agencies nationwide; interviews with police executives; and a conference in which police chiefs and other experts from across the country gathered to discuss the use of body-worn cameras.

First, PERF distributed surveys to 500 police departments nationwide in July 2013. The exploratory survey was designed to examine the nationwide usage of body-worn cameras and to identify the primary issues that need to be considered. Questions covered topics such as recording requirements; whether certain officers are required to wear body-worn cameras; camera placement on the body; and data collection, storage, and review.

PERF received responses from 254 departments (a 51 percent response rate). Although the use of body-worn cameras is undoubtedly a growing trend, over 75 percent of the respondents reported that they did not use body-worn cameras as of July 2013.

*"I really believe that body-worn cameras are the wave of the future for most police agencies. This technology is driving the expectations of the public. They see this out there, and they see that other agencies that have it, and their question is, 'Why don't you have it?'"*

– Roberto Villaseñor, Chief of Police,  
Tucson (Arizona) Police Department

Of the 63 agencies that reported using body-worn cameras, nearly one-third did not have a written policy governing body-worn camera usage. Many police executives reported that their hesitance to implement a written policy was due to a lack of guidance on what the policies should include, which highlights the need for a set of standards and best practices regarding body-worn cameras.

Second, PERF staff members interviewed more than 40 police executives whose departments have implemented—or have considered implementing—body-worn cameras. As part of this process, PERF also reviewed written policies on body-worn cameras that were shared by departments across the country.

Last, PERF convened a one-day conference of more than 200 police chiefs, sheriffs, scholars, representatives from federal criminal justice agencies, and other experts to discuss the policy and operational issues surrounding body-worn cameras. The conference, held in Washington, D.C., on September 11, 2013, gave participants the opportunity to share the lessons they have learned, to identify promising practices from the field, and to engage in a dialogue about the many unresolved issues regarding the use of body-worn cameras.

Drawing upon feedback from the conference, the survey results, and information gathered from the interviews and policy reviews, PERF created this publication to provide law enforcement agencies with guidance on the use of body-worn cameras.

The first chapter discusses the perceived benefits of deploying body-worn cameras, particularly how law enforcement agencies have used the cameras to resolve complaints and prevent spurious complaints, to enhance transparency and officer accountability, to identify and address structural problems within the department, and to provide an important new type of evidence for criminal and internal administrative investigations.



## Introduction

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The second chapter discusses the larger policy concerns that agencies must consider when implementing body-worn cameras, including privacy implications, the effect cameras have on community relationships and community policing, officers' concerns, the expectations cameras create, and financial costs.

The third chapter presents PERF's policy recommendations, which reflect the promising practices and lessons that emerged from PERF's conference and its extensive discussions with police executives and other experts following the conference.

The police executives referenced throughout this publication are those who attended the September conference; participated in a discussion of body-worn cameras at PERF's October 2013 Town Hall Meeting, a national forum held in Philadelphia; provided policies for PERF's review; and/or were interviewed by PERF in late-2013 and early-2014.<sup>2</sup> A list of participants from the September conference is located in appendix B.

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2. The titles listed throughout this document reflect officials' positions at the time of the September 2013 conference.



# Chapter 1. Perceived Benefits of Body-Worn Cameras

Among the police executives whose departments use body-worn cameras, there is an overall perception that the cameras provide a useful tool for law enforcement. For these agencies, the perceived benefits that body-worn cameras offer—capturing a video recording of critical incidents and encounters with the public, strengthening police accountability, and providing a valuable new type of evidence—largely outweigh the potential drawbacks. For example, Chief Superintendent Stephen Cullen of the New South Wales (Australia) Police Force said, “After testing out body-worn cameras, we were convinced that it was the way of the future for policing.”

## Accountability and transparency

The police executives whom PERF consulted cited many ways in which body-worn cameras have helped their agencies strengthen accountability and transparency. These officials said that, by providing a video record of police activity, body-worn cameras have made their operations more transparent to the public and have helped resolve questions following an encounter between officers and members of the public. These officials also said that body-worn cameras are helping to prevent problems from arising in the first place by increasing officer professionalism, helping agencies evaluate and improve officer performance, and allowing agencies to identify and correct larger structural problems within the department. As a result, they report that their agencies are experiencing fewer complaints and that encounters between officers and the public have improved.

*“Everyone is on their best behavior when the cameras are running. The officers, the public—everyone.”*

– Ron Miller, Chief of Police,  
Topeka (Kansas) Police Department

## Reducing complaints and resolving officer-involved incidents

In 2012, the police department in Rialto, California, in partnership with the University of Cambridge-Institute of Criminology (UK), examined whether body-worn cameras would have any impact on the number of complaints against officers or on officers’ use of force. Over the course of one year, the department randomly assigned body-worn cameras to various front-line officers across 988 shifts. The study found that there was a 60 percent reduction in officer use of force incidents following camera deployment, and during the experiment, the shifts without cameras experienced twice as many use of force incidents as shifts with cameras. The study also found that there was an 88 percent reduction in the number of citizen complaints between the year prior to camera implementation and the year following deployment.<sup>3</sup> Chief of Police William Farrar of Rialto, who oversaw the study, said, “Whether the reduced number of complaints was because of the officers behaving better or the citizens behaving better—well, it was probably a little bit of both.”

### Body-worn camera results for Rialto (California) Police Department

- 60 percent reduction in officer use of force incidents following camera deployment
- Half the number of use of force incidents for shifts with cameras compared to shifts without cameras
- 88 percent reduction in number of citizen complaints between the year prior to and following camera deployment

A study conducted in Mesa, Arizona, also found that body-worn cameras were associated with a reduction in complaints against officers. In October 2012, the Mesa Police Department implemented a one-year pilot program in which 50 officers were assigned to wear body-worn cameras, and 50 officers were assigned to a control group without the cameras. The two groups were demographically

3. William Farrar, “Operation Candid Camera: Rialto Police Department’s Body-Worn Camera Experiment,” *The Police Chief* 81 (2014): 20–25.

## Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned

similar in terms of age, race, and other characteristics. The study, which was conducted by Arizona State University, found that during the first eight months of deployment, the officers without the cameras had almost three times as many complaints as the officers who wore the cameras.<sup>4</sup> The study

also found that the officers assigned body-worn cameras had 40 percent fewer total complaints and 75 percent fewer use of force complaints during the pilot program than they did during the prior year when they were not wearing cameras.<sup>5</sup>

Police executives interviewed by PERF overwhelmingly report that their agencies experienced a noticeable drop in complaints against officers after deploying body-worn cameras. “There’s absolutely no doubt that having body-worn cameras reduces the number of complaints against officers,” said Chief of Police Ron Miller of Topeka, Kansas. One explanation for this is that the mere presence of a camera can lead to more civil interactions between officers and the public. “We actually encourage our officers to let

people know that they are recording,” said Chief of Police Ken Miller of Greensboro, North Carolina. “Why? Because we think that it elevates behavior on both sides of the camera.”

Lieutenant Harold Rankin, who oversaw the body-worn camera program in Mesa, agrees: “Anytime you know you’re being recorded, it’s going to have an impact on your behavior. When our officers encounter a confrontational situation, they’ll tell the person that the camera is running. That’s often enough to deescalate the situation.” Many police executives report that wearing cameras has helped improve professionalism among their officers. Chief Superintendent Cullen of New South Wales said,

“After testing out body-worn cameras, the overwhelming response from officers was that the cameras increased their professionalism because they knew that everything they said and did was being recorded.”

Many agencies have found that having video footage of an encounter also discourages people from filing unfounded complaints against officers. “We’ve actually had citizens come into the department to file a complaint, but after we show them the video, they literally turn and walk back out,” said Chief Miller of Topeka. Chief of Police Michael Frazier of Surprise, Arizona, reports a similar experience. “Recently we received an allegation that an officer engaged in racial profiling during a traffic stop. The officer was wearing his body-worn camera, and the footage showed that the allegation was completely unfounded,” Frazier said. “After reviewing the tape, the complainants admitted that they have never been treated unfavorably by any officers in my department.” As several police officials noted, preventing unfounded complaints can save departments the significant amounts of time and money spent on lengthy investigations and lawsuits.

When questions arise following an encounter, police executives said that having a video record of events helps lead to a quicker resolution. According to the results of PERF’s exploratory survey, the number one reason why police departments choose to implement body-worn cameras is to provide a more accurate documentation of police encounters with the public. Police executives report that when questions arise following an encounter or a major event such as an officer-involved shooting, having video from a body-worn camera can help resolve the questions.

4. Harold Rankin, “End of Program Evaluation and Recommendations: On-Officer Body Camera System” (Mesa, AZ: Mesa Police Department, 2013).

5. Ibid.

### Body-worn camera results for Mesa (Arizona) Police Department

- Nearly 3x more complaints against officers without cameras, eight months after camera deployment
- 40 percent fewer total complaints for officers with cameras during pilot program
- 75 percent fewer use of force complaints for officers with cameras during pilot program

*“In the testing we did [of body-worn cameras], we had a number of tenured officers who wanted to wear the cameras and try them out, and their feedback was very positive. They said things like, ‘You’ll be amazed at how people stop acting badly when you say this is a camera, even if they’re intoxicated.’ And we also know that the overwhelming majority of our officers are out there doing a very good job, and the cameras will show just that.”*

– Douglas Gillespie, Sheriff,  
Las Vegas Metropolitan Police Department



## Chapter 1. Perceived Benefits of Body-Worn Cameras

Agencies are also reporting that, in most of these cases, the resolution is in support of the officer's account of events. Chief of Police Mike Chitwood of Daytona Beach, Florida, recalled one example in which a member of the public threatened to file a complaint against officers following a contentious encounter. Alleging that the officers had threatened him and used racial epithets, the individual said that he would go to the news media if the department failed to take action. One of the officers involved had been wearing a body-worn camera. "We reviewed the video, and clearly the individual lied," recalled Chitwood. "The officer was glad to have the footage because the individual's allegations were absolutely not what was represented in the video."

Body-worn cameras have also helped to resolve more serious incidents, including officer-involved shootings. Chief Miller of Topeka said that the local district attorney cleared an officer in a deadly shooting incident after viewing the officer's body-worn camera footage. Miller described how the camera footage captured the event in real time and provided a record of events that would otherwise not have existed. "The entire event was captured on video from the perspective of the officer. Now tell me when that happened before the advent of body-worn cameras," said Miller.

Several police departments, including those in Daytona Beach, Florida, and Greenville, North Carolina, are finding that officers with a history of complaints are now actively requesting to wear cameras. For officers who behave properly but generate complaints because they have high levels of activity or frequent contacts with criminal suspects, cameras can be seen as beneficial. "We all have our small percentage of officers with a history of complaints," said Chief of Police Hassan Aden of Greenville. "Internal Affairs has told me that these officers have come in to request body-worn cameras so that they can be protected in the future."

### Identifying and correcting internal agency problems

Another way that body-worn cameras have strengthened accountability and transparency, according to many police executives, is by helping agencies identify and correct problems within the department. In fact, PERF's survey found that 94 percent of respondents use body-worn camera footage to train officers and aid in administrative reviews.

Many police agencies are discovering that body-worn cameras can serve as a useful training tool to help improve officer performance. For example, agencies are using footage from body-worn cameras to provide scenario-based training, to evaluate the performance of new officers in the field, and to identify new areas in which training is needed. By using body-worn cameras in this way, agencies have the opportunity to raise standards of performance when it comes to tactics, communication, and customer service. This can help increase the perceived legitimacy and sense of procedural justice that communities have about their police departments.

Law enforcement agencies have also found that body-worn cameras can help them to identify officers who abuse their authority or commit other misconduct and to assist in correcting questionable behavior before it reaches that level. In Phoenix, for example, an officer was fired after his body-worn camera captured repeated incidents of unprofessional conduct. Following a complaint

*"The use of body-worn video by frontline officers has real potential to reduce complaints of incivility and use of force by officers. The footage can also exonerate officers from vexatious and malicious complaints. In addition, I feel there are benefits to the criminal justice system in terms of more guilty pleas, reduced costs at court, and a reduction in the number of civil cases brought against the police service for unlawful arrest/excessive force. We already have good examples of body-worn video footage exonerating officers from malicious complaints."*

– Paul Rumney, Detective Chief Superintendent,  
Greater Manchester (UK) Police

*"We have about 450 body-worn cameras actively deployed, and in the overwhelming majority of cases, the footage demonstrates that the officer's actions were appropriate."*

– Sean Whent, Chief of Police,  
Oakland (California) Police Department



## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

against the officer, the police department reviewed footage from the incident along with video from prior shifts. Upon finding repeated instances of verbal abuse, profanity, and threats against members of the public, the department terminated the officer. “It clearly shocked the conscience when you saw all of the different incidents,” said Assistant Chief of Police Dave Harvey of Phoenix.

In Daytona Beach, Chief Chitwood requested that the officers with a history of complaints be among the first to be outfitted with body-worn cameras. Although he found that usually the videos demonstrated that “the majority of the officers are hardworking, good police,” he has also seen how body-worn cameras can help an agency address discipline problems. Chitwood said:

We had an officer who had several questionable incidents in the past, so we outfitted him with a camera. Right in the middle of an encounter with a subject, the camera goes blank, and then it comes back on when the incident is over. He said that the camera malfunctioned, so we gave him another one. A week later he goes to arrest a woman, and again, the camera goes blank just before the encounter. He claimed again that the camera had malfunctioned. So we conducted a forensic review of the camera, which determined that the officer had intentionally hit the power button right before the camera shut off. Our policy says that if you turn it off, you’re done. He resigned the next day.

Body-worn cameras can also help law enforcement officials to address wide-reaching structural problems within the department. Many police officials that PERF consulted said that body-worn cameras have allowed them to identify potential weaknesses within their agencies and to develop solutions for improvement, such as offering new training programs or revising their departmental policies and protocols.

*In Phoenix, an officer was fired after his body-worn camera captured repeated incidents of unprofessional conduct.*

For example, Chief of Police William Lansdowne of San Diego said that one reason his department is implementing body-worn cameras is to improve its understanding of incidents involving claims of racial profiling. “When it comes to collecting data, the raw numbers don’t

always fully capture the true scope of a problem,” he said. “But by capturing an audio and video account of an encounter, cameras provide an objective record of whether racial profiling took place, what patterns of officer behavior are present, and how often the problem occurs.”

Police agencies have also found that implementing a body-worn camera program can be useful when facing consent decrees and external investigations. Roy Austin, deputy assistant attorney general for the Civil Rights Division at the U.S. Department of Justice, said, “We want to get police departments out from under consent decrees as soon as possible. What is important is whether you can show that your officers are engaged in constitutional policing on a regular basis. Although it isn’t an official Department of Justice policy, the Civil Rights Division believes that body-worn cameras can be useful for doing that.”

Many police departments that have faced external investigations, including those in New Orleans and Detroit, are in various stages of testing and implementing body-worn cameras. Police executives in these cities said that cameras help them to demonstrate they are improving policies and practices within their agencies. Police Superintendent Ron Serpas of New Orleans, whose department is in the process of deploying more than 400 body-worn cameras, said, “Body-worn cameras will be good for us. The hardworking officers say, ‘Chief, just give us a chance to show everyone that we are not like the people who went astray after Hurricane Katrina.’ The one thing that New Orleans police officers want more than anything else is the independent verification that they are doing what they’re

supposed to do.” The police departments in Las Vegas, Nevada, and Spokane, Washington are also implementing body-worn cameras to assist in complying with the collaborative agreements they entered into with the COPS Office of the U.S. Department of Justice.

Chief of Police Charlie Beck of Los Angeles, whose department is testing body-worn cameras, understands first-hand how video evidence can help in these situations. “We exited our consent decree last year, and one of the reasons that the federal judge signed off on us was that we implemented in-car video,” said Beck. “Recordings can help improve public trust.”

## Evidence documentation

Police executives said that body-worn cameras have significantly improved how officers capture evidence for investigations and court proceedings. Along with documenting encounters with members of the public, body-worn cameras can provide a record of interrogations and arrests, as well as what officers witness at crime scenes.

Chief of Police Jason Parker of Dalton, Georgia, described how body-worn cameras have helped officers to improve evidence collection at accident scenes. “It is always hard to gather evidence from accident scenes,” Parker said. He explained that officers are often focused on securing the scene and performing life-saving measures and that witnesses and victims may not always remember what they had told officers in the confusion. This can lead to conflicting reports when victims and witnesses are asked to repeat their accounts in later statements. “Unlike in-car cameras, body-worn cameras capture everything that happens as officers travel around the scene and interview multiple people. The body-worn cameras have been incredibly useful in accurately preserving information.”

Some prosecutors have started encouraging police departments to use body-worn cameras to capture more reliable evidence for court, particularly in matters like domestic violence cases that can be difficult to prosecute. Chief Chitwood of Daytona Beach explained how body-worn cameras have changed how domestic violence cases are handled. “Oftentimes we know that the suspect is repeatedly abusing the victim, but either the victim refuses to press charges, or there is simply not enough evidence to go to trial,” he said. With the victim’s consent, Daytona Beach officers can now use body-worn cameras to videotape victim statements. “The footage shows first-hand the victim’s injuries, demeanor, and immediate reactions,” Chitwood noted. In some cases, officers capture the assault itself on video if they arrive on the scene while the incident is still ongoing. “This means that we can have enough evidence to move forward with the case, even if the victim ultimately declines to prosecute.”

Chief Miller of Topeka echoed this sentiment: “When we show suspects in domestic violence cases footage from the body-worn cameras, often they plead guilty without even having to go to trial.”

*“Some police departments are doing themselves a disservice by not using body-worn cameras. Everyone around you is going to have a camera, and so everyone else is going to be able to tell the story better than you if you don’t have these cameras. And when the Civil Rights Division is looking at a police department, every piece of information that shows the department is engaged in constitutional policing is important. So of course body-worn cameras can help.”*

– Roy L. Austin, Jr., Deputy Assistant Attorney General,  
Civil Rights Division, U.S. Department of Justice

*“Although body-worn cameras are just one tool, the quality of information that they can capture is unsurpassed. With sound policy and guidance, their evidentiary value definitely outweighs any drawbacks or concerns.”*

– Jason Parker, Chief of Police,  
Dalton (Georgia) Police Department







# Chapter 2. Considerations for Implementation

New technologies in policing raise numerous policy issues that must be considered. This is especially true with body-worn cameras, which can have significant implications in terms of privacy, community relationships, and internal departmental affairs. As agencies develop body-worn camera programs, it is crucial that they thoughtfully examine how their policies and practices intersect with these larger questions. Policy issues to look at include the effect these cameras have on privacy and community relationships, the concerns raised by frontline officers, the expectations that cameras create in terms of court proceedings and officer credibility, and the financial considerations that cameras present.

## Privacy considerations

The proliferation of camera phones, advances in surveillance technology, and the emergence of social media have changed the way people view privacy, contributing to the sense that, as Police Commissioner Charles Ramsey of Philadelphia said, it sometimes feels as though “everyone is filming everybody.” As technology advances and expectations of privacy evolve, it is critical that law enforcement agencies carefully consider how the technology they use affects the public’s privacy rights, especially when courts have not yet provided guidance on these issues.

Body-worn cameras raise many privacy issues that have not been considered before. Unlike many traditional surveillance methods, body-worn cameras can simultaneously record both audio and video and capture close-up images that allow for the potential use of facial recognition technology. In addition, while stationary surveillance cameras generally cover only public spaces, body-worn cameras give officers the ability to record inside private homes and to film sensitive situations that might emerge during calls for service.

There is also concern about how the footage from body-worn cameras might be stored and used. For example, will a person be able to obtain video that was recorded inside a neighbor’s home? Will agencies keep videos indefinitely? Is it possible that the body-worn camera footage might be improperly posted online?

When implementing body-worn cameras, law enforcement agencies must balance these privacy considerations with the need for transparency of police operations, accurate documentation of events, and evidence collection. This means making careful decisions about when officers will be required to activate cameras, how long recorded data should be retained, who has access to the footage, who owns the recorded data, and how to handle internal and external requests for disclosure.

*“In London we have CCTVs, which are quite extensive and becoming even more so, but the distinction is that those cameras don’t listen to your conversations. They observe behavior and see what people do and cover public space, so you can see if there is a crime being committed. But CCTVs don’t generally seek out individuals. So I think there is an important distinction there.”*

– Sir Bernard Hogan-Howe, Commissioner,  
London Metropolitan Police Service

## Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned

### Determining when to record

The issue with perhaps the greatest privacy implications is deciding which types of encounters and activities officers should record. Should officers be required to record every interaction with a member of the public? Or are there some situations in which recording should be discretionary or prohibited?

One approach is to require officers to record all encounters with the public. This would require officers to activate their cameras not only during calls for service or other law enforcement-related

encounters but also during informal conversations with members of the public (e.g., a person asking an officer for directions or an officer stopping into a store and engaging in casual conversation with the owner). This is the approach advocated by the American Civil Liberties Union (ACLU), which stated in a report released in October 2013, “If a police department is to place its cameras under officer control, then it must put in place tightly effective means of limiting officers’ ability to choose which encounters to record. That can only take the form of a department-wide policy that mandates that police turn on recording during every interaction with the public.”<sup>6</sup>

Scott Greenwood, an attorney with the ACLU, explained why the ACLU advocates recording all encounters. “You don’t want to give officers a list and say, ‘Only record the following 10 types of situations.’ You want officers to record all the situations, so when a situation does go south, there’s an unimpeachable record of it—good, bad, ugly, all of it. This is an optimal policy from a civil liberties perspective.”

Greenwood said this approach benefits not only the public but also officers. “Mandatory recording is also what will protect an officer from allegations of discretionary recording or tampering,” said Greenwood.

“You want activating the camera to be a reflexive decision, not

something that officers have to evaluate with each new situation. If officers have to determine what type of incident it is before recording, there are going to be a lot of situations in which a recording might have exonerated an officer, but the recording was never made.”

However, PERF believes that requiring officers to record every encounter with the public would sometimes undermine community members’ privacy rights and damage important police-community relationships. There are certain situations, such as interviews with crime victims and witnesses and informal, non-law enforcement interactions with members of the community, that call for affording officers some measure of discretion in determining whether to activate their cameras. There are situations in which not recording is a reasonable decision. An agency’s body-worn camera policy should expressly describe these situations and provide solid guidance for officers when they exercise discretion not to record.

For example, officer discretion is needed in sensitive situations, such as encounters with crime victims or witnesses who are concerned about retaliation if they are seen as cooperating with the police. In other cases, officer discretion is needed for routine and casual situations—such as officers on foot or bike patrol who wish to chat with neighborhood residents—and turning on a video camera could make the encounter seem officious and off-putting.

*“For the [American Civil Liberties Union], the challenge of on-officer cameras is the tension between their potential to invade privacy and their strong benefit in promoting police accountability. Overall, we think they can be a win-win—but only if they are deployed within a framework of strong policies to ensure they protect the public without becoming yet another system for routine surveillance of the public, and maintain public confidence in the integrity of those privacy protections. Without such a framework, their accountability benefits would not exceed their privacy risks.”*

—“Police Body-Mounted Cameras: With Right Policies in Place, a Win for All” (New York: ACLU, 2013).

6. Jay Stanley, “Police Body-Mounted Cameras: With Right Policies in Place, a Win for All” (New York: ACLU, 2013), [https://www.aclu.org/files/assets/police\\_body-mounted\\_cameras.pdf](https://www.aclu.org/files/assets/police_body-mounted_cameras.pdf).



Of the police departments that PERF consulted, very few have adopted the policy of recording all encounters with the public. The more common approach is to require officers to activate their cameras when responding to calls for service and during law enforcement-related encounters and activities, such as traffic stops, arrests, searches, interrogations, and pursuits. In many cases, the department's written policy defines what constitutes a law enforcement-related encounter or activity, and some policies also provide a specific list of which activities are included. Many policies generally indicate that when in doubt, officers should record. Most policies also give officers the discretion to not record when doing so would be unsafe, impossible, or impractical, but most require officers to articulate in writing their reasons for not activating the camera or to say on camera why they are turning the camera off.

Police executives cite several reasons for favoring a more limited and flexible approach rather than requiring officers to record all encounters. One reason is that it gives officers the discretion to not record if they feel that doing so would infringe on an individual's privacy rights. For example, many police departments, including those in Oakland and Rialto, California; Mesa, Arizona; and Fort Collins, Colorado, give officers discretion regarding whether to record interviews with victims of rape, abuse, or other sensitive crimes. Some departments also extend this discretion to recording victims of other crimes. The Daytona Beach (Florida) Police Department recently changed its policy to require that officers obtain consent, on camera, from all crime victims prior to recording an interview. "This new policy is a response to the privacy concerns that arise when you are dealing with victims of crime," said Chief of Police Mike Chitwood of Daytona Beach.

Some agencies encourage officers to use discretion when determining whether to record encounters with or searches of individuals who are partially or completely unclothed. Chief of Police Don Lanpher of Aberdeen, South Dakota, said, "We had an incident when officers were called to assist a female on a landing in an apartment building who was partially undressed. All of the officers had cameras, but they did not record her until she was covered. Officers are encouraged to use discretion in those cases."

In addition to privacy concerns, police executives cite the potential negative impact on community relationships as a reason for not requiring officers to record all encounters with the public. Their goal, always, is to maintain an open dialogue with community members and preserve the trust in their relationships.<sup>7</sup> "There are a lot of issues with recording every citizen contact without regard to how cooperative or adversarial it is," said Chief of Police Ken Miller of Greensboro, North Carolina. "If people think that they are going to be recorded every time they talk to an officer, regardless of the context, it is going to damage openness and create barriers to important relationships."

Commissioner Ramsey of Philadelphia agrees. "There has to be some measure of discretion. If you have a police interaction as a result of a 911 call or a reasonable suspicion stop, it is one thing—you should record in those situations. But you have to give officers discretion whether to record if they are just saying 'hello' to someone or if they are approached by an individual who wants to give them information."

7. See "Impact on community relationships" on page 19, "Securing community support" on page 21, "Protecting intelligence-gathering efforts" on page 22, and "Lessons learned about impact on community relationships" on page 24 for strategies departments have taken to address this impact.

*Of the police departments that PERF consulted, very few have adopted the policy of recording all encounters with the public. The more common approach is to require officers to activate their cameras when responding to calls for service and during law enforcement-related encounters and activities, such as traffic stops, arrests, searches, interrogations, and pursuits.*

## Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned

Some police executives also believe that requiring officers to record all encounters can signal a lack of trust in officers, which is problematic for any department that wants to encourage its officers to be thoughtful and to show initiative. For example, a survey of officers conducted in Vacaville, California, found that although 70 percent of officers were in favor of using body-worn cameras, a majority were opposed to a policy containing strict requirements of mandatory recording of all police contacts.

*"In a sensitive investigation, such as a rape or child abuse case, if you have a victim who doesn't want to be recorded, I think you have to take that into account. I think that you cannot just arbitrarily film every encounter. There are times when you've got to give your officers some discretion to turn the camera off. Of course, the officers should be required to articulate why they're not recording or why they're shutting it off, but we have to give them that discretion."*

– Charlie Beck, Chief of Police,  
Los Angeles Police Department

*"Legitimacy in policing is built on trust. And the notion of video-recording every interaction in a very tense situation would simply not be a practical operational way of delivering policing. In fact, it would exacerbate all sorts of problems. In the United Kingdom, we're also subject to human rights legislation, laws on right to privacy, right to family life, and I'm sure you have similar statutes. It's far more complicated than a blanket policy of 'every interaction is filmed.' I think that's far too simplistic. We have to give our officers some discretion. We cannot have a policy that limits discretion of officers to a point where using these devices has a negative effect on community-police relations."*

– Sir Hugh Orde, President,  
Association of Chief Police Officers (UK)

For departments whose policies do not require officers to record every interaction with the public, the goal is to sufficiently ensure accountability and adherence to the department's body-worn camera policies and protocols. For example, when officers have discretion to not record an encounter, many departments require them to document, either on camera or in writing, the fact that they did not record and their reasons for not recording. Some departments also require officers to obtain supervisor approval to deactivate the camera if a subject requests to not be recorded.

### Consent to record

In a handful of states, officers are legally required to inform subjects when they are recording and to obtain the person's consent to record. This is known as a "two-party consent" law, and it can create challenges to implementing a body-worn camera program. In many two-party consent states, however, police executives have successfully worked with their state legislatures to have the consent requirement waived for body-worn police cameras. For example, in February 2014 Pennsylvania enacted a law waiving the two-party consent requirement for police using body-worn cameras.<sup>8</sup> Efforts are under way to change two-party consent statutes in other jurisdictions as well. Each department must research its state laws to determine whether the two-party consent requirement applies.

Some police executives believe that it is good practice for officers to inform people when they are recording, even if such disclosures are not required by law. In Greensboro, for example, officers are encouraged—but not required—to announce when they are recording. Chief Miller of Greensboro said this policy is based on the belief that the knowledge that cameras are running can help defuse potentially confrontational situations and improve behavior from all parties.

However, many police executives in one-party consent states do not explicitly instruct officers to inform people that they are recording. "Kansas is a one-party consent state, so only the officer needs to know that the camera is running. But if a person asks, the officer tells them the truth," said Chief of Police Ron Miller of Topeka, Kansas.

8. Police body cameras heading to Pennsylvania (February 10, 2014), ABC 27 News, <http://www.abc27.com/story/24686416/police-body-cameras-heading-to-pennsylvania>.

## Recording inside private homes

Another privacy question is whether and under what conditions officers should be allowed to record while inside a person's home. Many law enforcement agencies have taken the position that officers have the right to record inside a private home as long as they have a legal right to be there. According to this approach, if an officer enters a home in response to a call for service, pursuant to a valid search warrant, or with consent of the resident, officers can record what they find inside.

There is a concern that footage taken inside a private home may be subject to public disclosure. Deputy Chief of Police William Roseman of Albuquerque described how this can be particularly problematic in states with broad public disclosure laws. "Here in Albuquerque, everything is open to public record unless it is part of an ongoing investigation. So if police come into your house and it is captured on video, and if the video isn't being used in an investigation, your neighbor can request the footage under the open records act, and we must give it to them." Scott Greenwood of the ACLU has expressed similar concerns:

An officer might be allowed to go into the residence and record, but that does not mean that everything inside ought to be public record. The warrant is an exception to the Fourth Amendment, not a waiver. We do not want this to show up on YouTube. My next-door neighbor should never be able to view something that happened inside my house without my permission.

*"One of the things we are forgetting is that we already send officers into people's homes and have them document all these bits of information that we're worried about recording. If an officer enters someone's home, they document the condition of the home, especially if it's a case about a child or involves domestic violence or physical injury. So videos are just a technologically advanced type of police report that should be treated no differently from an initial contact form that we currently fill out every day. The advantage of a camera is now you have a factual representation as opposed to an interpretation by an officer."*

– Chris Burbank, Chief of Police,  
Salt Lake City (Utah) Police Department

## Data storage, retention, and disclosure

Decisions about where to store video footage and how long to keep it can have a far-reaching effect on privacy. Many police executives believe that privacy concerns can be addressed through data storage, retention, and disclosure policies. However, when developing these policies, agency leaders must balance privacy considerations with other factors, such as state law requirements, transparency, and data storage capacity and cost.

### Data storage policies

Among police executives interviewed by PERF, security, reliability, cost, and technical capacity were the primary factors cited for choosing a particular method for storing video files from body-worn cameras. Among the more than 40 departments that PERF consulted, all stored body-worn camera video on an in-house server (managed internally) or an online cloud database (managed by a third-party vendor).<sup>9</sup>

Police executives noted a number of strategies that can help agencies protect the integrity and privacy of their recorded data, regardless of which storage method is used. These lessons learned regarding data storage include the following:

- *Consult with prosecutors and legal advisors:* Legal experts can advise whether data storage policies and practices are in compliance with all relevant laws and adequately preserve evidentiary chain of custody.

9. Cloud storage is a method for storing and backing up electronic data. The data is maintained and managed remotely, generally by a third party, and made available to users over a network, or "cloud."



## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

- *Explicitly prohibit data tampering, editing, and copying.*
- *Include protections against tampering with the data prior to downloading:* This helps to mitigate concerns that officers will be able to alter or delete recordings prior to downloading them. Some body-worn camera systems are sold with technological safeguards that make it impossible for an officer to access the data prior to downloading.
- *Create an auditing system:* It is important to have a record of who accesses video data, when, and for what purpose. Some storage systems include a built-in audit trail.
- *Explicitly state who will be authorized to access data:* Many written policies outline who will have access to the data (e.g., supervisors, Internal Affairs, certain other officers and department personnel, and prosecutors) and for what purpose (e.g., administrative review, training, and investigations).

*"Whether you store video internally or externally, protecting the data and preserving the chain of custody should always be a concern. Either way, you need something built into the system so that you know that video has not been altered."*

– Ken Miller, Chief of Police,  
Greensboro (North Carolina) Police Department

- *Ensure there is a reliable back-up system:* Some systems have a built-in backup system that preserves recorded data, and some departments copy recordings to disc and store them as evidence.
- *Specify when videos will be downloaded from the camera to the storage system and who will download them:* The majority of existing policies require the camera operator to download the footage by the end of each shift. In the case of an officer-involved shooting or other serious incident, some policies require supervisors to step in and physically take possession of the camera and assume downloading responsibilities.
- *Consider third-party vendors carefully:* Overwhelmingly, the police executives whom PERF interviewed reported that their legal advisors and prosecutors were comfortable using a third-party vendor to manage the storage system. When deciding whether to use a third-party vendor, departments consider the vendor's technical assistance capabilities and whether the system includes protections such as an audit trail, backup system, etc. Police executives stressed the importance of entering into a legal contract with the vendor that protects the agency's data.

These strategies are important not only for protecting the privacy rights of the people recorded but also for preserving evidence and resolving allegations of data tampering.

### Data retention policies

The length of time that departments retain body-worn camera footage plays a key role for privacy. The longer that recorded videos are retained, the longer they are subject to public disclosure, which can be problematic if the video contains footage associated with privacy concerns. And community members' concerns about police departments collecting data about them in the first place are lessened if the videos are not retained for long periods of time.

The retention times are generally dictated by the type of encounter or incident that the footage captures. Although protocols vary by department, footage is typically categorized as either "evidentiary" or "non-evidentiary."

Evidentiary video involves footage of an incident or encounter that could prove useful for investigative purposes, such as a crime, an arrest or citation, a search, a use of force incident, or a confrontational encounter with a member of the public. Evidentiary footage is usually further categorized by specific incident type, and the retention period is governed by state evidentiary rules for that incident. For example, many state laws require that footage involving a homicide

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be retained indefinitely, but video of a traffic citation must be kept for only a matter of months. Departments often purge evidentiary videos at the conclusion of the investigation, court proceeding, or administrative hearing for which they were used.

Non-evidentiary video involves footage that does necessarily have value to aid in an investigation or prosecution, such as footage of an incident or encounter that does not lead to an arrest or citation or of general activities that an officer might perform while on duty (e.g., assisting a motorist or clearing a roadway). Agencies often have more leeway in setting retention times for non-evidentiary videos, which are generally not subject to state evidentiary laws.

Of the departments that PERF consulted, the most common retention time for non-evidentiary video was between 60 and 90 days. Some departments retain non-evidentiary video for an even shorter period. Fort Collins, Colorado, for example, discards footage after seven days if there is no citizen contact recorded and after 30 days if contact is made but no enforcement action is taken. On the other end of the spectrum, some departments, such as Albuquerque, retain non-evidentiary video for a full year.

Many police executives express a preference for shorter retention times for non-evidentiary video. Shorter retention periods not only address privacy concerns but also reduce the costs associated with data storage. On the other hand, police executives noted that they must keep videos long enough to demonstrate transparency and to have footage of an encounter in case a complaint arises about an officer's actions. For example, departments in Rialto, Fort Collins, Albuquerque, Daytona Beach, and Toronto base retention times in part on how long it generally takes for complaints to be filed.

### Public disclosure policies

State public disclosure laws, often known as freedom of information laws, govern when footage from body-worn cameras is subject to public release. However, most of these laws were written long before law enforcement agencies began deploying body-worn cameras, so the laws do not necessarily account for all of the considerations that must be made when police departments undertake a body-worn camera program.

Although broad disclosure policies can promote police agency transparency and accountability, some videos—especially recordings of victims or from inside people's homes—will raise privacy concerns if they are released to the public or the news media. When determining how to approach public disclosure issues, law enforcement agencies must balance the legitimate interest of openness with protecting privacy rights.<sup>10</sup>

In most state public disclosure laws, exceptions are outlined that may exempt body-worn camera footage from public release. For example, even the broadest disclosure laws typically contain an exception for video that contains evidence or is part of an ongoing investigation. Some state disclosure laws, such as those in North Carolina, also exempt personnel records from public release. Body-worn camera videos used to monitor officer performance may fall under this type of exception.

*"It is important to have retention policies that are directly linked to the purposes of having the video, whether that purpose is to have evidence of a crime or to hold officers and the public accountable. Agencies should not retain every video indefinitely, or else those videos could be used down the road for all sorts of inappropriate reasons."*

– Lorie Fridell, Associate Professor,  
University of South Florida

10. Scott Greenwood of the ACLU recommends that police executives work with the ACLU to ensure that state disclosure laws contain adequate privacy protections for body-worn camera videos. "If interpreted too broadly, open records laws can undermine the accountability of law enforcement agencies," said Greenwood. "You want to make sure that the video is not subject to arbitrary disclosure. It deserves the highest level of protection."



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*“When developing body-worn camera policies, agencies have to consider how open the public disclosure laws are in their state. Are they going to have to give up all of their footage to any person that requests it? Or are there some protections? This is important to think about when it comes to privacy.”*

– Ron Miller, Chief of Police,  
Topeka (Kansas) Police Department

These exceptions to public disclosure can help police departments to avoid being required to release videos if doing so could jeopardize a criminal prosecution. The exceptions can also help police to protect the privacy of crime victims and witnesses. However, by policy and practice, law enforcement

agencies should apply these exceptions judiciously to avoid any suspicion by community members that police are withholding video footage to hide officer misconduct or mistakes. In launching body-worn camera programs, law enforcement agencies should convey that their goal is to foster transparency and accountability while protecting civil liberties and privacy interests. When an agency decides whether to release or withhold body-worn camera footage of a particular incident, the agency should articulate its reasons for doing so.

In addition, some agencies have adopted recording and retention policies that help to avoid violations of privacy. For example, some agencies allow officers to deactivate their cameras during interviews with crime victims or witnesses. And short retention times for non-evidentiary video footage can reduce the window of opportunity for requests for release of video footage that would serve no legitimate purpose.

### *Lessons learned on privacy considerations*

In their conversations with PERF staff members, police executives and other experts revealed a number of lessons that they have learned regarding body-worn cameras and privacy rights:

- Body-worn cameras have significant implications for the public's privacy rights, particularly when it comes to recording victim interviews, nudity, and other sensitive subjects and when recording inside people's homes. Agencies must factor these privacy considerations into decisions about when to record, where and how long to store data, and how to respond to public requests for video footage.
- In terms of when officers should be required to activate their cameras, the most common approach is requiring officers to record all calls for service and law enforcement-related encounters and activities and to deactivate the camera only at the conclusion of the event or with supervisor approval.
- It is essential to clearly define what constitutes a law enforcement-related encounter or activity in the department's written body-worn camera policy. It is also useful to provide a list of specific activities that are included, noting that the list is not necessarily all inclusive. Many agencies give a general recommendation to officers that when they are in doubt, they should record.
- To protect officer safety and acknowledge that recording may not be possible in every situation, it is helpful to state in policies that recording will not be required if it would be unsafe, impossible, or impractical.
- Significant privacy concerns can arise when interviewing crime victims, particularly in situations involving rape, abuse, or other sensitive matters. Some agencies prefer to give officers discretion regarding whether to record in these circumstances. In such cases, officers should take into account the evidentiary value of recording and the willingness of the victim to speak on camera. Some agencies go a step further and require officers to obtain the victim's consent prior to recording the interview.
- To promote officer accountability, most policies require officers to document, on camera or in writing, the reasons why the officer deactivated the camera in situations that are otherwise required to be recorded.

- In one-party consent states, officers are not legally required to notify subjects when officers are recording. However, some agencies have found that announcing the camera is running promotes better behavior and defuses potentially confrontational encounters.
- When making decisions about where to store body-worn camera footage, how long to keep it, and how it should be disclosed to the public, it is advisable for agencies to consult with departmental legal counsel and prosecutors.
- Regardless of the chosen method for storing recorded data, agencies should take all possible steps to protect the integrity and security of the data. This includes explicitly stating who has access to the data and under what circumstances, creating an audit system for monitoring access, ensuring there is a reliable back-up system, specifying how data will be downloaded from the camera, and including protections against data tampering prior to downloading.
- It is important that videos be properly categorized according to the type of event contained in the footage. How the videos are categorized will determine how long they are retained, who has access, and whether they can be disclosed to the public.
- To help protect privacy rights, it is generally preferable to set shorter retention times for non-evidentiary data. The most common retention time for this video is between 60 and 90 days.
- When setting retention times, agencies should consider privacy concerns, the scope of the state's public disclosure laws, the amount of time the public needs to file complaints, and data storage capacity and costs.
- Evidentiary footage is generally exempt from public disclosure while it is part of an ongoing investigation or court proceeding. Deleting this video after it serves its evidentiary purpose can reduce the quantity of video stored and protect it from unauthorized access or release. It is important to always check whether deletion is in compliance with laws governing evidence retention.
- Informing the public about how long video will be retained can help promote agency transparency and accountability. Some agencies have found it useful to post retention times on the department's website.
- It is important for the agency to communicate its public disclosure policy to the community when the body-worn camera program is deployed to develop public understanding of the technology and the reasons for adopting it.

*In launching body-worn camera programs, law enforcement agencies should convey that their goal is to foster transparency and accountability while protecting civil liberties and privacy interests.*

## Impact on community relationships

Building positive relationships with the community is a critical aspect of policing, and these relationships can exist only if police have earned the trust of the people they serve. Police rely on these community partnerships to help them address crime and disorder issues.

At the PERF conference, a number of participants expressed concern that excessive recording with body-worn cameras may damage the relationships officers have developed with the community and hinder the openness of their community policing interactions. Some police executives fear, for

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example, that people will be less likely to come forward to share information if they know their conversation is going to be recorded, particularly in high-crime neighborhoods where residents might be subject to retaliation if they are seen as cooperating with police.

*“Before we make a decision on where to go with body-worn cameras, I really think that all of us need to stop and consider some of these larger unanswered questions. We need to look at not only whether the cameras reduce complaints but also how they relate to witnesses on the street coming forward, what they mean for trust and officer credibility, and what messages they send to the public.”*

– Bob Cherry, Detective of  
Baltimore Police Department  
and President of Baltimore City  
Fraternal Order of Police

Detective Bob Cherry of the Baltimore Police Department, who is also the president of the Baltimore City Fraternal Order of Police, said, “Trust builds through relationships, and body-worn cameras start from a position of mistrust. The comments I hear from some officers are, ‘I’m worried that if I wear a camera, it is going to make it hard to continue the relationship I have with a business owner or the lady down the street. These are the people I’m working with now to clean up the neighborhood.’”

Some police executives reported that deploying body-worn cameras has in fact had a negative impact on their intelligence-gathering activities, particularly when officers are not allowed the discretion to turn off the camera. Chief of Police Sean Whent of Oakland, California, explained, “Our policy is to film all detentions and to keep recording until the encounter is over. But let’s say an officer detains someone, and now that person wants to give up information. We are finding that people are not inclined to do so with the camera running. We are considering changing our policy to allow officers to turn off the camera in those situations.”

The Mesa (Arizona) Police Department has also found that body-worn cameras can undermine information-gathering efforts. “We have definitely seen people being more reluctant to give information when they know that they are being videotaped,” said Lieutenant Harold Rankin.

However, other police executives said that these types of situations are rare and that body-worn cameras have not had a significant impact on their ability to gather information from the public. For some agencies, public reaction to the cameras has been practically nonexistent. Major Stephen Willis of the Charlotte-Mecklenburg (North Carolina) Police Department said, “We have had in-car cameras for many years, and in most instances the public has an expectation that they will be recorded. We encountered very little resistance from the public when we piloted body-worn cameras.” Deputy Chief of Police Cory Christensen of Fort Collins, Colorado, said, “We are not seeing much pushback from the community. Often people do not even notice the presence of the cameras.”

“I disagree that cameras hurt community relationships,” said Chief of Police William Farrar of Rialto, California. “We have not seen any evidence of that. People will ask officers if they have a camera on, but it does not seem to bother them.” In fact, in its evaluation of its body-worn camera program, the Rialto Police Department found that officers made 3,178 more contacts with the public (not counting calls for service) during the year that cameras were deployed than in the prior year.<sup>11</sup>

Some police executives reported that body-worn cameras have actually improved certain aspects of their police-community relationships. These executives said that the presence of cameras leads to better behavior by both the officer and the person being recorded. “The cameras help defuse some of the tensions that might come up during encounters with the public. I think that 98 percent of the time, cameras help improve relationships with the community,” said Chief Chitwood of Daytona Beach. Deputy Chief Christensen of Fort Collins agreed: “Officers wearing cameras have reported a noticeable improvement in the quality of their encounters with the public. With both sides behaving better, community relations will improve.”

11. William Farrar, “Operation Candid Camera: Rialto Police Department’s Body-Worn Camera Experiment,” *The Police Chief* 81 (2014): 20–25.



### Sir Robert Peel's Principles of Policing

Sir Robert Peel, who created London's Metropolitan Police Force in 1829, is known as the father of modern policing. He helped to establish a policing philosophy grounded in professionalism, ethics, and strong police-community cooperation, which continues to influence policing to this day. The "Nine Principles of Policing," which were issued to the first officers of the London Metropolitan Police and reflect Sir Robert Peel's philosophy, provide guidance on the role of police and the importance of maintaining strong police-community relationships.

The following principles attributed to Peel seem to have relevance for a discussion of how body-worn cameras can affect police officers' relationships with community members:

Police must recognize always that the power of the police to fulfill their functions and duties is dependent on

public approval of their existence, actions and behavior and on their ability to secure and maintain public respect.

Police must recognize always that to secure and maintain the respect and approval of the public means also the securing of the willing cooperation of the public in the task of securing observance of laws.

Police must maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and that the public are the police, the police being only members of the public who are paid to give full time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.\*

\* "Principles of Good Policing," Institute for the Study of Civil Society, <http://www.civitas.org.uk/pubs/policeNine.php>.

Cameras have also helped assure the public that an agency is serious about transparency and officer accountability, according to several police executives. "We have found that body-worn cameras can actually help strengthen trust and police legitimacy within the community," said Chief of Police Hassan Aden of Greenville, North Carolina. To illustrate this point, Aden shared the following story:

A local community group approached me with a genuine concern that certain officers were racially profiling subjects during traffic stops. We went back and looked at the footage from these officers' body-worn cameras and found that there was indeed a pattern of using flimsy probable cause when making stops. However, we determined that it was a training problem and immediately changed the relevant training protocols. The organization that had raised the complaint was happy with the outcome. They appreciated that we had the body-worn camera footage, that the officers' behavior was investigated, and that we used the video to help us improve.

### Securing community support

To mitigate community concerns, many police executives found it useful to engage the community before rolling out their camera programs. The Rialto Police Department, for example, used social media to inform the public about its body-worn camera program. "You have to engage the public before the cameras hit the streets," said Chief Farrar of Rialto. "You have to tell people what the cameras are going to be used for and how everyone can benefit from them."

*"We want our officers to go out, get out of their cars, and talk to the public about football or whatever it may be to establish an informal relationship. That's how you build partnerships and persuade people to give you information about crime in their area. I think if we say that every single interaction is going to be recorded, the danger is that it will lead to a more officious relationship. Maybe the public will get used to it, just as in our country they've gotten used to cameras on the streets. But as we start off, I think there's a danger that every interaction will become a formal interaction, and the informal relationships may be eroded."*

– Sir Peter Fahy, Chief Constable,  
Greater Manchester (UK) Police

## Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned

The Los Angeles Police Department, which is in the process of testing body-worn cameras, plans to solicit public feedback when developing its camera policies. The Greensboro (North Carolina) Police Department partnered with the Greensboro Police Foundation, which launched a “Put Cameras on Cops” public information campaign that included posting billboards and reaching out to the community.

Chief Lanpher of Aberdeen said that it is also important for agencies to engage local policymakers and other stakeholders. “Police departments cannot do this alone,” he said. “We went to the mayor, the city council, and the state’s attorney’s office and showed them actual footage that officers had recorded to demonstrate why these cameras would be useful. Without their support, implementing the program would have been a challenge. Communication and developing those partnerships is critical.”

*“My opinion is that body-worn cameras will help with community relationships. They will show when officers are doing a good job and help us correct when they aren’t. This is good for the community.”*

— Lieutenant Dan Mark,  
Aurora (Colorado) Police Department

*“I think it’s absolutely critical that we talk to the public about [body-worn cameras]. We need to bring them on board and have them understand what this is about and go through the advantages and disadvantages and the issues.”*

— Sir Peter Fahy, Chief Constable,  
Greater Manchester (UK) Police

There are also indications that the public is more accepting of body-worn cameras if agencies are transparent about their camera policies and practices. Some agencies post their camera policies on their websites. In addition, some agencies, such as the Oakland Police Department, have proactively posted body-worn camera footage on their websites to demonstrate transparency and to help resolve questions surrounding controversial incidents.

In Phoenix, the police department released to the media body-worn camera footage from an officer who was fired for misconduct. Assistant Chief of Police Dave Harvey of Phoenix explained that the police union requested the release to demonstrate transparency.

“It is important that agencies are open and transparent with the community,” said Deputy Chief Christensen of Fort Collins. “If we only show the good and hide the bad, it will foster distrust of the police.”

### Protecting intelligence-gathering efforts

In addition to engaging the public to mitigate concerns, some agencies have adopted recording policies that seek to minimize the potential damage that body-worn cameras have on police-community relationships. These agencies limit body-worn camera recordings to calls for service and law enforcement-related contacts, rather than recording every encounter with the public, so that officers do not feel compelled to record the kinds of casual conversations that are central to building informal relationships within the community.

Chief Miller of Topeka said that this approach has worked well. “I recently witnessed a community policing officer having a casual conversation with two citizens,” he said. “The officer was wearing a camera, but it was not running at the time. The camera was clearly visible, but it did not create a problem.” Chief Miller of Greensboro said, “From a community policing aspect, it does not make sense to record every single interaction with the public. If an officer sees someone on the street and just wants to talk about what is going on in the neighborhood, it is easier to have that conversation if the camera is not running.”



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A number of agencies also give officers the discretion to turn off their cameras when talking with a person who wants to share information about a crime. This situation can occur when a person approaches an officer with information or if an officer interviews witnesses at a crime scene. In either case, police executives said that officers must weigh the evidentiary value of recording the statement with the reality that some people who share information may not want to talk on camera. “If officers encounter an informant or witness who isn’t comfortable being recorded, they have to decide whether obtaining the information outweighs recording the statement,” said Lieutenant Rankin of Mesa. “If so, our officers can either turn the camera off or position the camera so that they capture audio but not video. People usually feel more comfortable with just the audio.”

Chief Farrar of Rialto said that it is important for officers to maintain credibility with people who might want to share information. “We teach our officers to consider the facts of each incident before they record,” he said. “When officers encounter reluctant witnesses, I would suggest that they develop a rapport by being honest and not pressuring them to talk, especially on camera.”

Many agencies, while allowing officers to turn off the camera at the request of the person being interviewed, nonetheless strongly encourage officers to record if at all possible. “It is important to remain flexible, as there are no absolutes,” said Commander Michael Kurtenbach of Phoenix. “But we would generally recommend an officer to keep the camera on if possible when gathering information from witnesses.”

Inspector Danny Inglis of Greater Manchester, United Kingdom, agreed. “I generally think there is more to gain than lose in terms of recording these kinds of statements,” he said. “Recording is a way to capture critical intelligence and evidence. Our officers can turn the camera off at the person’s request, but they should confirm the reason for this on camera.”

The Topeka Police Department takes a similar approach. “Officers should try to leave the camera on to record exactly what a person says. If the person does not want to talk on camera, the officer can turn it off after stating the reason why,” said Chief Miller. Again, it is important that officers weigh the situation before making a decision. “The detectives and the prosecutors will want witness interviews on camera if possible. But they would also rather have the good information than have the witness refuse to talk because of the camera,” said Miller.

Some police executives said that the decision to record witnesses at a crime scene may depend on whether the scene is live or if it has been controlled. In many places, including Greensboro, Daytona Beach, and Rialto, officers typically leave their cameras running when responding to a live crime scene so they can capture spontaneous statements and impressions. Once the scene has been controlled (crime scene tape is put up, detectives arrive, etc.), it transitions into an investigative scene, and officers can turn the cameras off. Then they can determine whether to record more detailed statements taken from witnesses at the scene.

Agencies often include protections in their policies to ensure officers do not abuse their recording discretion. If an officer chooses not to record an encounter with someone giving information, he or she must typically document, on camera or in writing, the reason for not recording. In addition, many agencies require officers to activate the camera if an interaction becomes adversarial after the initial

*“If officers are talking to a member of the community just to say hello or to ask what is going on in the neighborhood, it is usually better for the relationship if the officer does not record the conversation.”*

– Stephen Cullen, Chief Superintendent,  
New South Wales (AUS) Police Force

*“We view evidence collection as one of the primary functions of cameras. So in the case of interviewing witnesses, we would make every attempt to capture the statement on video. However, we do allow discretion if the person we approach requests that the camera be turned off. Officers just need to understand what the tradeoff is.”*

– Cory Christensen, Deputy Chief of Police, Fort Collins  
(Colorado) Police Department

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

contact. Chief Chitwood said this approach has worked in Daytona Beach. “Between their experience and training, the officers know when they need to turn on their cameras. Activating the camera in these situations has become second nature to them,” he said.

### *Lessons learned about impact on community relationships*

In their conversations with PERF staff members, police executives and other experts revealed a number of lessons that they have learned when addressing the impact body-worn cameras can have on community relationships:

- Engaging the community prior to implementing a camera program can help secure support for the program and increase the perceived legitimacy of the program in the community.
- Agencies have found it useful to communicate with the public, local policymakers, and other stakeholders about what the cameras will be used for and how the cameras will affect them.
- Social media is an effective way to facilitate public engagement.
- Transparency about the agency’s camera policies and practices, both prior to and after implementation, can help increase public acceptance and hold agencies accountable. Examples of transparency include posting policies on the department website and publicly releasing video recordings of controversial incidents.
- Requiring officers to record calls for service and law enforcement-related activities—rather than every encounter with the public—can ensure officers are not compelled to record the types of casual conversations that are central to building informal relationships within the community.
- In cases in which persons are unwilling to share information about a crime if they are being recorded, it is a valuable policy to give officers discretion to deactivate their cameras or to position the camera to record only audio. Officers should consider whether obtaining the information outweighs the potential evidentiary value of capturing the statement on video.
- Recording the events at a live crime scene can help officers capture spontaneous statements and impressions that may be useful in the later investigation or prosecution.
- Requiring officers to document, on camera or in writing, the reasons why they deactivated a camera in situations that they are otherwise required to record promotes officer accountability.

### *Addressing officer concerns*

For a body-worn camera program to be effective, it needs the support not only of the community but also of the frontline officers who will be wearing the cameras. Securing this support can help ensure the legitimacy of a camera program and make its implementation more successful. Agency leaders should engage in ongoing communication with officers about the program’s goals, the benefits and challenges of using cameras, and the agency’s expectations of the officers.

### *Officer concerns about body-worn cameras*

One of the primary concerns for police executives is the fear that body-worn cameras will erode the trust between officers and the chief and top managers of the department. Some officers may view the cameras as a signal that their supervisors and managers do not trust them, and they worry that supervisors would use the cameras to track and scrutinize their every move. Inspector Inglis of Greater Manchester explained, “I have heard some resentment about the level of scrutiny that

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officers will be under if they wear body-worn cameras. This is especially true with the first-level response officers, who already feel they are under an extraordinary amount of pressure to get everything right. I can understand this concern.”

Given these concerns, one of the most important decisions an agency must make is how it will use camera footage to monitor officer performance. Most agencies permit supervisors to review videos so they can investigate a specific incident or complaint, identify videos for training purposes, ensure the system is working, and monitor overall compliance with the camera program.

However, there is some debate over whether supervisors should also periodically and randomly review videos to monitor officer performance. Some agencies allow periodic monitoring to help proactively identify problems and hold officers accountable for their performance. Other agencies permit periodic monitoring only in certain circumstances, such as when an officer is still in a probationary period or after an officer has received a certain number of complaints. Some agencies prohibit random monitoring altogether because they believe doing so is unnecessary if supervisors conduct reviews when an incident occurs.

In Greater Manchester, Inspector Inglis encourages supervisors to randomly review camera footage. “We use random review as a teaching tool, not just a supervision tool,” he said. “Supervisors might not get a lot of face time with officers, so reviewing the video is a good way for supervisors to appraise officers and provide feedback. It also helps hold officers accountable and gives them incentive to record.”

Other agencies expressly prohibit supervisors from randomly monitoring body-worn camera footage. “Per our policy, we do not randomly review videos to monitor officer performance,” said Chief Chitwood of Daytona Beach. “Instead, our review is incident-based, so if there is an issue, we will review the footage. In those cases, we can also review prior videos to see if there is a pattern of behavior.”

The Topeka Police Department generally prohibits random monitoring, though supervisors can periodically review videos if officers have received numerous complaints. Chief Miller of Topeka said that this policy strikes a balance between showing trust in the officers and holding them accountable. “If an officer does something wrong, you do not want to be accused of deliberate indifference because you had the videos but ignored them,” he said. “You have to show that you reviewed the footage once you had a reason to do so.”

Some police officials suggested that an agency’s internal audit unit, rather than direct supervisors, should be responsible for periodic, random monitoring. They said this approach allows agencies to monitor compliance with the program and assess officer performance without undermining the trust between an officer and his or her supervisor. These officials stressed that internal audit reviews should be truly random (rather than targeted to a specific officer or officers) and should be conducted in accordance with a written standard of review that is communicated to the officers. Chief of Police Jeff Halstead of Fort Worth, Texas, said, “Random review of the camera footage, either by an internal auditor or a supervisor, is critical to demonstrating that an agency is doing what it is supposed to do and is serious about accountability.”

In addition to concerns about trust and supervisor scrutiny, police executives said that some officers worried about the difficulty of operating the cameras and learning a new technology. “Officers can feel inundated with technology,” said Chief of Police Roberto Villaseñor of Tucson. “In the past few

*“I have heard officers say that while they are not opposed to using body-worn cameras, they do have some concerns. Some of these concerns are more practical, like whether adding new equipment will be overly burdensome. But the larger philosophical concern is whether these cameras send the wrong message about the trust we place in officers. What does it say about officer professionalism and credibility if the department has to arm every officer with a camera?”*

– Bob Cherry, Detective of  
Baltimore Police Department  
and President of Baltimore City  
Fraternal Order of Police



## Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned

years, our department has introduced a new records management system and a new digital radio system. So some officers see body-worn cameras as another new piece of technology that they will have to learn.” Some officers also said that cameras can be cumbersome and challenging to operate, and agencies often have to test several different camera models and camera placement on the body to determine what works best.

### Addressing officer concerns

Agencies have taken various steps to address officer concerns about body-worn cameras. One of the most important steps, according to many police executives, is for agency leaders to engage in open communication with officers about what body-worn cameras will mean for them.

For example, a survey of officers conducted by the Vacaville (California) Police Department found that including officers in the implementation process—and allowing them to provide meaningful input—generated support for the cameras. Some police executives, like Chief Chitwood of Daytona Beach and Chief Lanpher of Aberdeen, have found it useful to attend officer briefings, roll calls, and meetings with union representatives to discuss the camera program. “My staff and I invested considerable time talking at briefings and department meetings with all employees who would be affected by body-worn cameras,” said Chief of Police Michael Frazier of Surprise, Arizona. “This has helped us gain support for the program.”

*“I think police agencies can help the officer and fulfill their duties to the public by saying, ‘We have an officer [whom] we think is having problems, and we are going to look at those videos to determine behavioral patterns.’ You do not want to have a problem come up later and claim that you did not know about it even though you had videos. So to me, targeted monitoring makes sense.”*

– Christy Lopez, Deputy Chief,  
Special Litigation Section,  
Civil Rights Division,  
U.S. Department of Justice

Many police executives said that creating implementation teams comprised of representatives from various units within the department can help improve the legitimacy of a body-worn camera program. For example, as agencies develop body-worn camera policies and protocols, it can be useful to receive input from patrol commanders and officers, investigators, training supervisors, the legal department, communications staff, Internal Affairs personnel, evidence management personnel, and others across the agency who will be involved with body-worn cameras.

Police executives also said it is important to emphasize to officers that body-worn cameras are useful tools that can help them perform their duties. Chief Terry Gainer, U.S. Senate sergeant at arms, believes that framing body-worn cameras as a check on officer behavior is the wrong approach. “It’s going to be hard to encourage our officers to be the self-actualized professionals that we want them to be if we say, ‘Wear this because we’re afraid you’re bad, and cameras will help you prove that you’re good,’” said Gainer. “Body cameras should be seen as a tool for creating evidence that will help ensure public safety.”

Lieutenant John Carli of Vacaville, California, suggests that agencies frame the cameras as a teaching tool, rather than a disciplinary measure, by encouraging supervisors to review footage with officers and provide constructive feedback. One suggestion to accomplish this goal is to highlight officers whose videos demonstrate exemplary performance by showing their footage at training programs or by showing the video during an awards ceremony.

## Incremental implementation

Some police executives have also found it helpful to take an incremental approach when implementing body-worn cameras. For example, the San Diego Police Department plans to deploy 100 cameras as part of a pilot program with the eventual goal of outfitting 900 uniformed officers with cameras.

The Greensboro Police Department took a similar approach. “When we first deployed the cameras, there was an undercurrent of apprehension on the part of the officers. So we rolled it out in small increments to help officers get more comfortable with the program,” said Chief Miller of Greensboro. Gradual implementation can also help agencies learn which policies, practices, and camera systems are the best fit for their departments. Some agencies, such as the Mesa Police Department, initially assigned cameras to the most tech-savvy officers as a way to ease implementation.

Many agencies have found that officers embrace body-worn cameras when they see evidence of the cameras’ benefits. “Our officers have been fairly enthusiastic about body-worn cameras because they have seen examples of how the cameras have cleared fellow officers of complaints,” said Lieutenant Dan Mark of Aurora, Colorado. “One officer was threatened by an individual, and it was captured on the officer’s camera. We took the footage to the city attorney’s office, and the individual was successfully prosecuted. Once that story got out among the officers, we saw a lot more acceptance of the cameras.”

Police executives said that in many cases, officers see these benefits once they begin wearing the cameras. “The more officers use the cameras, the more they want to have them,” said Lieutenant Gary Lewis from Appleton, Wisconsin. “If I could put cameras on all of my patrol officers, I would have 100 percent support.” Chief Farrar of Rialto agreed: “Now that the officers wear the cameras, they say that they could not do without them.”

## Lessons learned about addressing officer concerns

Police executives revealed a number of lessons about addressing officers’ concerns about body-worn cameras:

- As with any other deployment of a 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.
- Briefings, roll calls, and meetings with union representatives are effective means to communicate information about a body-worn camera program.
- Creating an implementation team that includes representatives from across the department can help strengthen program legitimacy and ease implementation.

*“You have to ask yourself, what is the main reason you are implementing the program? Is it because you want to give officers a helpful tool, or because you do not trust them? The answer to that question—and how you convey it—will influence how officers receive the program.”*

– Lieutenant John Carli,  
Vacaville (California) Police Department

*“At first, officers had a lot of concerns about the ‘Big Brother’ aspect of body-worn cameras. But once they wear them and see the benefits, they are much more likely to embrace them. Resistance has been almost nonexistent.”*

– Chris Burbank, Chief of Police,  
Salt Lake City (Utah) Police Department



## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

- Departments have found that officers support the program if they view the cameras as useful tools: e.g., as a technology that helps to reduce complaints and produce evidence that can be used in court or in internal investigations.
- Recruiting an internal “champion” to help inform officers about the benefits of the cameras has proven successful in addressing officers’ hesitation to embrace the new technology.
- Body-worn cameras can serve as a teaching tool when supervisors review footage with officers and provide constructive feedback.
- Taking an incremental approach to implementation can help make deployment run more smoothly. This can include testing cameras during a trial period, rolling out cameras slowly, or initially assigning cameras to tech-savvy officers.

### Managing expectations

*“In the beginning, some officers were opposed to the cameras. But as they began wearing them, they saw that there were more benefits than drawbacks. Some officers say that they would not go out on the street without a ballistic vest; now they say they will not go out without a camera.”*

– Lieutenant Harold Rankin,  
Mesa (Arizona) Police Department

Police executives said that it has become increasingly common for courts, arbitrators, and civilian review boards to expect police departments to use body-worn cameras. “If your department has a civilian review board, the expectation now is that police should have cameras,” said Chief of Police Chris Burbank of Salt Lake City. “If you don’t, they will ask, ‘Why don’t your officers have cameras? Why aren’t your cameras fully deployed? Why does the next town over have cameras, but you don’t?’”

In addition, people often expect that officers using body-worn cameras will record video of everything that happens while they are on duty. But most police departments do not require officers to record every encounter. Many agencies have policies against recording when it is unsafe or impossible, and some agencies give officers discretion to

deactivate their cameras in certain sensitive situations, such as during interviews with victims or witnesses. Camera malfunctions may also occur. Some agencies have taken steps to inform judges, oversight bodies, and the public about these realities of using body-worn cameras.

Police executives said that these expectations can undermine an officer’s credibility if questions arise about an incident that was not captured on video. This is one reason why many agencies require officers to articulate, either on camera or in writing, their reasons for turning a camera off in the middle of an incident or for not turning it on in the first place. These issues of credibility are also why it is important to provide rigorous, ongoing officer training on body-worn camera policies and

practices. Some agencies find that situational training can be particularly useful. For example, the Oakland Police Department incorporated a program into its police academy that involves officers participating in situational exercises using training model cameras.

Expectations about body-worn cameras can also affect how cases are prosecuted in criminal courts. Some police executives said that judges and juries have come to rely heavily on camera footage as evidence, and some judges have even dismissed a case when video did not exist. “Juries no longer want to hear just officer testimony—they want to see the video,” said Detective Cherry of Baltimore. “But the video only

*“There is a learning curve that comes with using body-worn cameras. And the video cannot always be taken at face value—the full story has to be known before conclusions are reached about what the video shows.”*

– Major Stephen Willis,  
Charlotte-Mecklenburg  
(North Carolina) Police Department

gives a small snapshot of events. It does not capture the entire scene, or show the officer's thought process, or show an officer's investigative efforts. This technology shouldn't replace an officer's testimony. I'm concerned that if juries rely only on the video, it reduces the important role that our profession plays in criminal court."

### *Officer review of video prior to making statements*

Given the impact that body-worn cameras can have in criminal and administrative proceedings, there is some question as to whether officers should be allowed to review camera footage prior to making a statement about an incident in which they were involved. According to many police executives, the primary benefit to officer review is that it allows officers to recall events more clearly, which helps get to the truth of what really happened. Some police executives, on the other hand, said that it is better for an officer's statement to reflect what he or she perceived during the event, rather than what the camera footage revealed.

The majority of police executives consulted by PERF are in favor of allowing officers to review body-worn camera footage prior to making a statement about an incident in which they were involved. They believe that this approach provides the best evidence of what actually took place. PERF agrees with this position.

"When you're involved in a tense situation, you don't necessarily see everything that is going on around you, and it can later be difficult to remember exactly what happened," said Police Commissioner Ramsey of Philadelphia. "So I wouldn't have a problem with allowing an officer to review a video prior to making a statement."

Chief Burbank of Salt Lake City agreed. "Officers should be able to review evidence that is gathered about an event, and that includes body-worn camera footage," he said. "Some of the most accurate reports are generated by officers who take a moment to go back and review the circumstances. For example, I was once involved in a pursuit that lasted 30 minutes. I went back and re-drove the route and documented every turn before filing my report. Otherwise, it would have been impossible to remember everything that happened."

Chief Miller of Topeka said that if an officer is not allowed to review video, and if the footage conflicts with the officer's statement, it can create unfair doubts about the officer's credibility. "What we are after is the truth," he said. "If you make a statement that you used force because you thought a suspect had a gun but the video later shows that it was actually a cell phone, it looks like you were lying. But if you truly thought he had a gun, you were not lying—you were just wrong. An officer should be given the chance to make a statement using all of the evidence available; otherwise, it looks like we are just trying to catch an officer in a lie."

Police executives who favor review said that officers will be held accountable for their actions regardless of whether they are allowed to watch the video recordings prior to making a statement. "Officers are going to have to explain their actions, no matter what the video shows," said Chief Burbank of Salt Lake City. Chief Frazier of Surprise, Arizona, said, "If an officer has acted

*"Right from the start, officers now learn how to use the cameras as part of their regular training on patrol procedures. We want activating the cameras to become a muscle memory so that officers do not have to think about it when they are in a real-world situation."*

– Sean Whent, Chief of Police,  
Oakland (California) Police Department

*"I tell the officers every day: You usually don't get hurt by the videos you have. What hurts you is when you are supposed to have a video but, for whatever reason, you don't."*

– Ron Miller, Chief of Police,  
Topeka (Kansas) Police Department

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

inappropriately, and those actions were recorded, the officer cannot change the record and will have to answer for his or her actions. What will be gained by a review of the video is a more accurate accounting of the incident.”

*The majority of police executives consulted by PERF are in favor of allowing officers to review body-worn camera footage prior to making a statement about an incident in which they were involved.*

Other police executives, however, said that the truth—and the officer’s credibility—are better served if an officer is not permitted to review footage of an incident prior to making a statement. “In terms of the officer’s statement, what matters is the officer’s perspective at the time of the event, not what is in the video,” said Major Mark Person of the Prince George’s County (Maryland) Police Department. “That perspective is what they are going to have to testify to. If officers watch the video before making a statement, they might tailor the statement to what they see. It can cause them to second-guess themselves, which makes them seem less credible.”

### *Lessons learned about managing expectations*

In interviews with PERF staff members, police executives discussed lessons that they have learned for managing expectations about body-worn cameras:

- With more and more agencies adopting body-worn cameras, courts, arbitrators, and civilian review boards have begun to expect not only that agencies will use cameras but also that officers will have footage of everything that happens while they are on duty. If this footage does not exist, even for entirely legitimate reasons, it may impact court or administrative proceedings and create questions about an officer’s credibility. Agencies must take steps to manage expectations while also working to ensure that officers adhere to agency policies about activating cameras.
- Educating oversight bodies about the realities of using cameras can help them to understand operational challenges and why there may be situations in which officers are unable to record. This can include demonstrations on how the cameras operate.
- Requiring an officer to articulate, on camera or in writing, the reason for not recording an event can help address questions about missing footage.
- Rigorous, ongoing officer training on body-worn camera policies and protocols is critical for improving camera usage. Situational training in which officers participate in exercises using mock cameras can be particularly useful in helping officers to understand how to operate cameras in the field.
- Many police executives believe that allowing officers to review body-worn camera footage prior to making a statement about an incident in which they were involved provides the best evidence of what actually occurred.



## Financial considerations

While body-worn cameras can provide many potential benefits to law enforcement agencies, they come at a considerable financial cost. In addition to the initial purchasing cost, agencies must devote funding and staffing resources toward storing recorded data, managing videos, disclosing copies of videos to the public, providing training to officers, and administering the program.

For some agencies, these costs make it challenging to implement a body-worn camera program. PERF's survey revealed that 39 percent of the respondents that do not use body-worn cameras cited cost as a primary reason. Chief Villaseñor of Tucson said that cost was a major obstacle to getting cameras. "In recent years, we've faced serious budget cuts and have had to reduce staffing levels," he said. "It can be hard to justify spending money on cameras when officers are fighting for their jobs." However, Villaseñor has put together a review committee to evaluate costs and explore how to implement body-worn cameras in Tucson.

Police Commissioner Ramsey said that in departments the size of Philadelphia's, which has 6,500 sworn officers, the cost of implementing a body-worn camera program would be extraordinary. "We've considered using cameras in Philadelphia, and we see all of the benefits they can provide," he said. "Cost is the primary thing holding us back."

Some police executives, however, said that body-worn cameras can save departments money. They said that by improving officer professionalism, defusing potentially confrontational encounters, strengthening officer training, and documenting encounters with the public, body-worn cameras can help reduce spurious lawsuits and complaints against officers. They also said that these savings more than make up for the considerable financial cost of implementing a camera program.

"If there is a lawsuit against the department, the settlements come from the department's operational budget," said Chief Chitwood of Daytona Beach. "By preventing these suits, the department has more money to spend on cars, technology, and other things that benefit officers."<sup>12</sup>

The London Metropolitan Police Service, working together with the College of Policing, is planning to conduct a cost-benefit analysis in conjunction with its upcoming pilot program of 500 cameras. The analysis will measure whether the cameras contribute to cost savings in terms of promoting early guilty pleas in criminal cases and quicker resolution of complaints against officers. The study will also measure community and victim satisfaction with the cameras, as well as how the cameras impact the length of sentences that offenders receive.

*"I absolutely think that officers should be allowed to review camera footage from an incident in which they were involved, prior to speaking with internal investigators. With what we know of the effect of stressful incidents on the human mind, officers in most instances may not recall every aspect of the incident. Or they may recall events out of sequence or not remember everything until much later. For this reason alone, allowing an officer to review the video prior to making a statement seems prudent."*

– Michael Frazier, Chief of Police,  
Surprise (Arizona) Police Department

12. See "Perceived Benefits of Body-Worn Cameras" on page 5 for additional discussion of cost-benefit analysis.

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

### *Cost of implementation*

The price of body-worn cameras currently ranges from approximately \$120 to nearly \$2,000 for each device. Most of the agencies that PERF consulted spent between \$800 and \$1,200 for each camera. Prices vary depending on factors such as functionality, storage capacity, and battery life. Agencies must make this initial purchase up front, and sometimes they purchase cameras as part of a contract with the manufacturer for related services, such as data storage and technical assistance.

*"Once you put cameras in the field, you're going to amass a lot of data that needs to be stored. Chiefs need to go into this with their eyes wide open. They need to understand what storage is going to cost, what their storage capacities are, and the amount of time it takes to review videos for public release. It is a major challenge."*

— Kenton Rainey, Chief of Police,  
Bay Area Rapid Transit Police Department

Although the initial costs of purchasing the cameras can be steep, many police executives said that data storage is the most expensive aspect of a body-worn camera program. "Data storage costs can be crippling," said Chief Aden of Greenville. Captain Thomas Roberts of Las Vegas agreed. "Storing videos over the long term is an ongoing, extreme cost that agencies have to anticipate," said Roberts.

The cost of data storage will depend on how many videos are produced, how long videos are kept, and where the videos are stored. If the videos are stored on an online cloud database, the costs typically go toward paying a third-party vendor to manage the data and to provide other services, such as technical assistance and forensic auditing. If videos are stored on an in-house server, agencies must often purchase additional computer equipment and spend money on technical staff and systems to ensure the data are secure.

The New Orleans Police Department has launched a plan for deploying 350 body-worn cameras at an anticipated cost of \$1.2 million over five years—the bulk of which will go to data storage.<sup>13</sup> One department reported that it will pay \$2 million per year, mostly toward data storage, to outfit 900 officers with cameras. Another department spent \$67,500 to purchase 50 cameras and will spend approximately \$111,000 to store the video on a cloud for two years. In terms of storage, Chief Miller of Topeka said, "I've seen a formula that says that if you have 250 officers that have body-worn cameras, in three years you will produce 2.3 million videos. If the officer was required to run the camera continuously during his or her entire shift, it would produce even more. Managing and storing that data is usually more expensive than buying the cameras."

In addition to the cost of purchasing cameras and storing data, administering a body-worn camera program requires considerable ongoing financial and staffing commitments. Many agencies appoint at least one full-time officer to manage the camera program. Agencies must provide ongoing training programs, ensure that cameras are properly maintained, fix technical problems, and address any issues of officer noncompliance. Some agencies also devote resources toward public information campaigns aimed at educating the community about the program.

According to many police executives, one of the most significant administrative costs—at least in terms of staff resources—involves the process of reviewing and categorizing videos. Although the exact process varies depending on the camera system, officers must typically label, or "tag," videos as evidentiary or non-evidentiary. Evidentiary videos are further categorized according to the type of incident captured in the footage (e.g., homicide, robbery, or traffic citation). This tagging process is critical for determining how a video will be used and how long it will be retained. Most agencies that PERF consulted require officers to download and tag videos by the end of each shift.

13. "NOPD Wearable Cameras Expected to Cost \$1.2 Million," The Times-Picayune, September 30, 2013, [http://www.nola.com/crime/index.ssf/2013/09/post\\_346.html](http://www.nola.com/crime/index.ssf/2013/09/post_346.html). Since The Times-Picayune published this article, New Orleans has increased the number of body-worn cameras it expects to deploy from 350 to more than 400.



Some officers have expressed concern about this increase to their administrative workload. “One of the major complaints we heard from officers was that they were spending so much time, after their shifts were over, downloading and tagging their videos,” said Commander Tony Filler from Mesa. The department explored several solutions to this problem, ultimately creating an automated process that linked videos to the department’s records management system (RMS). The department also purchased from the camera manufacturer electronic tablets that allow officers to view and tag videos while they are in the field. “The tablets were an additional cost, but they were worth it because they save officers a lot of time,” said Filler.

Police executives said that there are also significant administrative costs involved with responding to requests from the public or the news media for body-worn camera videos. When an agency receives a disclosure request, often under the Freedom of Information Act, officers or other department personnel must spend time reviewing videos to find the relevant footage, determining whether an exception to the presumption of disclosure applies, identifying portions that by law must be redacted, and performing the redaction process.

### *Cost-saving strategies*

Police executives discussed several strategies that their agencies have employed to mitigate the considerable financial and staffing costs associated with body-worn cameras. These strategies focus primarily on managing the costs of data storage, which many police executives said represent the most expensive aspect of their programs.

Although managing data storage costs is not the primary reason why many agencies have decided against recording non-law enforcement related encounters with the public, it can be a factor. “There is a huge difference in the amount of money it would take to record all encounters versus adopting a more restrictive recording policy,” said Chief Miller of Greensboro. “If you record everything, there are going to be astronomical data storage costs. With 500 officers using cameras, we have already produced over 40,000 videos in just seven months. And we would have a lot more if we didn’t use a more restrictive recording policy.”

Some agencies, such as the police departments in Oakland and Daytona Beach, are working to adopt shorter data retention periods for non-evidentiary footage in an effort to keep data storage costs manageable. Although it is important to keep videos long enough to demonstrate transparency and preserve a record of an encounter, keeping these videos indefinitely would overwhelm an agency’s resources. Some agencies may even decide against adopting body-worn cameras due to the extraordinary costs of data storage.

“The two biggest challenges that we face in terms of cost are data storage and responding to records requests,” said Chief Chitwood of Daytona Beach. “We had to brainstorm about how to address those costs, and one way was through changing our retention times.”

As the public becomes more familiar with the existence of police body-worn camera programs, it is reasonable to expect that members of the public and the news media will increasingly want to obtain video recordings. Such public records requests will add to the workload of managing a camera program. Captain James Jones of the Houston Police Department said, “The cost of responding to

*“Responding to public disclosure requests is one of the biggest challenges that my department faces. When a request for a video comes in, an officer has to sit for at least two hours and review the videos to find the footage and identify which portions must by law be redacted. And the actual redactions can take over 10 hours to complete.”*

– Lieutenant Harold Rankin,  
Mesa (Arizona) Police Department

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

open records requests played a role when we were deciding how long to keep the video. To protect privacy, you have to go through every video and make sure that you're not disclosing something that you shouldn't. It takes a lot of time, and personnel, to review and redact every tape. If you keep video for five years, it is going to take even more."

Agencies have also explored cheaper storage methods for videos that by law must be retained long-term, such as those containing evidence regarding a homicide or other serious felony. For example, the Greensboro Police Department deletes videos requiring long-term storage from the online cloud after importing them into its RMS or Internal Affairs case management systems. This reduces overall consumption of expensive cloud storage for videos that are required for future court proceedings or long-term retention under state personnel laws. The Charlotte-Mecklenburg Police Department recently completed a body-worn camera trial program, and Major Willis said that the department is exploring alternative storage methods. "Long-term storage costs are definitely going to be a problem. We are looking at cold storage, offline storage, and shorter retention times as a way to keep those costs more manageable," he said.

Many police agencies have also found it useful to conduct a cost-benefit analysis when exploring whether to implement body-worn cameras. For example, agencies can conduct an audit of their claims, judgments, and settlements related to litigation and complaints against officers to determine what costs they may already be incurring. The costs associated with deploying body-worn cameras may be offset by reductions in litigation costs, and agencies should carefully assess their ongoing legal expenses to determine how they could be reduced through the use of body-worn cameras.

### *Lessons learned about financial considerations*

In interviews with PERF staff members, police executives and other experts revealed a number of lessons that they have learned about the financial costs of body-worn cameras:

- The financial and administrative costs associated with body-worn camera programs include costs of the equipment, storing and managing recorded data, and responding to public requests for disclosure.
- It is useful to compare the costs of the camera program with the financial benefits (e.g., fewer lawsuits and unwarranted complaints against officers, as well as more efficient evidence collection).
- Setting shorter retention times for non-evidentiary videos can help make the significant costs of data storage more manageable.
- Videos requiring long-term storage (e.g., those involving serious offenses) can be copied to a disc, attached to the case file, and deleted from the internal server or online cloud. This frees up expensive storage space for videos that are part of an ongoing investigation or that have shorter retention times.
- Linking recorded data to the agency's records management system or using electronic tablets, which officers can use in the field, can ease the administrative burden of tagging and categorizing videos.

## The Los Angeles Police Department's Approach to Financing Body-Worn Cameras

In September 2013, Los Angeles Police Commission President Steve Soboroff launched a campaign to raise money to purchase on-body cameras for the Los Angeles Police Department (LAPD). “Before being elected commission president, I heard from numerous leaders in the LAPD that getting on-body cameras was a top priority with a huge upside,” said Soboroff in an interview with PERF. “After hearing all of the benefits that this technology could offer, I wanted to find a way to proactively jump-start the project.”\*

Realizing that trying to secure city funds for cameras would be challenging—the LAPD’s in-car camera project has been going on for two decades and is only 25 percent complete—Soboroff devised a plan to identify private donors. Within five months, he had raised \$1.3 million for a body-worn camera program, exceeding its original goal. Contributors included a number of local companies, executives, and philanthropists, including the Los Angeles Dodgers, movie director Steven Spielberg, entertainment executive Jeffrey Katzenberg, and former Los Angeles Mayor Richard Riordan.<sup>†</sup>

This money will go toward purchasing 600 body-worn cameras for LAPD officers and for video storage, repairs, and other costs over two years.<sup>‡</sup> The LAPD said it would test several camera models before implementing its program.<sup>§</sup> According to Soboroff, the LAPD will eventually need hundreds more cameras to outfit every patrol officer, but he hopes the pilot program will convince city officials that the cameras are worth the money. “I think that the pilot will show that body-worn cameras are transformative. I think it will show so many public safety benefits, and so many savings in litigation settlement dollars, man hours, and attorney hours, that the return on the investment will be apparent and significant,” he said.<sup>\*\*</sup>

Soboroff believes that other places can look at the LAPD’s fundraising approach as a model. “Probably every city in America has financial concerns. But I believe that there are always going to be local businesses and philanthropists who are willing to help. You just have to show them that there is going to be a positive community and financial return on their investment or donation.”<sup>††</sup> However, Soboroff also said it is important that law enforcement agencies retain independence as they develop their programs: “The LAPD has complete control over which cameras it chooses and its camera policies. That is critical—there should be no outside influence from donors.”<sup>§§</sup>

As Soboroff indicates, police agencies outside of Los Angeles have also sought private funding for body-worn cameras. For example, the Greensboro (North Carolina) Police Department told PERF that the Greensboro Police Foundation raised \$130,000 from private donors to purchase 125 cameras. The Greensboro Police Foundation also created awareness by launching the “Put Cameras on Cops” public information campaign that included reaching out to potential donors and posting billboards in support of the program.

\* Steve Soboroff (president, Los Angeles Police Commission), in discussion with PERF staff members, fall 2013.

† “LAPD to Soon Start Testing Body Cameras,” *CBS Los Angeles*, January 13, 2014, <http://losangeles.cbslocal.com/2014/01/13/lapd-officers-to-soon-start-testing-body-cameras/>.

‡ “LAPD Surpasses Fundraising Goal for Officers’ On-Body Cameras,” *Los Angeles Times*, November 6, 2013, <http://articles.latimes.com/2013/nov/06/local/la-me-ln-lapd-cameras-20131106>.

§ “LAPD to Soon Start Testing Body Cameras.”

\*\* Soboroff, discussion with PERF staff members.

†† Ibid.

§§ Ibid.







## Chapter 3. Body-Worn Camera Recommendations

The list of recommendations beginning on page 38 is intended to assist law enforcement agencies as they develop body-worn camera policies and practices. These recommendations, which are based on the research conducted by PERF with support from the COPS Office, reflect the promising practices and lessons that emerged from PERF's September 2013 conference in Washington, D.C., where more than 200 police chiefs, sheriffs, scholars, and federal criminal justice officials shared their experiences with body-worn cameras and their perspectives on the issues discussed in this publication. The recommendations also incorporate feedback gathered during PERF's interviews of more than 40 law enforcement officials and other experts, as well as findings from PERF's review of body-worn camera policies submitted by police agencies across the country.

Each law enforcement agency is different, and what works in one department might not be feasible in another. Agencies may find it necessary to adapt these recommendations to fit their own needs, budget and staffing limitations, state law requirements, and philosophical approach to privacy and policing issues.

When developing body-worn camera policies, PERF recommends that police agencies consult with frontline officers, local unions, the department's legal advisors, prosecutors, community groups, other local stakeholders, and the general public. Incorporating input from these groups will increase the perceived legitimacy of a department's body-worn camera policies and will make the implementation process go more smoothly for agencies that deploy these cameras.

PERF recommends that each agency develop its own comprehensive written policy to govern body-worn camera usage. Policies should cover the following topics:

- Basic camera usage, including who will be assigned to wear the cameras and where on the body the cameras are authorized to be placed
- The designated staff member(s) responsible for ensuring cameras are charged and in proper working order, for reporting and documenting problems with cameras, and for reissuing working cameras to avert malfunction claims if critical footage is not captured
- Recording protocols, including when to activate the camera, when to turn it off, and the types of circumstances in which recording is required, allowed, or prohibited
- The process for downloading recorded data from the camera, including who is responsible for downloading, when data must be downloaded, where data will be stored, and how to safeguard against data tampering or deletion
- The method for documenting chain of custody
- The length of time recorded data will be retained by the agency in various circumstances
- The process and policies for accessing and reviewing recorded data, including the persons authorized to access data and the circumstances in which recorded data can be reviewed



## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

- Policies for releasing recorded data to the public, including protocols regarding redactions and responding to public disclosure requests
- Policies requiring that any contracts with a third-party vendor for cloud storage explicitly state that the videos are owned by the police agency and that its use and access are governed by agency policy

In summary, policies must comply with all existing laws and regulations, including those governing evidence collection and retention, public disclosure of information, and consent. Policies should be specific enough to provide clear and consistent guidance to officers yet allow room for flexibility as the program evolves. Agencies should make the policies available to the public, preferably by posting the policies on the agency website.

### General recommendations

1. **Policies should clearly state which personnel are assigned or permitted to wear body-worn cameras and under which circumstances.**

It is not feasible for PERF to make a specific recommendation about which officers should be required to wear cameras. This decision will depend on an agency's resources, law enforcement needs, and other factors.

**Lessons learned:** Some agencies have found it useful to begin deployment with units that have the most frequent contacts with the public (e.g., traffic or patrol officers).

2. **If an agency assigns cameras to officers on a voluntary basis, policies should stipulate any specific conditions under which an officer might be required to wear one.**

For example, a specified number of complaints against an officer or disciplinary sanctions, or involvement in a particular type of activity (e.g., SWAT operations), might result in an officer being required to use a body-worn camera.

3. **Agencies should not permit personnel to use privately-owned body-worn cameras while on duty.**

**Rationale:** Most of the police executives whom PERF interviewed believe that allowing officers to use their own personal cameras while on duty is problematic. PERF agrees with this position. Because the agency would not own the recorded data, there would be little or no protection against the officer tampering with the videos or releasing them to the public or online. In addition, chain-of-custody issues would likely prevent the video evidence from being admitted as evidence in court.

This recommendation applies regardless of whether the agency has deployed body-worn cameras.

4. Policies should specify the location on the body on which cameras should be worn.

The most appropriate camera placement will depend on several factors, such as the type of camera system used. Agencies should test various camera locations to see what works for their officers in terms of field of vision, comfort, functionality, and ease of use.

**Lessons learned:** Police executives have provided feedback regarding their experiences with different camera placements:

- **Chest:** According to the results of PERF's survey, the chest was the most popular placement location among agencies.
- **Head/sunglasses:** This is a very popular location because the camera "sees what the officer sees." The downside, however, is that an officer cannot always wear sunglasses. Some officers have also reported that the headband cameras are uncomfortably tight, and some expressed concern about the potential of injury when wearing a camera so close to the eye area.
- **Shoulder/collar:** Although some officers like the perspective that this placement offers, others have found the camera can too easily be blocked when officers raise their arms. One agency, for example, lost valuable footage of an active shooter incident because the officer's firearm knocked the camera from his shoulder.
- **Shooting side:** Some agencies specify that officers should wear cameras on the gun/shooting side of the body, which they believe affords a clearer view of events during shooting incidents.

5. Officers who activate the body-worn camera while on duty should be required to note the existence of the recording in the official incident report.

**Rationale:** This policy ensures that the presence of video footage is accurately documented in the case file so that investigators, prosecutors, oversight boards, and courts are aware of its existence. Prosecutors may need to give potentially exculpatory materials to defense attorneys.

6. Officers who wear body-worn cameras should be required to articulate on camera or in writing their reasoning if they fail to record an activity that is required by department policy to be recorded. (See recommendations 7–13 for recording protocols.)

This may occur, for example, if an officer exercises recording discretion in accordance with the agency's policy because he or she cannot record due to unsafe conditions or if a person does not give consent to record when consent is required.

**Rationale:** This holds officers accountable and helps supervisors investigate any recording irregularities that may occur.

## Recording protocols

7. As a general recording policy, 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. Exceptions include recommendations 10 and 11 below or other situations in which activating cameras would be unsafe, impossible, or impractical.

**7a:** Policies and training materials should clearly define what is included in the description “law enforcement-related encounters and activities that occur while the officer is on duty.” Some agencies have found it useful to provide a list of examples in their policies, such as traffic stops, arrests, searches, interrogations or interviews, and pursuits.

**7b:** Officers should also be required to activate the camera during the course of any encounter with the public that becomes adversarial after the initial contact.

### Rationale:

- The policy affords officers discretion concerning whether to record informal, non-law enforcement-related interactions with members of the community, such as a person asking an officer for directions or officers having casual conversations with people they see on patrol. If officers were always required to record in these situations, it could inhibit the informal relationships that are critical to community policing efforts.
  - The policy can help to secure officer support for a body-worn camera program because it demonstrates to officers that they are trusted to understand when cameras should and should not be activated. Protocols should be reinforced in officer training.
  - The policy is broad enough to capture the encounters and activities that, because they are the most likely to produce evidence or lead to complaints from community members about the police, are most in need of accurate documentation. However, the policy is narrow enough to help keep the amount of recorded data more manageable. This can help reduce the costs associated with storing data, reviewing and tagging data, and responding to public records requests.
8. Officers should be required to inform subjects when they are being recorded unless doing so would be unsafe, impractical, or impossible.

Some states have two-party consent laws that require a person making a recording to obtain the consent of the person or persons being recorded. In this case, officers must obtain consent unless the law provides an exception for police recordings. Most states have one-party consent policies, which allow officers to make recordings without obtaining consent.

PERF recommends that police in all states inform subjects that they are being recorded, aside from the exceptions stated already. This policy does not mean that officers in one-party consent states must obtain consent prior to recording; rather, they must inform subjects when the camera is running.

**Rationale:** The mere knowledge that one is being recorded can help promote civility during police-citizen encounters. Police executives report that cameras improve both officer professionalism and the public’s behavior, an observation that is supported by evaluations of body-worn camera programs.



9. Once activated, the body-worn camera should remain in recording mode until the conclusion of an incident/encounter, the officer has left the scene, or a supervisor has authorized (on camera) that a recording may cease.

Officers should also announce while the camera is recording that the incident has concluded and the recording will now cease.

See further discussion in recommendation 11b, “Lessons learned.”

10. Regardless of the general recording policy contained in recommendation 7, officers should be required to obtain consent prior to recording interviews with crime victims.

**Rationale:** There are significant privacy concerns associated with videotaping crime victims. PERF believes that 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.

This policy should apply regardless of whether consent is required under state law.

Crime victims should give or deny consent in writing and/or on camera.

11. Regardless of the general recording policy contained in recommendation 7, 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.

**11a:** When determining whether to record interviews with witnesses and members of the community who wish to share information, officers should always consider both the evidentiary value of recording and the subject’s comfort with speaking on camera. To better capture evidence, PERF recommends that officers record statements made by witnesses and people sharing information. However, if a person will not talk unless the camera is turned off, officers may decide that obtaining the information is more important than recording. PERF recommends allowing officers that discretion.

**11b:** Policies should provide clear guidance regarding the circumstances under which officers will be allowed to exercise discretion to record, the factors that officers should consider when deciding whether to record, and the process for documenting whether to record.

Situations in which officers may need to exercise discretion include the following:

- When a community member approaches an officer to report a crime or share information
- When an officer attempts to interview witnesses, either at a crime scene or during follow-up interviews

**Rationale:** Some witnesses and community members may be hesitant to come forward with information if they know their statements will be recorded. They may fear retaliation, worry about their own privacy, or not feel comfortable sharing sensitive information on camera. This hesitancy can undermine community policing efforts and make it more difficult for officers to collect important information.

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

**Lessons learned:** Agencies have adopted various approaches for recording conversations with witnesses or other people who want to share information:

- Record unless the subject requests otherwise; after receiving such a request, the officer can turn the camera off.
- Require officers to proactively obtain consent from the subject prior to recording.
- Allow officers to position the camera so they capture only audio, and not video, of the person making the statement.
- Instruct officers to keep their cameras running during the initial response to an ongoing/live crime scene to capture spontaneous statements and impressions but to turn the camera off once the scene is controlled and moves into the investigative stage. Officers may then make a case-by-case decision about whether to record later interviews with witnesses on the scene.

If an officer does turn the camera off prior to obtaining information from a witness or informant, the officer should document on camera the reason for doing so.

- 12. Agencies should prohibit recording other agency personnel during routine, non-enforcement-related activities unless recording is required by a court order or is authorized as part of an administrative or criminal investigation.**

Under this policy, for example, officers may not record their partner while they are patrolling in their vehicle (unless they are responding to a call for service), are having lunch at their desks, are on breaks, are in the locker room, etc.

**Rationale:** This policy supports officer privacy and ensures officers feel safe to engage in routine, informal, non-law enforcement-related conversations with their colleagues.

- 13. Policies should clearly state any other types of recordings that are prohibited by the agency.**

Prohibited recordings should include the following:

- Conversations with confidential informants and undercover officers (to protect confidentiality and officer safety)
- Places where a reasonable expectation of privacy exists (e.g., bathrooms or locker rooms)
- Strip searches
- Conversations with other agency personnel that involve case tactics or strategy

## Download and storage policies

- 14. Policies should designate the officer as the person responsible for downloading recorded data from his or her body-worn camera. However, in certain clearly identified circumstances (e.g., officer-involved shootings, in-custody deaths, or other incidents involving the officer that result in a person's bodily harm or death), the officer's supervisor should immediately take physical custody of the camera and should be responsible for downloading the data.**



**15. Policies should include specific measures to prevent data tampering, deleting, and copying.**

Common strategies include the following:

- Using data storage systems with built-in audit trails
- Requiring the supervisor to physically take custody of the officer's body-worn camera at the scene of a shooting or at another serious incident in which the officer was involved and to assume responsibility for downloading the data (see recommendation 14)
- Conducting forensic reviews of the camera equipment when questions arise (e.g., if an officer claims that he or she failed to record an incident because the camera malfunctioned)

**16. Data should be downloaded from the body-worn camera by the end of each shift in which the camera was used.**

**Rationale:** First, many camera systems recharge and clear old data during the downloading process, so this policy helps to ensure cameras are properly maintained and ready for the next use. Second, events will be fresh in the officer's memory for the purpose of tagging and categorizing. Third, this policy ensures evidence will be entered into the system in a timely manner.

**17. Officers should properly categorize and tag body-worn camera videos at the time they are downloaded. Videos should be classified according to the type of event or incident captured in the footage.**

If video contains footage that can be used in an investigation or captures a confrontational encounter between an officer and a member of the public, it should be deemed "evidentiary" and categorized and tagged according to the type of incident. If the video does not contain evidence or it captures a routine, non-confrontational encounter, it should be considered "non-evidentiary" or a "non-event."

**Rationale:** Proper labeling of recorded data is critical for two reasons. First, the retention time for recorded data typically depends on the category of the event captured in the video. Thus, proper tagging is critical for determining how long the data will be retained in the agency's system. Second, accurate tagging helps supervisors, prosecutors, and other authorized personnel to readily identify and access the data they need for investigations or court proceedings.

**Lessons learned:** Some agencies report that reviewing and tagging recorded data can be a time-consuming process that is prone to human error. One agency addressed this issue by working with the camera manufacturer to develop an automated process that links the recorded data to the agency's records management system. Some camera systems can also be linked to electronic tablets that officers can use to review and tag recorded data while still in the field.

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

### 18. Policies should specifically state the length of time that recorded data must be retained. For example, many agencies provide 60-day or 90-day retention times for non-evidentiary data.

Agencies should clearly state all retention times in the policy and make the retention times public by posting them on their websites to ensure community members are aware of the amount of time they have to request copies of video footage.

Retention times for recorded data are typically subject to state laws and regulations that govern other types of evidence. Agencies should consult with legal counsel to ensure retention policies are in compliance with these laws.

- For evidentiary data, most state laws provide specific retention times depending on the type of incident. Agencies should set retention times for recorded data to meet the minimum time required by law but may decide to keep recorded data longer.
- For non-evidentiary data, policies should follow state law requirements when applicable. However, if the law does not provide specific requirements for non-evidentiary data, the agency should set a retention time that takes into account the following:
  - Departmental policies governing retention of other types of electronic records
  - Openness of the state's public disclosure laws
  - Need to preserve footage to promote transparency and investigate citizen complaints
  - Capacity for data storage

Agencies should obtain written approval for retention schedules from their legal counsel and prosecutors.

### 19. Policies should clearly state where body-worn camera videos are to be stored.

The decision of where to store recorded data will depend on each agency's needs and resources. PERF does not recommend any particular storage method. Agencies should consult with their department's legal counsel and with prosecutors to ensure the method for data storage meets any legal requirements and chain-of-custody needs.

Common storage locations include in-house servers (managed internally) and online cloud databases (managed by a third-party vendor). Some agencies burn recorded data to discs as part of the evidence file folder.

**Lessons learned:** Factors that agency leaders should consider when determining storage location include the following:

- Security concerns
- Reliable methods for backing up data
- Chain-of-custody issues
- Capacity for data storage

**Lessons learned:** Police executives and prosecutors report that they have had no issues to date with using a third-party vendor to manage recorded data on an online cloud, so long as the chain of custody can be properly established. When using a third-party vendor, the keys to protecting the security and integrity of the data include the following:

- Using a reputable, experienced third-party vendor
- Entering into a legal contract that governs the vendor relationship and protects the agency's data
- Using a system that has a built-in audit trail to prevent data tampering and unauthorized access
- Using a system that has a reliable method for automatically backing up data
- Consulting with prosecutors and legal advisors

## Recorded data access and review

20. **Officers should be permitted to review video footage of an incident in which they were involved, prior to making a statement about 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.

**Rationale:**

- Reviewing footage will help officers remember the incident more clearly, which leads to more accurate documentation of events. The goal is to find the truth, which is facilitated by letting officers have all possible evidence of the event.
- Real-time recording of the event is considered best evidence. It often provides a more accurate record than an officer's recollection, which can be affected by stress and other factors. Research into eyewitness testimony demonstrates that stressful situations with many distractions are difficult even for trained observers to recall correctly.
- If a jury or administrative review body sees that the report says one thing and the video indicates another, this can create inconsistencies in the evidence that might damage a case or unfairly undermine the officer's credibility.

21. **Written policies should clearly describe the circumstances in which supervisors will be authorized to review an officer's body-worn camera footage.**

Common situations in which supervisors may need to review footage include the following:

- To investigate a complaint against an officer or a specific incident in which the officer was involved
- To identify videos for training purposes and for instructional use



## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

PERF also recommends that supervisors be permitted to review footage to ensure compliance with recording policies and protocols, specifically for the following situations:

- When officers are still in a probationary period or are with a field training officer
- When officers have had a pattern of allegations of verbal or physical abuse
- When officers, as a condition of being put back on the street, agree to a more intensive review
- When officers are identified through an early intervention system

- 22. An agency's internal audit unit, rather than the officer's direct chain of command, should periodically conduct a random review of body-worn camera footage to monitor compliance with the program and assess overall officer performance.**

**Rationale:** PERF recommends that an agency's internal audit unit (e.g., the Staff Inspection Unit) conduct these random footage reviews to avoid undermining the trust between an officer and his or her supervisor.

The internal audit unit's random monitoring program should be governed by a clearly-defined policy, which should be made available to officers.

- 23. Policies should explicitly forbid agency personnel from accessing recorded data for personal use and from uploading recorded data onto public and social media websites.**

**Rationale:** Agencies must take every possible precaution to ensure body-worn camera footage is not used, accessed, or released for any unauthorized purpose. This prohibition should be explicitly stated in the written policy.

Written policies should also describe the sanctions for violating this prohibition.

- 24. Policies should include specific measures for preventing unauthorized access or release of recorded data.**

Some systems have built-in audit trails. All video recordings should be considered the agency's property and be subject to any evidentiary laws and regulations.

- 25. Agencies should have clear and consistent protocols for releasing recorded data externally to the public and the news media (a.k.a. Public Disclosure Policies). Each agency's policy must be in compliance with the state's public disclosure laws (often known as Freedom of Information Acts).**

Policies should state who is allowed to authorize the release of data and the process for responding to public requests for data. PERF generally recommends a broad disclosure policy to promote agency transparency and accountability.

However, there are some videos—such as recordings of victims and witnesses and videos taken inside private homes—that raise privacy concerns if they are publicly released. These privacy considerations must be taken into account when deciding when to release video to the public. The policy should also identify any exemptions to public disclosure that are outlined in the state Freedom of Information laws.

In certain cases, an agency may want to proactively release body-worn camera footage. For example, some agencies have released footage to share what the officer's video camera showed regarding controversial incidents. In some cases, the video may support a contention that an officer was in compliance with the law. In other cases, the video may show that the department is taking appropriate action against an officer. Policies should specify the circumstances in which this type of public release is allowed. When determining whether to proactively release data to the public, agencies should consider whether the footage will be used in a criminal court case, and the potential effects that releasing the data might have on the case.

#### Lessons learned:

- While agencies that have implemented body-worn cameras report that responding to public disclosure requests can be administratively complicated, departments must implement systems that ensure responses to these requests are timely, efficient, and fully transparent. This process should include reviewing footage to locate the requested video, determining which portions are subject to public release under state disclosure laws, and redacting any portions that state law prohibits from disclosure (e.g., images of juveniles' faces).
- The most important element of an agency's policy is to communicate it clearly and consistently within the community.

## Training policies

- 26. Body-worn camera training should be required for all agency personnel who may use or otherwise be involved with body-worn cameras.**

This should include supervisors whose officers wear cameras, records/evidence management personnel, training personnel, Internal Affairs, etc.

Agencies may also wish to offer training as a courtesy to prosecutors to help them better understand how to access the data (if authorized), what the limitations of the technology are, and how the data may be used in court.

- 27. Before agency personnel are equipped with body-worn cameras, they must receive all mandated training.**

- 28. Body-worn camera training should include the following:**

- All practices and protocols covered by the agency's body-worn camera policy (which should be distributed to all personnel during training)
- An overview of relevant state laws governing consent, evidence, privacy, and public disclosure
- Procedures for operating the equipment safely and effectively
- Scenario-based exercises that replicate situations that officers might encounter in the field



## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

- Procedures for downloading and tagging recorded data
  - Procedures for accessing and reviewing recorded data (only for personnel authorized to access the data)
  - Procedures for preparing and presenting digital evidence for court
  - Procedures for documenting and reporting any malfunctioning device or supporting system
29. **A body-worn camera training manual should be created in both digital and hard-copy form and should be readily available at all times to agency personnel.**
- The training manual should be posted on the agency's intranet.
30. **Agencies should require refresher courses on body-worn camera usage and protocols at least once per year.**
- Agencies should also require ongoing monitoring of body-worn camera technology for updates on equipment, data storage options, court proceedings, liability issues, etc.

## Policy and program evaluation

31. **Agencies should collect statistical data concerning body-worn camera usage, including when video footage is used in criminal prosecutions and internal affairs matters.**
- Statistics should be publicly released at various specified points throughout the year or as part of the agency's year-end report.
- Rationale:** Collecting and releasing statistical information about body-worn camera footage helps to promote transparency and trust within the community. It also allows agencies to evaluate the effectiveness of their body-worn camera programs and to identify areas for improvement.
32. **Agencies should conduct evaluations to analyze the financial impact of implementing a body-worn camera program.**
- These studies should analyze the following:
- The anticipated or actual cost of purchasing equipment, storing recorded data, and responding to public disclosure requests
  - The anticipated or actual cost savings, including legal fees and other costs associated with defending lawsuits and complaints against officers
  - Potential funding sources for a body-worn camera program

**33. Agencies should conduct periodic reviews of their body-worn camera policies and protocols.**

Evaluations should be based on a set standard of criteria, such as the following:

- Recording policies
- Data storage, retention, and disclosure policies
- Training programs
- Community feedback
- Officer feedback
- Internal audit review discoveries
- Any other policies that govern body-worn camera usage

An initial evaluation should be conducted at the conclusion of the body-worn camera pilot program or at a set period of time (e.g., six months) after the cameras were first implemented. Subsequent evaluations should be performed on a regular basis as determined by the agency.

**Rationale:** Body-worn camera technology is new and evolving. In addition, the policy issues associated with body-worn cameras are just recently being fully considered and understood. Agencies must continue to examine whether their policies and protocols take into account new technologies, are in compliance with new laws, and reflect the most up-to-date research and best practices. Evaluations will also help agencies determine whether their policies and practices are effective and appropriate for their departments.



# Conclusion

The recent emergence of body-worn cameras has already impacted policing, and this impact will increase as more agencies adopt this technology. Police agencies that are considering implementing body-worn cameras should not enter into this decision lightly. Once an agency travels down the road of deploying body-worn cameras, it will be difficult to reverse course because the public will come to expect the availability of video records.

When implemented correctly, body-worn cameras can help strengthen the policing profession. These cameras can help promote agency accountability and transparency, and they can be useful tools for increasing officer professionalism, improving officer training, preserving evidence, and documenting encounters with the public. However, they also raise issues as a practical matter and at the policy level, both of which agencies must thoughtfully examine. Police agencies must determine what adopting body-worn cameras will mean in terms of police-community relationships, privacy, trust and legitimacy, and internal procedural justice for officers.

Police agencies should adopt an incremental approach to implementing a body-worn camera program. This means testing the cameras in pilot programs and engaging officers and the community during implementation. It also means carefully crafting body-worn camera policies that balance accountability, transparency, and privacy rights, as well as preserving the important relationships that exist between officers and members of the community.

PERF's recommendations provide guidance that is grounded in current research and in the lessons learned from police agencies that have adopted body-worn cameras. However, because the technology is so new, a large body of research does not yet exist regarding the effects body-worn cameras have on policing. Additional research and field experience are needed before the full impact of body-worn cameras can be understood, and PERF's recommendations may evolve as further evidence is gathered.

Like other new forms of technology, body-worn cameras have the potential to transform the field of policing. To make sure this change is positive, police agencies must think critically about the issues that cameras raise and must give careful consideration when developing body-worn camera policies and practices. First and foremost, agencies must always remember that the ultimate purpose of these cameras should be to help officers protect and serve the people in their communities.





# Appendix A. Recommendations Matrix

The tables below include the 33 policy recommendations and other lessons learned that are found throughout this publication. These recommendations, which are based on the research conducted by PERF with support from the COPS Office, reflect the promising practices and lessons that emerged from PERF's September 2013 conference in Washington, D.C., where more than 200 police chiefs, sheriffs, scholars, and federal criminal justice officials shared their experiences with body-worn cameras and their perspectives on the issues discussed in this report. The recommendations also incorporate feedback gathered during PERF's interviews of more than 40 law enforcement officials and other experts, as well as findings from PERF's review of body-worn camera policies submitted by police agencies across the country.

## Policy recommendations

### General recommendations

| No. | Recommendation                                                                                                                                                         | Rationale for Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                             | Page Reference(s)                                                                                   |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| 1   | Policies should clearly state which personnel are assigned or permitted to wear body-worn cameras and under which circumstances.                                       | The decision about which officers should wear body-worn cameras will depend on an agency's resources, law enforcement needs, and other factors.<br><br>Implementation tip:<br><ul style="list-style-type: none"> <li>Some agencies find it useful to begin deployment with units that have the most frequent contacts with the public (e.g., traffic or patrol officers).</li> </ul> | Assignment of cameras: p. 38<br><br>Incremental implementation: p. 27                               |
| 2   | If an agency assigns cameras to officers on a voluntary basis, policies should stipulate any specific conditions under which an officer might be required to wear one. | Officers who are not otherwise assigned body-worn cameras may become required to wear one in certain circumstances, such as the following:<br><ul style="list-style-type: none"> <li>After receiving a specified number of complaints or disciplinary actions</li> <li>When participating in a certain type of activity, such as SWAT operations</li> </ul>                          | Use of body-worn cameras to improve officer performance: p. 7-9<br><br>Assignment of cameras: p. 38 |
| 3   | Agencies should not permit personnel to use privately-owned body-worn cameras while on duty.                                                                           | The agency would not own recordings made from personal devices; thus, there would be little or no protection against data tampering or releasing the videos to the public or online. There would also be chain-of-custody issues with admitting personal recordings as evidence in court.                                                                                            | Personal cameras: p. 38<br><br>Data protection: pp. 15-16; 17-19; 42-47                             |
| 4   | Policies should specify the location on the body on which cameras should be worn.                                                                                      | Implementation tips:<br><ul style="list-style-type: none"> <li>Factors to consider when determining camera placement include field of vision, comfort, functionality, ease of use, and the type of camera system used.</li> <li>Agencies should field test various camera locations.</li> </ul>                                                                                      | Camera placement: p. 39                                                                             |

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

| No. | Recommendation                                                                                                                                                                                                                                            | Rationale for Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page Reference(s)                                                                                                                                            |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5   | Officers who activate the body-worn camera while on duty should be required to note the existence of the recording in the official incident report.                                                                                                       | This policy ensures that the presence of video footage is accurately documented in the case file so that investigators, prosecutors, oversight boards, and courts are aware of its existence.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Documentation of camera usage: p. 39                                                                                                                         |
| 6   | Officers who wear body-worn cameras should be required to articulate on camera or in writing their reasoning if they fail to record an activity that is required by department policy to be recorded. (See Recommendations 7-13 for Recording Protocols.) | <p>There may be times when an officer fails to record an event or activity that is otherwise required by agency policy to be recorded. This may arise under the following circumstances:</p> <ul style="list-style-type: none"> <li>When conditions make it unsafe or impossible to activate the camera</li> <li>When an officer exercises discretion, per agency policy, to not record because doing so would be detrimental to other agency priorities (e.g., protecting privacy rights, preserving community relations, or facilitating intelligence gathering)</li> <li>When the camera malfunctions or otherwise fails to capture the event/activity</li> </ul> <p>In these situations, officers should document in writing and/or on camera their reasons for not recording. This holds officers accountable, allows supervisors to investigate recording irregularities, and documents the absence of video footage for investigations and court proceedings.</p> <p>Implementation tips:</p> <ul style="list-style-type: none"> <li>The failure to record should be noted in the officer's written report.</li> <li>If the officer deactivates the camera in the middle of recording, the officer should state on camera the reasons why.</li> </ul> | <p>Documenting the failure to record:<br/>pp. 13; 14;<br/>18–19; 23; 28;<br/>30; 39</p> <p>Recording discretion:<br/>pp. 12–14;<br/>18–19; 22–23;<br/>40</p> |

## Recording protocols

| No. | Recommendation                                                                                                                                                                                                                                                                                                                                                                               | Findings in Support of Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page Reference(s)                                                                                                                                                  |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 7   | General recording policy: 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. Exceptions include recommendations 10 and 11 below or other situations in which activating cameras would be unsafe, impossible, or impractical. | <p>Rather than requiring officers to record all encounters with the public, most agencies that PERF consulted require officers to record during calls for service and during all law enforcement-related encounters and activities. PERF agrees with this approach. This means that officers have discretion whether to record informal, non-law enforcement-related interactions with the public.</p> <p>The reasons for adopting this approach include the following:</p> <ul style="list-style-type: none"> <li>Protecting relationships between the police and the community</li> <li>Promoting community policing efforts</li> <li>Securing officer support for the body-worn camera program by signaling that they are trusted to know when to record</li> <li>Keeping data storage manageable</li> </ul> | Recording discretion:<br>pp. 12–14;<br>18–19; 22–23;<br>40                                                                                                         |
| 7a  | Policies and training materials should clearly define what is included in the description “law enforcement-related encounters and activities that occur while the officer is on duty.”                                                                                                                                                                                                       | <p>Officers should have clear guidance about which specific types of activities, events, and encounters they are required to record.</p> <p>Implementation tip:</p> <ul style="list-style-type: none"> <li>Some agencies have found it useful to provide a list of specific examples in their policies, such as traffic stops, arrests, searches, interrogations or interviews, and pursuits. Policies should note that these types of lists are not exhaustive.</li> <li>These recording policies should be reinforced in training.</li> </ul>                                                                                                                                                                                                                                                                 | Recording guidance:<br>pp. 13; 18–24;<br>40                                                                                                                        |
| 7b  | Officers should also be required to activate the camera during the course of <b>any</b> encounter with the public that becomes adversarial after the initial contact.                                                                                                                                                                                                                        | <p>If officers are given discretion to not record informal, non-law enforcement-related encounters with the public, they should nonetheless be instructed to activate their cameras if the encounter becomes adversarial. This provides documentation of the encounter in the event that a complaint later arises. It also may help to defuse tense situations and prevent further escalation.</p> <p>Implementation tip:</p> <ul style="list-style-type: none"> <li>Officers may be called upon to activate their cameras quickly and in high-stress situations. Therefore, training programs should strive to ensure that camera activation becomes second-nature to officers. Situational training is particularly useful to achieve this goal.</li> </ul>                                                   | <p>Recording adversarial encounters:<br/>pp. 23; 40</p> <p>Preserving documentation for complaints:<br/>pp. 5–7</p> <p>Situational training:<br/>pp. 28–29; 47</p> |

Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

| No. | Recommendation                                                                                                                                                                                                             | Findings in Support of Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Page Reference(s)                                                                                                                                   |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| 8   | Officers should be required to inform subjects when they are being recorded unless doing so would be unsafe, impractical, or impossible.                                                                                   | <p>The mere knowledge that one is being recorded can help promote civility during police encounters with the public. Many police executives have found that officers can avoid adversarial situations if they inform people that they are being recorded.</p> <p>Implementation tips:</p> <ul style="list-style-type: none"> <li>In states with two-party consent laws, officers are required to announce they are recording and to obtain the subject's consent. Agencies should consult their state laws to determine whether this requirement applies.</li> <li>In one-party consent states, PERF's recommendation that officers inform a person that he or she is being recorded does <i>not</i> mean that officers must also obtain the person's consent to record.</li> <li>An officer may exercise discretion to not announce that he or she is recording if doing so would be unsafe, impractical, or impossible.</li> </ul> | <p>Consent (in general): pp. 14; 40</p> <p>Improving police-citizen encounters: pp. 6; 14</p> <p>Informing when recording: pp. 6; 14; 18–19; 40</p> |
| 9   | Once activated, the body-worn camera should remain in recording mode until the conclusion of an incident/encounter, the officer has left the scene, or a supervisor has authorized (on camera) that a recording may cease. | <p>Implementation tip:</p> <ul style="list-style-type: none"> <li>Prior to deactivating the camera, officers should announce that the incident has concluded and that the recording will now cease.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Camera deactivation: pp. 18–19; 41                                                                                                                  |
| 10  | Regardless of the general recording policy contained in recommendation 7, officers should be required to obtain consent prior to recording interviews with crime victims.                                                  | <p>There are significant privacy concerns associated with videotaping crime victims. PERF believes that 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.</p> <p>Implementation tips:</p> <ul style="list-style-type: none"> <li>Victims should give or deny consent in writing and/or on camera.</li> <li>This policy should apply regardless of whether consent is required under state law.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                     | Recording crime victims: pp. 13; 18–19; 40–41                                                                                                       |



| No. | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Findings in Support of Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Page Reference(s)                                                                                                                                         |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11  | Regardless of the general recording policy contained in recommendation 7, 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.                                                                                                                                                                                                                                                                                                  | <p>One of the most important jobs of police officers is to gather information about crime that occurs in their communities. These intelligence-gathering efforts may be formal (e.g., through interviews with witnesses of a crime) or informal (e.g., through conversations with community members with whom the officer has a relationship). Some police executives report that body-worn cameras can inhibit intelligence-gathering efforts, as some witnesses and community members may be hesitant to report information if they know their statements will be recorded. They may fear retaliation, worry about their own privacy, or not feel comfortable sharing sensitive information on camera. Officers should have the discretion to keep their cameras turned off in these situations.</p> <p>Implementation tips:</p> <ul style="list-style-type: none"> <li>• If a person is not comfortable sharing information on camera, some agencies permit officers to position the camera so that they capture only audio, not video, recordings of the person making the statement. This affords greater privacy protections while still preserving evidentiary documentation.</li> <li>• It is useful for officers to keep their cameras running during the initial response to an ongoing/live crime scene to capture spontaneous statements and impressions made by people at the scene. Once the scene is controlled and has moved into the investigative stage, officers may make a case-by-case decision about whether to record later interviews with witnesses.</li> <li>• When encountering a reluctant witness, officers should attempt to develop a rapport by being honest and not pressuring the person to talk on camera.</li> <li>• If an officer turns the camera off prior to obtaining information, the officer should document on camera the reason for doing so.</li> </ul> | <p>Impact on intelligence-gathering efforts:<br/>pp. 19–21</p> <p>Recording statements from witnesses or citizen informants:<br/>pp. 22–23;<br/>41–42</p> |
| 11a | When determining whether to record interviews with witnesses and members of the community who wish to share information, officers should always consider both the evidentiary value of recording and the subject's comfort with speaking on camera. To better capture evidence, PERF recommends that officers record statements made by witnesses and people sharing information. However, if a person will not talk unless the camera is turned off, officers may decide that obtaining the information is more important than recording. PERF recommends allowing officers that discretion. | <p>Recorded statements made by crime victims and members of the community can provide valuable evidence for investigations and prosecutions. Therefore, it is always preferable to capture these statements on camera when possible.</p> <p>Implementation tips:</p> <ul style="list-style-type: none"> <li>• Many agencies instruct officers to keep the camera activated when speaking with witnesses or informants unless the person actively requests otherwise.</li> <li>• Agencies should work with prosecutors to determine how best to weigh the importance of having a recorded statement versus the importance of gathering information when a witness refuses to speak on camera.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>Recording statements from witnesses or citizen informants:<br/>pp. 22–23;<br/>41–42</p>                                                                |
| 11b | Policies should provide clear guidance regarding the circumstances under which officers will be allowed to exercise discretion to record, the factors that officers should consider when deciding whether to record, and the process for documenting whether to record.                                                                                                                                                                                                                                                                                                                       | <p>Although discretion is important for protecting community policing efforts, this discretion must not be unlimited. Officers should always adhere to agency policies regarding discretion and should document when they exercise this discretion.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <p>Recording statements from witnesses or citizen informants:<br/>pp. 22–23;<br/>41–42</p>                                                                |



## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

| No. | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Findings in Support of Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page Reference(s)                                                                                         |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
| 12  | Agencies should prohibit recording other agency personnel during routine, non-enforcement-related activities unless recording is required by a court order or is authorized as part of an administrative or criminal investigation.                                                                                                                                                                                                                                                                                                                      | <p>This policy supports officer privacy and ensures officers feel safe to engage in routine, informal, non-law enforcement-related conversations with their colleagues. Situations that should not be recorded include the following:</p> <ul style="list-style-type: none"> <li>• Non-law enforcement-related conversations held between officers while on patrol (except while responding to a call for service)</li> <li>• Conversations between agency personnel held during breaks, at lunch, in the locker room, or during other non-law enforcement-related activities</li> </ul> | Prohibited recordings:<br>p. 42                                                                           |
| 13  | <p>Policies should clearly state any other types of recordings that are prohibited by the agency. Prohibited recordings should include the following:</p> <ul style="list-style-type: none"> <li>• Conversations with confidential informants and undercover officers to protect confidentiality and officer safety</li> <li>• Places where a reasonable expectation of privacy exists (e.g., bathrooms or locker rooms)</li> <li>• Strip searches</li> <li>• Conversations with other agency personnel that involve case tactics or strategy</li> </ul> | When determining whether a recording should be prohibited, agencies should consider privacy concerns, the need for transparency and accountability, the safety of the officer and the citizen, and the evidentiary value of recording.                                                                                                                                                                                                                                                                                                                                                   | <p>Prohibited recordings:<br/>pp. 37–38; 42</p> <p>Privacy considerations (in general):<br/>pp. 11–20</p> |

## Download and storage policies

| No. | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Findings in Support of Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Page Reference(s)                                  |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| 14  | Policies should designate the officer as the person responsible for downloading recorded data from his or her body-worn camera. However, in certain clearly identified circumstances (e.g., officer-involved shootings, in-custody deaths, or other incidents involving the officer that result in a person's bodily harm or death), the officer's supervisor should immediately take physical custody of the camera and should be responsible for downloading the data. | In most cases, it is more efficient for an officer to download recorded data from his or her own body-worn camera. The officer will have the best access to the camera and knowledge of the footage for tagging/documentation purposes. However, if the officer is involved in a shooting or other incident that results in someone's bodily harm or death, it is prudent for the officer's supervisor to take immediate custody of the officer's camera for evidence preservation purposes.                                                                                                                                                                                                                                                                                                  | Data protection:<br>pp. 15–16;<br>18–19; 42–44     |
| 15  | Policies should include specific measures to prevent data tampering, deleting, and copying.                                                                                                                                                                                                                                                                                                                                                                              | Implementation tips: <ul style="list-style-type: none"> <li>Agencies should create an audit system that monitors who accesses recorded data, when, and for what purpose. Some camera systems come with a built-in audit trail.</li> <li>Agencies can conduct forensic reviews to determine whether recorded data has been tampered with.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                           | Data protection:<br>pp. 15–16;<br>18–19; 42–45     |
| 16  | Data should be downloaded from the body-worn camera by the end of each shift in which the camera was used.                                                                                                                                                                                                                                                                                                                                                               | The majority of agencies that PERF consulted require officers to download recorded data by the conclusion of his or her shift. The reasons for this include the following: <ul style="list-style-type: none"> <li>Many camera systems recharge and clear old data during the downloading process.</li> <li>Events will be fresh in the officer's memory for the purpose of tagging and categorizing.</li> <li>Evidence will be entered into the system in a timely manner.</li> </ul>                                                                                                                                                                                                                                                                                                         | Data protection:<br>pp. 15–16;<br>18–19; 42–45     |
| 17  | Officers should properly categorize and tag body-worn camera videos at the time they are downloaded. Videos should be classified according to the type of event or incident captured in the footage.                                                                                                                                                                                                                                                                     | Properly categorizing and labeling/tagging recorded video is important for the following reasons: <ul style="list-style-type: none"> <li>The type of event/incident on the video will typically dictate data retention times.</li> <li>It enables supervisors, investigators, and prosecutors to more easily identify and access the data they need.</li> </ul> Implementation tips: <ul style="list-style-type: none"> <li>Some camera systems can be linked to an agency's records management system to allow for automated tagging and documentation.</li> <li>Some camera systems can be linked to electronic tablets that officers can use to review and tag recorded data while in the field. This saves the officer time spent tagging data at the end of his or her shift.</li> </ul> | Data tagging:<br>pp. 16–17;<br>18–19; 33–34;<br>43 |

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

| No. | Recommendation                                                                                                                                                                           | Findings in Support of Recommendation and<br>Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Page<br>Reference(s)                          |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|
| 18  | Policies should specifically state the length of time that recorded data must be retained. For example, many agencies provide 60-day or 90-day retention times for non-evidentiary data. | <p>Most state laws provide specific retention times for videos that contain evidentiary footage that may be used for investigations and court proceedings. These retention times will depend on the type of incident captured in the footage. Agencies typically have more discretion when setting retention times for videos that do not contain evidentiary footage.</p> <p>When setting retention times, agencies should consider the following:</p> <ul style="list-style-type: none"> <li>• State laws governing evidence retention</li> <li>• Departmental policies governing retention of other types of electronic records</li> <li>• The openness of the state's public disclosure laws</li> <li>• The need to preserve footage to promote transparency</li> <li>• The length of time typically needed to receive and investigate citizen complaints</li> <li>• The agency's capacity for data storage</li> </ul> <p>Implementation tips:</p> <ul style="list-style-type: none"> <li>• Agencies should make retention times public by posting them on their websites.</li> <li>• When setting retention times, agencies should consult with legal counsel to ensure compliance with relevant evidentiary laws. Agencies should obtain written approval for retention schedules from prosecutors and legal counsel.</li> </ul> | Data retention:<br>pp. 16–19;<br>33–34; 43–45 |

| No. | Recommendation                                                                | Findings in Support of Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Page Reference(s)                            |
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| 19  | Policies should clearly state where body-worn camera videos are to be stored. | <p>Common storage locations include in-house servers (managed internally) and online cloud databases (managed by a third-party vendor). Factors that agencies should consider when determining where to store data include the following:</p> <ul style="list-style-type: none"> <li>• Security concerns</li> <li>• Reliable methods for backing up data</li> <li>• Chain-of-custody issues</li> <li>• Capacity for data storage</li> </ul> <p>Implementation tips:</p> <ul style="list-style-type: none"> <li>• Agencies should consult with prosecutors and legal advisors to ensure data storage methods meet all legal requirements and chain-of-custody needs.</li> <li>• For videos requiring long-term storage, some agencies burn the data to a disc, attach it to the case file, and delete it from the internal server or online database. This frees up expensive storage space for videos that are part of an ongoing investigation or that have shorter retention times.</li> <li>• The agencies that PERF consulted report having no issues to date with using a third-party vendor to manage recorded data. To protect the security and integrity of data managed by a third party, agencies should use a reputable, experienced vendor; enter into a legal contract with the vendor that protects the agency's data; ensure the system includes a built-in audit trail and reliable backup methods; and consult with legal advisors.</li> </ul> | Data storage: pp. 15–16; 18–19; 32–34; 43–44 |



## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

### *Recorded data access and review*

| No. | Recommendation                                                                                                                                      | Findings in Support of Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | Page Reference(s)                                     |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| 20  | Officers should be permitted to review video footage of an incident in which they were involved, prior to making a statement about the incident.    | <p>Most agencies that PERF consulted permit officers to review video footage of an incident in which they were involved, such as a shooting, prior to making a statement that might be used in an administrative review or court proceeding. The reasons for this policy include the following:</p> <ul style="list-style-type: none"> <li>• Reviewing footage will help lead to the truth of the incident by helping officers to remember an incident more clearly.</li> <li>• Real-time recording is considered best evidence and provides a more accurate record than the officer's recollection.</li> <li>• Research into eyewitness testimony has demonstrated that stressful situations with many distractions are difficult for even trained observers to recall correctly.</li> <li>• Officers will have to explain and account for their actions, regardless of what the video shows.</li> </ul> | Officer review of footage: pp. 29–30; 45–47           |
| 21  | Written policies should clearly describe the circumstances in which supervisors will be authorized to review an officer's body-worn camera footage. | <p>PERF recommends that supervisors be authorized to review footage in the following circumstances:</p> <ul style="list-style-type: none"> <li>• When a supervisor needs to investigate a complaint against an officer or a specific incident in which the officer was involved</li> <li>• When a supervisor needs to identify videos for training purposes and for instructional use</li> <li>• When officers are still in a probationary period or are with a field training officer</li> <li>• When officers have had a pattern of allegations of abuse or misconduct</li> <li>• When officers have agreed to a more intensive review as a condition of being put back on the street</li> <li>• When an officer has been identified through an early intervention system</li> </ul>                                                                                                                    | Supervisor review of footage: pp. 24–26; 27–28; 45–47 |



| No. | Recommendation                                                                                                                                                                                                                             | Findings in Support of Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Page Reference(s)                                           |
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| 22  | An agency's internal audit unit, rather than the officer's direct chain of command, should periodically conduct a random review of body-worn camera footage to monitor compliance with the program and assess overall officer performance. | <p>Randomly monitoring an officer's camera footage can help proactively identify problems, determine noncompliance, and demonstrate accountability. However, unless prompted by one of the situations described in recommendation 21, PERF does not generally recommend that supervisors randomly monitor footage recorded by officers in their chain of command for the purpose of spot-checking the officers' performance. Instead, an agency's internal audit unit should be responsible for conducting random monitoring. This allows agencies to monitor compliance with the program and assess performance without undermining the trust between an officer and his or her supervisor.</p> <p>Implementation tips:</p> <ul style="list-style-type: none"> <li>Internal audit reviews should be truly random and not target a specific officer or officers.</li> <li>Audits should be conducted in accordance with a written standard of review that is communicated to officers.</li> </ul> | Internal audit unit review of footage: pp. 24–26; 28; 45–47 |
| 23  | Policies should explicitly forbid agency personnel from accessing recorded data for personal use and from uploading recorded data onto public and social media websites.                                                                   | <p>Agencies must take every possible precaution to ensure that camera footage is not used, accessed, or released for any unauthorized purposes.</p> <p>Implementation tips:</p> <ul style="list-style-type: none"> <li>Written policies should describe the sanctions for violating this prohibition.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Data protection: pp. 15–16; 18–19; 45–46                    |
| 24  | Policies should include specific measures for preventing unauthorized access or release of recorded data.                                                                                                                                  | All video recordings should be considered the agency's property and be subject to any evidentiary laws and regulations. (See also recommendations 15 and 23.)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Data protection: pp. 15–16; 18–19; 45–46                    |

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

| No. | Recommendation                                                                                                                                                                                                                                                                                    | Findings in Support of Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Page Reference(s)                          |
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| 25  | Agencies should have clear and consistent protocols for releasing recorded data externally to the public and the news media (a.k.a. Public Disclosure Policies). Each agency's policy must be in compliance with the state's public disclosure laws (often known as Freedom of Information Acts). | <p>PERF generally recommends a broad public disclosure policy for body-worn camera videos. By implementing a body-worn camera program, agencies are demonstrating that they are committed to transparency and accountability, and their disclosure policies should reflect this commitment.</p> <p>However, there are some situations when an agency may determine that publicly releasing body-worn camera footage is not appropriate. These include the following:</p> <ul style="list-style-type: none"> <li>Videos that contain evidentiary footage being used in an ongoing investigation or court proceeding are typically exempted from disclosure by state public disclosure laws.</li> <li>When the videos raise privacy concerns, such as recordings of crime victims or witnesses or footage taken inside a private home, agencies must balance privacy concerns against the need for transparency while complying with relevant state public disclosure laws.</li> </ul> <p>Implementation tips:</p> <ul style="list-style-type: none"> <li>Policies should state who is allowed to authorize the release of videos.</li> <li>When determining whether to proactively release videos to the public (rather than in response to a public disclosure request), agencies should consider whether the footage will be used in a criminal court case and the potential effects that releasing the data may have on the case.</li> <li>Policies should clearly state the process for responding to public disclosure requests, including the review and redaction process.</li> <li>Agencies should always communicate their public disclosure policies to the public.</li> </ul> | Public disclosure: pp. 17–19; 33–34; 46–47 |

## Training policies

| No. | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Findings in Support of Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Page Reference(s)                    |
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| 26  | Body-worn camera training should be required for all agency personnel who may use or otherwise be involved with body-worn cameras.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | <p>Personnel who receive training should include the following:</p> <ul style="list-style-type: none"> <li>• Officers who will be assigned or permitted to wear cameras</li> <li>• Supervisors whose officers wear cameras</li> <li>• Records/evidence management personnel</li> <li>• Training personnel</li> <li>• Internal Affairs</li> <li>• Anyone else who will be involved with the body-worn camera program</li> </ul> <p>Implementation tip:</p> <ul style="list-style-type: none"> <li>• As a courtesy, agencies may wish to offer training to prosecutors so they can better understand how to access the data, what the limitations of the technology are, and how the data may be used in court.</li> </ul> | Training:<br>pp. 47–49               |
| 27  | Before agency personnel are equipped with body-worn cameras, they must receive all mandated training.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | This ensures officers are prepared to operate the cameras safely and properly prior to wearing them in the field.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Training:<br>pp. 25; 28–29;<br>47–49 |
| 28  | <p>Body-worn camera training should include the following:</p> <ul style="list-style-type: none"> <li>• All practices and protocols covered by the agency's body-worn camera policy (which should be distributed to all personnel during training)</li> <li>• An overview of relevant state laws governing consent, evidence, privacy, and public disclosure</li> <li>• Procedures for operating the equipment safely and effectively</li> <li>• Scenario-based exercises that replicate situations that officers might encounter in the field</li> <li>• Procedures for downloading and tagging recorded data</li> <li>• Procedures for accessing and reviewing recorded data (only for personnel authorized to access the data)</li> <li>• Procedures for preparing and presenting digital evidence for court</li> <li>• Procedures for documenting and reporting any malfunctioning device or supporting system</li> </ul> | <p>Implementation tips:</p> <ul style="list-style-type: none"> <li>• Agencies can use existing body-worn camera footage to train officers on the proper camera practices and protocols.</li> <li>• Scenario-based training can be useful to help officers become accustomed to wearing and activating their cameras. Some agencies require officers to participate in situational exercise using training model cameras.</li> </ul>                                                                                                                                                                                                                                                                                      | Training:<br>pp. 7; 26–30;<br>47–49  |
| 29  | A body-worn camera training manual should be created in both digital and hard-copy form and should be readily available at all times to agency personnel.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p>Implementation tip:</p> <ul style="list-style-type: none"> <li>• The training manual should be posted on the agency's intranet.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Training:<br>pp. 47–49               |
| 30  | Agencies should require refresher courses on body-worn camera usage and protocols at least once per year.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Body-worn camera technology is constantly evolving. In addition to yearly refresher courses, training should occur anytime an agency's body-worn camera policy changes. Agencies should also keep abreast of new technology, data storage options, court proceedings, and other issues surrounding body-worn cameras.                                                                                                                                                                                                                                                                                                                                                                                                    | Training:<br>pp. 47–49               |

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

### *Policy and program evaluation*

| No. | Recommendation                                                                                                                                                          | Findings in Support of Recommendation and Tips for Implementation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Page Reference(s)                                                                                                                             |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| 31  | Agencies should collect statistical data concerning body-worn camera usage, including when video footage is used in criminal prosecutions and internal affairs matters. | <p>Collecting and releasing data about body-worn cameras helps promote transparency and trust within the community. It also helps agencies to evaluate the effectiveness of their programs, to determine whether their goals are being met, and to identify areas for improvement. Agencies can also use the findings when presenting information about their body-worn camera programs to officers, oversight boards, policymakers, and the community.</p> <p>Implementation tip:</p> <ul style="list-style-type: none"> <li>Statistics should be publicly released at various specified points throughout the year or as part of the agency's year-end report.</li> </ul>                                                                                                                                                                                                                                                                                            | Engaging the public:<br>pp. 21–22; 24; 28–29; 47–48                                                                                           |
| 32  | Agencies should conduct evaluations to analyze the financial impact of implementing a body-worn camera program.                                                         | <p>A cost-benefit analysis can help an agency to determine the feasibility of implementing a body-worn camera program. The analysis should examine the following:</p> <ul style="list-style-type: none"> <li>The anticipated or actual cost of purchasing equipment, storing recorded data, and responding to public disclosure requests</li> <li>The anticipated or actual cost savings, including legal fees and other costs associated with defending lawsuits and complaints against officers</li> <li>Potential funding sources for a body-worn camera program</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                         | <p>Financial considerations:<br/>pp. 30–34; 48–49</p> <p>Cost-benefit analysis: p.31</p> <p>Reducing complaints and lawsuits:<br/>pp. 6–9</p> |
| 33  | Agencies should conduct periodic reviews of their body-worn camera policies and protocols.                                                                              | <p>Body-worn camera technology is new and evolving, and the policy issues associated with body-worn cameras are just recently being fully considered. Agencies must continue to examine whether their policies and protocols take into account new technologies, are in compliance with new laws, and reflect the most up-to-date research and best practices. Evaluations will also help agencies determine whether their policies and practices are effective and appropriate for their departments.</p> <p>Implementation tips:</p> <ul style="list-style-type: none"> <li>Evaluations should be based on a set of standard criteria and outcome measures.</li> <li>An initial evaluation should be conducted at the conclusion of the body-worn camera pilot program or at a set period of time (e.g., six months) after the cameras were first implemented. Subsequent evaluations should be conducted on a regular basis as determined by the agency.</li> </ul> | Program evaluation:<br>p. 48–49                                                                                                               |



## Additional lessons learned: engaging officers, policymakers, and the community

According to the police officials whom PERF consulted, it is critical for agencies to engage the community, policymakers, courts, oversight boards, unions, frontline officers, and other stakeholders about the department's body-worn camera program. Open communication—both prior to and after camera deployment—can strengthen the perceived legitimacy of the camera program, demonstrate agency transparency, and help educate stakeholders about the realities of using body-worn cameras. The following table presents lessons that agencies shared with PERF with respect to engaging stakeholders.

| No. | Lesson Learned                                                                                                                                                                                                                                                                                                          | Page Reference(s) |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
| 1   | Engaging the community prior to implementing a camera program can help secure support for the program and increase the perceived legitimacy of the program within the community.                                                                                                                                        | pp. 21–22; 24     |
| 2   | Agencies have found it useful to communicate with the public, local policymakers, and other stakeholders about what the cameras will be used for and how the cameras will affect them.                                                                                                                                  | pp. 21–22; 24     |
| 3   | Social media is an effective way to facilitate public engagement about body-worn cameras.                                                                                                                                                                                                                               | pp. 21–22; 24     |
| 4   | Transparency about the agency's camera policies and practices, both prior to and after implementation, can help increase public acceptance and hold agencies accountable. Examples of transparency include posting policies on the agency's website and publicly releasing video recordings of controversial incidents. | pp. 21–22; 24     |
| 5   | 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.                                                             | pp. 26–27         |
| 6   | Briefings, roll calls, and meetings with union representatives are effective means to communicate with officers about the agency's body-worn camera program.                                                                                                                                                            | pp. 26–27         |
| 7   | Creating an implementation team that includes representatives from across the agency can help strengthen program legitimacy and ease implementation.                                                                                                                                                                    | pp. 26–27         |
| 8   | Agencies have found that officers support a body-worn camera program if they view the cameras as useful tools: e.g., as a technology that helps to reduce complaints and produce evidence that can be used in court or in internal investigations.                                                                      | pp. 26–27         |
| 9   | Recruiting an internal "champion" to help inform officers about the benefits of the cameras has proven successful in addressing officers' concerns about embracing the new technology.                                                                                                                                  | pp. 26–27         |
| 10  | Taking an incremental approach to implementation can help make deployment run more smoothly. This can include testing cameras during a trial period, rolling out cameras slowly, or initially assigning cameras to tech savvy officers.                                                                                 | pp. 26–27         |
| 11  | Educating oversight bodies about the realities of using cameras can help them to understand operational challenges and why there may be situations in which officers are unable to record. This can include demonstrations to judges, attorneys, and civilian review boards about how the cameras operate.              | pp. 28–30         |





# Appendix B. Conference attendees

PERF and the COPS Office convened this one-day conference on September 11, 2013, in Washington, D.C., to discuss the policy and operational issues surrounding body-worn cameras. The titles listed below reflect attendees' positions at the time of the conference.

## **Albuquerque (NM) Police Department**

**William Roseman**  
Deputy Chief of Police

## **Alexandria (VA) Police Department**

**David Huchler**  
Deputy Chief of Police

**Eddie Reyes**  
Deputy Chief of Police

## **Anne Arundel County (MD) Police Department**

**Herbert Hasenpusch**  
Captain

**Thomas Kohlmann**  
Lieutenant

## **Appleton (WI) Police Department**

**Gary Lewis**  
Lieutenant

## **Arlington County (VA) Police Department**

**Jason Bryk**  
Lieutenant

**Michael Dunne**  
Deputy Chief of Police

**Lauretta Hill**  
Assistant Chief of Police

## **Arnold & Porter LLP**

**Meredith Esser**  
Associate

**Peter Zimroth**  
Partner

## **Atlanta (GA) Police Department**

**Todd Coyt**  
Lieutenant

**Joseph Spillane**  
Major

## **Aurora (CO) Police Department**

**Dan Mark**  
Lieutenant

## **Baltimore County (MD) Police Department**

**Karen Johnson**  
Major

**James Johnson**  
Chief of Police

## **Baltimore (MD) Fraternal Order of Police**

**Bob Cherry**  
President

## **Baltimore (MD) Police Department**

**Jeronimo Rodriguez**  
Deputy Police Commissioner

## **Bay Area Rapid Transit Police Department**

**Kenton Rainey**  
Chief of Police

## **Boyd (VA) Police Department**

**Michael Brave**  
Training Officer

## **Bureau of Justice Assistance**

U.S. Department of Justice

**David Adams**  
Senior Policy Advisor

**Steve Edwards**  
Senior Policy Advisor

**Kristen Mahoney**  
Deputy Director of Policy

**Denise O'Donnell**  
Director

**Brian Reaves**  
Senior Statistician

**Cornelia Sigworth**  
Senior Advisor

**Christopher Traver**  
Senior Policy Advisor

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

### Calgary (AB) Police Service

**Trevor Daroux**  
Deputy Chief of Police

**Evel Kiez**  
Sergeant

**Asif Rashid**  
Staff Sergeant

### Camden County (NJ) Police Department

**Orlando Cuevas**  
Deputy Chief of Police

### Charlotte-Mecklenburg (NC) Police Department

**Michael Adams**  
Major

**Stephen Willis**  
Major

### Cincinnati (OH) Police Department

**Thomas Streicher**  
Chief of Police (Retired)

### City of Akron (OH) Police Department

**James Nice**  
Chief of Police

### Civil Rights Division

U.S. Department of Justice

**Roy L. Austin, Jr.**  
Deputy Assistant Attorney General

**Christy Lopez**  
Deputy Chief

**Zazy Lopez**  
Attorney

**Jeffrey Murray**  
Attorney

**Tim Mygatt**  
Special Counsel

**Rashida Ogletree**  
Attorney

### CNA Corporation

**James Stewart**  
Director of Public Safety

### Columbus (OH) Division of Police

**Gary Cameron**  
Commander, Narcotics Bureau

### Commission on Accreditation for Law Enforcement Agencies, Inc.

**Craig Hartley**  
Deputy Director

### CP2, Inc.

**Carl Peed**  
President

### Dallas (TX) Police Department

**Andrew Acord**  
Deputy Chief of Police

### Dalton (GA) Police Department

**Jason Parker**  
Chief of Police

### Daytona Beach (FL) Police Department

**Michael Chitwood**  
Chief of Police

### Denver (CO) Police Department

**Magen Dodge**  
Commander

### Des Moines (IA) Police Department

**Judy Bradshaw**  
Chief of Police

**Todd Dykstra**  
Captain

**Stephen Waymire**  
Major

### Detroit (MI) Police Department

**James Craig**  
Chief of Police

### Digital Ally, Inc.

**Matthew Andrews**  
Engineer

**Stan Ross**  
CEO

### Eugene (OR) Police Department

**James Durr**  
Captain

**Fairfax County (VA) Police Department**

**Bob Blakley**  
Lieutenant

**Fayetteville (NC) Police Department**

**Wayne Burgess**  
Lieutenant

**Bradley Chandler**  
Assistant Chief of Police

**Timothy Tew**  
Lieutenant

**Federal Bureau of Investigation**

**Jacques Battiste**  
Supervisory Special Agent

**Federal Emergency Management Agency**

**Roberto Hylton**  
Senior Law Enforcement Advisor

**Edward Welch**  
Director

**Fort Collins (CO) Police Department**

**Cory Christensen**  
Deputy Chief of Police

**Garner (NC) Police Department**

**Chris Hagwood**  
Lieutenant

**Glenview (IL) Police Department**

**William Fitzpatrick**  
Chief of Police

**Grand Junction (CO) Police Department**

**John Camper**  
Chief of Police

**Greater Manchester (UK) Police**

**Paul Rumney**  
Detective Chief Superintendent

**Greensboro (NC) Police Department**

**Kenneth Miller**  
Chief of Police

**George Richey**  
Captain

**Wayne Scott**  
Deputy Chief of Police

**Greenville (NC) Police Department**

**Hassan Aden**  
Chief of Police

**Greenwood & Streicher LLC**

**Scott Greenwood**  
CEO

**Gulf States Regional Center for Public Safety Innovations**

**Daphne Levenson**  
Director

**Harrisonburg (VA) Police Department**

**John Hancock**  
Officer

**Roger Knott**  
Lieutenant

**Hayward (CA) Police Department**

**Lauren Sugayan**  
Program Analyst

**Henrico County (VA) Division of Police**

**Douglas Middleton**  
Chief of Police

**Herndon (VA) Police Department**

**Maggie DeBoard**  
Chief of Police

**Steven Pihonak**  
Sergeant

**Houston (TX) Police Department**

**Jessica Anderson**  
Sergeant

**James Jones**  
Captain

**Charles McClelland**  
Chief of Police

**Indianapolis (IN) Department of Public Safety**

**David Riggs**  
Director

**Innovative Management Consulting, Inc.**

**Thomas Maloney**  
Senior Consultant

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

### International Association of Chiefs of Police

**Mike Fergus**  
Program Manager

**David Roberts**  
Senior Program Manager

### Jersey City (NJ) Police Department

**Matthew Dillon**  
Police ID Officer

**Stephen Golecki**  
Sr. Police ID Officer

**Samantha Pescatore**  
Officer

**John Scalcione**  
Officer

**Daniel Sollitti**  
Captain

### L-3 Communications

**Michael Burrige**  
Executive Director, Public Safety

### Lakehurst (NJ) Police Department

**Eric Higgins**  
Chief of Police

### Lansing (MI) Police Department

**Michael Yankowski**  
Chief of Police

### Las Vegas Metropolitan (NV) Police Department

**Liesl Freedman**  
General Counsel

**Thomas Roberts**  
Captain

### Leesburg (VA) Police Department

**Carl Maupin**  
Lieutenant

### Lenexa (KS) Police Department

**Dawn Layman**  
Major

### Los Angeles County Sheriff's Department

**David Betkey**  
Division Chief

**Kevin Goran**  
Division Chief

**James Hellmold**  
Assistant Sheriff

**Chris Marks**  
Lieutenant

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**Greg Meyer**  
Captain (Retired)

### Louisville (KY) Metro Police Department

**Robert Schroeder**  
Major

### Lynchburg (VA) Police Department

**Mark Jamison**  
Captain

**Ryan Zuidema**  
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### Madison (WI) Police Department

**June Groehler**  
Lieutenant

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**Eugene Ramirez**  
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**Jeffry Cossette**  
Chief of Police

**Timothy Topulos**  
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**Tony Filler**  
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**Michael Anderson**  
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**John Singleton**  
IT Security Manager

**Metropolitan (DC) Police Department**

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Assistant Chief of Police

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**Bruce Folkens**  
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**Janeé Harteau**  
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**Montgomery County (MD) Police Department**

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**Luther Reynolds**  
Assistant Chief of Police

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**Kelly Kirwan**  
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**Steve Sebestyen**  
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**National Institute of Justice**  
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**New Orleans (LA) Police Department**

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Superintendent of Police

**New South Wales (AUS) Police Force**

**Stephen Cullen**  
Chief Superintendent

**New York City Police Department**

**Terrence Riley**  
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## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

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Chief of Police

**Samuel DeMaio**  
Director

**Michele MacPhee**  
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Lieutenant

### Norfolk (VA) Police Department

**Frances Emerson**  
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**James Ipock**  
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### Northern California Regional Intelligence Center

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### Oakland (CA) Police Department

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Social Science Analyst

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**Katherine McQuay**  
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**Robert Lunney**  
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### Police Foundation

**Jim Bueermann**  
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**Jim Specht**  
Assistant to the President for  
Communications and Policy

### Poulsbo (WA) Police Department

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**Hector Velez**  
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Assistant Chief of Police

**Robinson & Yu LLC****David Robinson**

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**Royal Canadian Mounted Police****K. Troy Lightfoot**

Director of Operational Policy and Compliance

**San Diego County District Attorney,  
Bureau of Investigations****Adolfo Gonzales**

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**San Leandro (CA) Police Department****Sandra Spagnoli**

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**Seattle (WA) Police Department****David Puente**

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**Spokane (WA) Police Department****Bradley Arleth**

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Deputy Chief of Police

## Implementing a Body-Worn Camera Program: *Recommendations and Lessons Learned*

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**Jim Rizzi**  
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**Peter Scranton**

### **University of California, San Diego Police Department**

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Chief of Police

**David Rose**  
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# About PERF

The **Police Executive Research Forum** (PERF) is an independent research organization that focuses on critical issues in policing. Since its founding in 1976, PERF has identified best practices on fundamental issues such as reducing police use of force, developing community policing and problem-oriented policing, using technologies to deliver police services to the community, and evaluating crime reduction strategies.

PERF strives to advance professionalism in policing and to improve the delivery of police services through the exercise of strong national leadership, public debate of police and criminal justice issues, and research and policy development.

In addition to conducting research and publishing reports on our findings, PERF conducts management studies of individual law enforcement agencies, educates hundreds of police officials each year in a three-week executive development program, and provides executive search services to governments that wish to conduct national searches for their next police chief.

All of PERF's work benefits from PERF's status as a membership organization of police officials, academics, federal government leaders, and others with an interest in policing and criminal justice.

All PERF members must have a four-year college degree and must subscribe to a set of founding principles, emphasizing the importance of research and public debate in policing, adherence to the Constitution and the highest standards of ethics and integrity, and accountability to the communities that police agencies serve.

PERF is governed by a member-elected president and board of directors and a board-appointed executive director. A staff of approximately 30 full-time professionals is based in Washington, D.C.

To learn more, visit PERF online at [www.policeforum.org](http://www.policeforum.org).



# About the COPS Office

The **Office of Community Oriented Policing Services (COPS Office)** is the component of the U.S. Department of Justice responsible for advancing the practice of community policing by the nation's state, local, territory, and tribal law enforcement agencies through information and grant resources.

Community policing is a philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.

Rather than simply responding to crimes once they have been committed, community policing concentrates on preventing crime and eliminating the atmosphere of fear it creates. Earning the trust of the community and making those individuals stakeholders in their own safety enables law enforcement to better understand and address both the needs of the community and the factors that contribute to crime.

The COPS Office awards grants to state, local, territory, and tribal law enforcement agencies to hire and train community policing professionals, acquire and deploy cutting-edge crime fighting technologies, and develop and test innovative policing strategies. COPS Office funding also provides training and technical assistance to community members and local government leaders and all levels of law enforcement. The COPS Office has produced and compiled a broad range of information resources that can help law enforcement better address specific crime and operational issues, and help community leaders better understand how to work cooperatively with their law enforcement agency to reduce crime.

- Since 1994, the COPS Office has invested more than \$14 billion to add community policing officers to the nation's streets, enhance crime fighting technology, support crime prevention initiatives, and provide training and technical assistance to help advance community policing.
- To date, the COPS Office has funded approximately 125,000 additional officers to more than 13,000 of the nation's 18,000 law enforcement agencies across the country in small and large jurisdictions alike.
- Nearly 700,000 law enforcement personnel, community members, and government leaders have been trained through COPS Office-funded training organizations.
- To date, the COPS Office has distributed more than 8.57 million topic-specific publications, training curricula, white papers, and resource CDs.

COPS Office resources, covering a wide breadth of community policing topics—from school and campus safety to gang violence—are available, at no cost, through its online Resource Center at [www.cops.usdoj.gov](http://www.cops.usdoj.gov). This easy-to-navigate website is also the grant application portal, providing access to online application forms.



In recent years, many law enforcement agencies have been deploying small video cameras worn by officers to record encounters with the public; investigate officer-involved incidents; produce evidence; and strengthen agency performance, accountability, and transparency. While body-worn cameras have the potential to improve police services, they also raise issues involving privacy, police-community relationships, procedural justice, and technical and cost questions, all of which agencies should examine as they consider this technology.

The Police Executive Research Forum, with support from the Office of Community Oriented Policing Services, conducted research in 2013 on the use of body-worn cameras. This research included interviews with police executives, a review of agencies' policies, and a national conference at which 200 police executives and other experts discussed their experiences with body-worn cameras. This publication describes the findings of this research, explores the issues surrounding body-worn cameras, and offers policy recommendations for law enforcement agencies.



**COPS**

Community Oriented Policing Services  
U.S. Department of Justice

U.S. Department of Justice  
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To obtain details on COPS Office programs,  
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## TECHNOLOGY

# Considering Police Body Cameras

*Developments in the Law*

APR 10, 2015

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One evening in early December 2014, thousands of people gathered on the historic Boston Common, not to view the annual Christmas-tree lighting, but to add their voices to a growing movement.<sup>1</sup>

1. Travis Andersen et al., *Thousands Protest Eric Garner Case in Downtown Boston*, BOS. GLOBE (Dec. 4, 2014), <http://www.bostonglobe.com/metro/2014/12/04/protest-planned-christmas-tree-lighting-common/875sx4ZA1JcHliKte9UyCJ/story.html> (<http://www.bostonglobe.com/metro/2014/12/04/protest-planned-christmas-tree-lighting-common/875sx4ZA1JcHliKte9UyCJ/story.html>) [<http://perma.cc/T6QF-D4AX>] (<http://perma.cc/T6QF-D4AX>)]. While the tree lighting proceeded as planned, the ceremony's speakers (none of whom acknowledged the demonstration) were forced to "shout[] over protesters." *Id.*

They carried with them signs inscribed with the mantras of that movement —phrases like “Hands Up, Don’t Shoot” and “Black Lives Matter” — and they joined together to call for justice, for police accountability, and for the nation to address the structural forces that permit white police officers to kill a black person at least every eighty-four hours.<sup>2</sup>

2. See Kevin Johnson et al., *Local Police Involved in 400 Killings per Year*, **USA TODAY** (Aug. 15, 2014, 9:41 AM), <http://www.usatoday.com/story/news/nation/2014/08/14/police-killings-data/14060357> (<http://www.usatoday.com/story/news/nation/2014/08/14/police-killings-data/14060357>) (<http://perma.cc/N8PM-P2S8> (<http://perma.cc/N8PM-P2S8>)] (finding that white police officers killed black people an average of two times per week based on self-reported statistics).

These displays of solidarity, inspired by earlier protests in Ferguson, Missouri,<sup>3</sup>

3. See *supra* Introduction, pp. 1707–08.

spread across the country: from Oakland<sup>4</sup>

4. See, e.g., Jessica Guynn, *Berkeley Protesters March for Fourth Night, Briefly Block Freeway*, **USA TODAY** (Dec. 11, 2014, 8:28 AM), <http://www.usatoday.com/story/news/2014/12/09/berkeley-protests-michael-brown-eric-garner-fourth-night/20162279> (<http://www.usatoday.com/story/news/2014/12/09/berkeley-protests-michael-brown-eric-garner-fourth-night/20162279>) (<http://perma.cc/VD32-MP7R> (<http://perma.cc/VD32-MP7R>)] (detailing protests of over 1500 individuals and noting that 223 protestors had already been arrested).

to Chicago<sup>5</sup>

5. See, e.g., Associated Press, *Ferguson Decision Brings Protests to Lake Shore Drive*, **CRAIN’S CHI. BUS.** (Nov. 24, 2014), <http://www.chicagobusiness.com/article/20141124/NEWS04/141129890/ferguson-decision-brings-protests-to-lake-shore-drive> (<http://www.chicagobusiness.com/article/20141124/NEWS04/141129890/ferguson-decision-brings-protests-to-lake-shore-drive>) (<http://perma.cc/N855-WBKN> (<http://perma.cc/N855-WBKN>)]].

to New York City,<sup>6</sup>



6. See, e.g., Rocco Parascandola, *Eric Garner Case Protesters Block Traffic in Staten Island Near Verrazano-Narrows Bridge*, N.Y. DAILY NEWS (Dec. 8, 2014, 10:37 AM), <http://www.nydailynews.com/new-york/eric-garner-protesters-block-traffic-staten-island-article-1.2037642> (<http://www.nydailynews.com/new-york/eric-garner-protesters-block-traffic-staten-island-article-1.2037642>) [<http://perma.cc/BS5R-AXWA> (<http://perma.cc/BS5R-AXWA>) ].

citizens took to the streets to demand reform from their government.

This widespread initiative — said to evoke the civil rights movement <sup>7</sup>

7. See Randy Kennedy & Jennifer Schuessler, *Ferguson Images Evoke Civil Rights Era and Changing Visual Perceptions*, N.Y. TIMES, Aug. 15, 2014, <http://www.nytimes.com/2014/08/15/us/ferguson-images-evoke-civil-rights-era-and-changing-visual-perceptions.html> (<http://www.nytimes.com/2014/08/15/us/ferguson-images-evoke-civil-rights-era-and-changing-visual-perceptions.html>) (noting that, despite “formal similarities” between images, depictions of the police “could not have been more different,” as “[t]oday’s riot police officers [are] wearing military-style camouflage and carrying military-style rifles, their heads and faces obscured by black helmets and gas masks as they [stand] in front of an armored vehicle”); Dani McClain, *The Civil Rights Movement Came Out of a Moment Like This One*, THE NATION (Dec. 4, 2014, 5:47 PM), <http://www.thenation.com/blog/19196/civil-rights-movement-came-out-moment-one> (<http://www.thenation.com/blog/19196/civil-rights-movement-came-out-moment-one>) [<http://perma.cc/3PLH-SN5X> (<http://perma.cc/3PLH-SN5X>) ].

— began largely in response to a Missouri grand jury’s decision not to indict police officer Darren Wilson for any crime related to his fatal shooting of Michael Brown, a black teenager who was unarmed when shot. <sup>8</sup>

8. See Eyder Peralta & Bill Chappell, *Ferguson Jury: No Charges for Officer in Michael Brown’s Death*, NPR: THE TWO-WAY (Nov. 24, 2014, 3:37 PM), <http://www.npr.org/blogs/thetwo-way/2014/11/24/366370100/grand-jury-reaches-decision-in-michael-brown-case> (<http://www.npr.org/blogs/thetwo-way/2014/11/24/366370100/grand-jury-reaches-decision-in-michael-brown-case>) [<http://perma.cc/2BZN-ZKW4> (<http://perma.cc/2BZN-ZKW4>) ]; see also *supra* Introduction, p. 1708; *supra* ch. I, p. 1723.

A little over a week later, the failure of a Staten Island grand jury to indict NYPD Officer Daniel Pantaleo for his fatal use of a chokehold on Eric Garner, yet another unarmed black man, further catalyzed the movement — particularly because this deadly encounter was captured on film by nearby onlookers. <sup>9</sup>

9. See Aaron Blake, *Why Eric Garner Is the Turning Point Ferguson Never Was*, **WASH. POST: THE FIX** (Dec. 8, 2014), <http://www.washingtonpost.com/blogs/the-fix/wp/2014/12/08/why-eric-garner-is-the-turning-point-ferguson-never-was> (<http://www.washingtonpost.com/blogs/the-fix/wp/2014/12/08/why-eric-garner-is-the-turning-point-ferguson-never-was>) [<http://perma.cc/3XKR-XXWP> (<http://perma.cc/3XKR-XXWP>)]; J. David Goodman & Al Baker, *Wave of Protests After Grand Jury Doesn't Indict Officer in Eric Garner Chokehold Case*, **N.Y. TIMES** (Dec. 3, 2014), <http://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html> (<http://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html>).

The outrage over Officer Pantaleo's nonindictment presents an interesting challenge for reformers. Prior to the grand jury's decision, both protestors and politicians were calling for police departments across the country to outfit their officers with body cameras. <sup>10</sup>

10. See, e.g., *Michael Brown's Family in Atlanta to Begin Campaign for Police Body Cameras*, **WSB-TV** (Sept. 21, 2014, 9:38 PM), <http://www.wsbtv.com/news/news/michael-browns-family-atlanta-begin-campaign-police/body-cameras> (<http://www.wsbtv.com/news/news/michael-browns-family-atlanta-begin-campaign-police/body-cameras>) [<http://perma.cc/X5SQ-YKH7> (<http://perma.cc/X5SQ-YKH7>)]; Justin Sink, *Obama to Provide Funding for 50,000 Police Body Cameras*, **THE HILL** (Dec. 1, 2014, 1:00 PM), <http://thehill.com/homenews/administration/225583-obama-to-provide-funding-for-50000-police-body-cameras> (<http://thehill.com/homenews/administration/225583-obama-to-provide-funding-for-50000-police-body-cameras>) [<http://perma.cc/98ED-G4QF> (<http://perma.cc/98ED-G4QF>)].

The hope was that video recordings of police-civilian interactions would deter officer misconduct and eliminate the ambiguity present in cases like Michael Brown's, making it easier to punish officers' use of excessive force. <sup>11</sup>

11. See Michael McAuliff, *Police Body Cameras Seen as a Fix for Ferguson-Style Killings*, **HUFFINGTON POST** (Nov. 25, 2014, 7:59 PM), [http://www.huffingtonpost.com/2014/11/25/ferguson-body-cameras\\_n\\_6221558.html](http://www.huffingtonpost.com/2014/11/25/ferguson-body-cameras_n_6221558.html) ([http://www.huffingtonpost.com/2014/11/25/ferguson-body-cameras\\_n\\_6221558.html](http://www.huffingtonpost.com/2014/11/25/ferguson-body-cameras_n_6221558.html)) [<http://perma.cc/TUS2-NTY2> (<http://perma.cc/TUS2-NTY2>)] ("Civil liberties advocates argue that video records prevent cops from abusing their authority, while law enforcement groups note that a person cannot falsely accuse an officer if their encounter is recorded.").

This initiative gained "overwhelming support from every stakeholder in the controversy — the public, the White House, federal legislators, police officials, [and] police unions." <sup>12</sup>

12. Howard M. Wasserman, *Moral Panics and Body Cameras*, WASH. U. L. REV. COMMENTARIES, Nov. 18, 2014, at 2, [http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1025&context=law\\_lawreview\\_commentaries](http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1025&context=law_lawreview_commentaries) ([http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1025&context=law\\_lawreview\\_commentaries](http://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1025&context=law_lawreview_commentaries)) [<http://perma.cc/P2QH-XGRC> (<http://perma.cc/P2QH-XGRC>)] (footnotes omitted).

Indeed, on December 1, 2014 — two days prior to the grand jury decision in Garner’s case — President Obama announced \$263 million in federal funding to allow law enforcement agencies “to purchase body-worn cameras and improve training.” <sup>13</sup>

13. Sink, *supra* note 10. This money “would be used by the federal government to match up to 50 percent spending by state and local police departments on body-worn cameras and storage for the equipment. The White House estimate[d] that aspect of the program, which would cost \$75 million, would help fund the purchase of 50,000 body-worn cameras.” *Id.*

The American Civil Liberties Union (ACLU) also repeatedly voiced its support for widespread adoption of this new technology, heralding body cameras as “a win-win” as long as civilian privacy remained properly protected. <sup>14</sup>

14. Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win for All*, ACLU (Oct. 9, 2013), <https://www.aclu.org/technology-and-liberty/police-body-mounted-cameras-right-policies-place-win-all> (<https://www.aclu.org/technology-and-liberty/police-body-mounted-cameras-right-policies-place-win-all>) [hereinafter Stanley, *Police Body-Mounted Cameras*] [<https://perma.cc/B22V-LMQ3> (<https://perma.cc/B22V-LMQ3>)]]; see also Jay Stanley, *Accountability vs. Privacy: The ACLU’s Recommendations on Police Body Cameras*, ACLU (Oct. 9, 2013, 11:00 AM), <https://www.aclu.org/blog/free-speech-national-security-technology-and-liberty/accountability-vs-privacy-aclus> (<https://www.aclu.org/blog/free-speech-national-security-technology-and-liberty/accountability-vs-privacy-aclus>) [<https://perma.cc/8KYZ-96U9> (<https://perma.cc/8KYZ-96U9>)]].

This widespread galvanization over body cameras <sup>15</sup>

15. A recent survey revealed that 77% of Americans would feel safer if officers were equipped with body cameras, and 74% felt that officers “should be required to wear body cameras.” Tammy Payne, *Arrest of OKC Officer Highlights Benefits of Body Cameras*, NEWS 9 (Aug. 22, 2014, 8:14 AM), <http://www.news9.com/story/26345123/arrest-of-okc-officer-highlights-benefits-of-body-cameras> (<http://www.news9.com/story/26345123/arrest-of-okc-officer-highlights-benefits-of-body-cameras>) [<http://perma.cc/5QL7-G9Q5> (<http://perma.cc/5QL7-G9Q5>)]].

exemplifies the human tendency, in times of tragedy, to latch on to the most readily available solution to a complex problem. But as the outcome of Garner's case demonstrates, even when high-quality, graphic footage is available, officers may still not be indicted, let alone convicted. <sup>16</sup>

16. For footage of Garner's death, see '*I Can't Breathe*': *Eric Garner Put in Chokehold by NYPD Officer* – Video, **THE GUARDIAN** (Dec. 4, 2014, 2:46 PM), <http://www.theguardian.com/us-news/video/2014/dec/04/i-cant-breathe-eric-garner-chokehold-death-video> (<http://www.theguardian.com/us-news/video/2014/dec/04/i-cant-breathe-eric-garner-chokehold-death-video>) [<http://perma.cc/K22V-4MHQ> (<http://perma.cc/K22V-4MHQ>)]]. This lack of accountability occurred despite the deadly use of a chokehold, Goodman & Baker, *supra* note 9, a maneuver banned by the NYPD since 1993. Tierney Sneed, *Tale of the Tape: When Police Brutality Is Caught on Camera*, **U.S. NEWS & WORLD REP.** (Aug. 7, 2014, 2:30 PM), <http://www.usnews.com/news/articles/2014/08/07/tale-of-the-tape-when-police-brutality-is-caught-on-camera> (<http://www.usnews.com/news/articles/2014/08/07/tale-of-the-tape-when-police-brutality-is-caught-on-camera>) [<http://perma.cc/LJ5Q-BX3C> (<http://perma.cc/LJ5Q-BX3C>)] (discussing the chokehold ban, but adding that the department has still received over 1000 allegations of chokeholds between 2009 and 2013). The ban “specifically [does] not distinguish between various types of holds, but rather ban[s] them categorically.” Ian Fisher, *Kelly Bans Choke Holds by Officers*, **N.Y. TIMES**, Nov. 24, 1993, <http://www.nytimes.com/1993/11/24/nyregion/kelly-bans-choke-holds-by-officers.html> (<http://www.nytimes.com/1993/11/24/nyregion/kelly-bans-choke-holds-by-officers.html>) (“‘Basically, stay the hell away from the neck,’ [then–NYPD Police Chief John Timoney] said.”).

Moreover, body cameras are a powerful — and indiscriminate — technology. Their proliferation over the next decade will inevitably change the nature of policing in unexpected ways, quite possibly to the detriment of the citizens the cameras are intended to protect. <sup>17</sup>

17. Historically, many reforms undertaken for the professed purpose of “protecting” civilians have ultimately ended up empowering police officers. For example, the stop-and-frisk programs, ostensibly implemented to deter violence in high-crime neighborhoods, have enabled officers to stop and search a grossly disproportionate number of minorities without any proven efficacy. See, e.g., Ray Rivera, *Pockets of City See Higher Use of Force During Police Stops*, **N.Y. TIMES** (Aug. 15, 2012), <http://www.nytimes.com/2012/08/16/nyregion/in-police-stop-data-pockets-where-force-is-used-more-often.html> (<http://www.nytimes.com/2012/08/16/nyregion/in-police-stop-data-pockets-where-force-is-used-more-often.html>) (reporting that NYPD officers made 680,000 stops in 2011, over 80% of which involved stopping a black or Latino individual, and finding that “police used some level of physical force in more than one in five stops across the city . . . [y]et the high level of force seldom translated into arrests”); Donald Braman, *Stop-and-Frisk Didn't Make New York Safer*, **THE ATLANTIC** (Mar. 26, 2014, 3:26 PM), <http://www.theatlantic.com/national/archive/2014/03/stop-and-frisk-didnt-make-new>

[york-safer/359666](http://www.theatlantic.com/national/archive/2014/03/stop-and-frisk-didnt-make-new-york-safer/359666) (<http://www.theatlantic.com/national/archive/2014/03/stop-and-frisk-didnt-make-new-york-safer/359666>) [<http://perma.cc/4VS7-E4AT> (<http://perma.cc/4VS7-E4AT>)] (“There’s no good evidence that the invasive policing strategy brought down crime.”).

So although video footage has the potential to move citizens as it did in the Garner case,<sup>18</sup>

18. Indeed, it is unlikely that the grassroots movement formed in response to Brown’s and Garner’s deaths would have become nearly as widespread or bipartisan without such footage. See Blake, *supra* note 9 (citing a study finding that 60% of Americans disagree with the grand jury outcome in Garner’s case, as compared to 36% of Americans disagreeing with the outcome in Brown’s case, and arguing that the disparity is due to the existence of video footage of the Garner incident, which significantly lessened the “debate about the particulars of precisely what happened”).

proper implementation of this new policing tool requires careful consideration of current policy proposals, rather than the rapid, reactionary adoptions currently taking place nationwide.<sup>19</sup>

19. As Professor José Gabilondo has observed, times of “moral panic” often arise out of “an incident or pattern [that] catalyzes preexisting social anxiety [from which] an ad hoc issues movement is born. The media fans the flames through sensationalist and reductionist news stories. . . . Usually, a hasty legal reform results from the panic. Driven as it is by irrationality, the reforms usually miss the point of the original problem and suffer from disproportionality.” José Gabilondo, *Financial Moral Panic! Sarbanes-Oxley, Financier Folk Devils, and Off-Balance-Sheet Arrangements*, 36 SETON HALL L. REV. 781, 792 (2006); see also Wasserman, *supra* note 12, at 4.

Their adoption should also not be used as an excuse to stifle continued conversation about the root causes of police violence and fractured community relations, as body cameras alone will never be the hoped-for cure-all.

To that end, this Chapter explores the contours of the body-camera debate. Section B lays out the purported benefits of body cameras, particularly their potential for increasing public trust and police accountability. Section C catalogs several downsides of the cameras, all of which should be critically explored prior to their widespread adoption. Section D then discusses recommendations for other legal reforms necessary to ensure that body cameras do in fact increase transparency and improve relations between police and the communities they are supposed to serve. Section E briefly concludes.



## B.

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1. Marcus Jeter was arrested by New Jersey police officers during the summer of 2012 and subsequently charged with “eluding police, resisting arrest and aggravated assault on an officer.”<sup>20</sup>

20. Sasha Goldstein, *Police Dash Cam Video Exonerates New Jersey Man, Leads to Indictment of Cops*, N.Y. DAILY NEWS (Feb. 25, 2014, 8:14 PM), <http://www.nydailynews.com/news/crime/police-dash-cam-video-exonerates-nj-man-implicates-cops-article-1.1701763> (<http://www.nydailynews.com/news/crime/police-dash-cam-video-exonerates-nj-man-implicates-cops-article-1.1701763>) [<http://perma.cc/C72T-GRHN> (<http://perma.cc/C72T-GRHN>)].

Parts of this encounter were caught on tape by the dashboard camera in the officers’ cruiser.<sup>21</sup>

21. *Id.*

Jeter maintained from the beginning that the officers had used excessive force while arresting him, and that he had not acted violently.<sup>22</sup>

22. *See id.*

The Bloomfield Police Department conducted an internal investigation and found “the officers did nothing wrong.”<sup>23</sup>

23. *Id.*

Jeter’s criminal case thus moved forward, and he considered accepting a plea deal that would have required him to serve five years in prison.<sup>24</sup>

24. *See id.*

But then, nearly a year after Jeter’s arrest, his attorney uncovered evidence that a second police cruiser had been on the scene that night — “a fact that was left out of the police report.”<sup>25</sup>

25. *Dashcam Clears Bloomfield Man of Resisting Arrest; 2 Officers Charged*, CBS N.Y. (Feb. 25, 2014, 8:51 PM), <http://newyork.cbslocal.com/2014/02/25/dashcam-clears-bloomfield-man-of-resisting-arrest-2-officers-charged> (<http://newyork.cbslocal.com/2014/02/25/dashcam-clears-bloomfield-man-of-resisting-arrest-2-officers-charged>) [<http://perma.cc/29BZ-UCNA> (<http://perma.cc/29BZ-UCNA>)] .

After filing an open-records request with the township, his attorney obtained video footage taken by the dashcam in the second car. <sup>26</sup>

26. *Id.*

This footage was allegedly never seen by the prosecutor’s office, though it had been in the possession of the police department since 2012. <sup>27</sup>

27. *Id.*

In the recovered video, the second police car is seen “swerv[ing] across oncoming traffic and running into the front of Jeter’s SUV, causing him to hit his head on the steering wheel.” <sup>28</sup>

28. Goldstein, *supra* note 20.

The footage also clearly shows Jeter with his hands in the air, sitting passively in the driver’s seat as officers approach the car — one pointing a pistol at the window, the other armed with a shotgun. <sup>29</sup>

29. *Id.*

An officer then “uses a baton to smash the driver’s side window[,] . . . rip[s] the innocent man from his car[,] and throw[s] him on the ground.” <sup>30</sup>

30. *Id.*

While beating Jeter, the officer yells “stop resisting” and “stop trying to take my f— gun” — although the camera footage indicates that Jeter was neither resisting nor capable of reaching for the officer’s gun. <sup>31</sup>

31. *Id.*

After Jeter is dragged out of his car, “his face is smashed into the cement . . . [and] another officer takes a swing at his head.”<sup>32</sup>

32. *Id.*

In light of this footage, the prosecutors dropped all charges against Jeter.<sup>33</sup>

33. *Id.*

The officers involved with the incident have since been indicted: one retired after pleading guilty to tampering, and two were arraigned “on charges of official misconduct, tampering with public records, and false documents and false swearing.”<sup>34</sup>

34. *Id.*

If not for the dashcam video, Jeter would almost certainly have spent several years of his life in a prison cell while the officers answered to no one for their actions.

Jeter’s story is just one example of the endemic problem of police misconduct, which has long been an issue of public concern, particularly with respect to interactions between police and people of color.<sup>35</sup>

35. See, e.g., Kenneth Adams, *Measuring the Prevalence of Police Abuse of Force*, in **POLICE VIOLENCE** 52, 64 (William A. Geller & Hans Toch eds., 1996) (discussing a Gallup poll in 1991 that found that “20 percent of respondents, and 30 percent of nonwhite respondents, said that they knew someone who had been physically abused by police”).

Of the almost five thousand misconduct reports filed each year against the police, excessive force complaints make up nearly one-quarter,<sup>36</sup>

36. David Packman, *2010 NPMSRP Police Misconduct Statistical Report -Draft-*, **NAT’L POLICE MISCONDUCT REPORTING PROJECT** (Apr. 5, 2011, 12:55 AM), [http://www.policemisconduct.net/2010-npmsrp-police-misconduct-statistical-report/#\\_Excessive\\_Force](http://www.policemisconduct.net/2010-npmsrp-police-misconduct-statistical-report/#_Excessive_Force) (<http://www.policemisconduct.net/2010-npmsrp-police-misconduct-statistical->

report/# Excessive Force) [<http://perma.cc/GGY2-YE8S> (<http://perma.cc/GGY2-YE8S>)] (finding that 23.8% of all misconduct allegations involved excessive force, with sexual misconduct complaints the next most common at 9.3%).

with close to ten percent of those cases having resulted in a civilian fatality. <sup>37</sup>

37. *Id.* (“There have been 127 fatalities associated with credible excessive force allegations within 2010, which means approximately 8.1% of reported excessive force cases involved fatalities. Of these excessive force fatalities, 91 were caused by firearms, 19 were caused by physical force, 11 by taser, and 6 by other causes.”).

Growing anxiety over police abuse has negatively impacted police departments’ public relations, and such tensions have hampered the effectiveness of law enforcement in the communities they police. <sup>38</sup>

38. U.S. DEP’T OF JUSTICE, POLICE USE OF EXCESSIVE FORCE: A CONCILIATION HANDBOOK FOR THE POLICE AND THE COMMUNITY 3 (2002), <http://www.justice.gov/archive/crs/pubs/pdexcess.pdf> (<http://www.justice.gov/archive/crs/pubs/pdexcess.pdf>) [<http://perma.cc/D94U-V27Q>] (“[O]ne thing we have learned[] is that good policing practices are essential to developing community support. . . . Moreover, a healthy relationship between the police and the community diminishes the prospect of the police using excessive force at all.”); *see also supra* ch. III, p. 1784.

Police departments are also forced to expend hundreds of millions of dollars each year to resolve these complaints. <sup>39</sup>

39. Packman, *supra* note 36 (finding that over \$346 million was spent in 2010 “on misconduct-related civil judgments and settlements excluding sealed settlements, court costs, and attorney fees”).

At first glance, then, body cameras may appear to be a panacea for police departments struggling to provide transparency to their communities and resolve civilian complaints efficiently. As Jeter’s story illustrates, video footage has the potential to expose officer misconduct and exonerate civilians whose actions have been falsely characterized by the police. These motivations spurred the adoption of body cameras by police departments in the United Kingdom several years ago, <sup>40</sup>

40. Bracken Stockley, *First Police Force to Make Body Cameras Compulsory for Frontline Officers*, JUSTICE GAP (Feb. 14, 2014), <http://thejusticegap.com/2014/02/britain-moves-towards-fully-digitalised-criminal-justice-system> (<http://thejusticegap.com/2014/02/britain-moves-towards-fully-digitalised-criminal-justice-system>) [<http://perma.cc/5H2N-CFJ8> (<http://perma.cc/5H2N-CFJ8>)] (highlighting an initiative by Hampshire police to “kit out all frontline officers with body worn video cameras”).

and seem to be the driving force behind the current expansion of their use in the United States. <sup>41</sup>

41. See, e.g., Michelle Griego, *Body Cameras New Normal for Police in Bay Area*, Nation, CBS SF BAY AREA (Nov. 7, 2014), <http://sanfrancisco.cbslocal.com/video/10826623-body-cameras-new-normal-for-police-in-bay-area-nation> (<http://sanfrancisco.cbslocal.com/video/10826623-body-cameras-new-normal-for-police-in-bay-area-nation>) [<http://perma.cc/KRX8-AA3P> (<http://perma.cc/KRX8-AA3P>)] (discussing the adoption of body cameras by over 4000 police departments nationwide, and their likely adoption by all emergency workers in the near future).

Given the rapid adoption of body cameras, it is worth examining the potential merits of this relatively untested technology before it becomes the “new normal” in policing. This section will thus lay out the anticipated benefits of body cameras while also questioning whether these advantages are, in fact, likely to be realized.

2. Proponents of body cameras often herald these cameras’ unique ability to provide an “unambiguous” account of police-civilian encounters. <sup>42</sup>

42. Cf. *Cruz v. City of Anaheim*, 765 F.3d 1076, 1077 (9th Cir. 2014) (Kozinski, C.J.) (“Nobody likes a game of ‘he said, she said,’ but far worse is the game of ‘we said, he’s dead.’ Sadly, this is too often what we face in police shooting cases like this one.”).

For example, they claim that, had Officer Wilson been wearing a camera, its footage would have captured the interaction between him and Michael Brown prior to Brown’s death. This footage would have provided the jury with a more objective account to use in resolving the discrepancies between Wilson’s account and the accounts of eyewitnesses. <sup>43</sup>



43. See Marty Knollenberg, Op-Ed., *On-Body Cameras Will Protect Citizens and Police*, DETROIT FREE PRESS (Dec. 11, 2014, 10:42 AM), <http://www.freep.com/story/opinion/contributors/2014/12/11/police-body-cameras/20214223> (<http://www.freep.com/story/opinion/contributors/2014/12/11/police-body-cameras/20214223>) [<http://perma.cc/3XAC-L5LM> (<http://perma.cc/3XAC-L5LM>) ].

This technology has also been praised as likely to reveal instances of police misconduct, reform police (and civilian) behavior, and build trust between the police and the community, all of which provide strong justifications for adoption.

(a) *Lowering Rates of Police Misconduct.* — Perhaps the most commonly cited indicator of body cameras’ potential to reduce instances of officer-civilian conflict is the “Rialto study.” In this study, which ran from February 2012 through July 2013, half of Rialto, California’s fifty-four patrol officers were “randomly assigned to wear the TASER AXON body-camera system.”<sup>44</sup>

44. MICHAEL D. WHITE, POLICE OFFICER BODY-WORN CAMERAS: ASSESSING THE EVIDENCE 17 (2014)

<https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf> [<https://ojpdiagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>] [<https://perma.cc/ER9F-BCBE> (<https://perma.cc/ER9F-BCBE>) ]. Other studies include an evaluation at the Mesa Police Department in Arizona, in which fifty officers were outfitted with body cameras for one year and were compared to officers who did not wear such cameras, *id.* at 17–18, and an ongoing study at the Phoenix Police Department that is testing “whether the cameras deter unprofessional behavior from officers, lower citizen complaints, reduce citizen resistance, and disprove allegations against officers,” *id.* at 18.

The results of the study appeared conclusive: “[s]hifts without cameras experienced twice as many incidents of use of force as shifts with cameras,” and “the rate of use of force incidents per 1,000 contacts was reduced by 2.5 times” overall as compared to the previous twelve-month period.<sup>45</sup>

45. BARAK ARIEL & TONY FARRAR, POLICE FOUND., SELF-AWARENESS TO BEING WATCHED AND SOCIALLY-DESIRABLE BEHAVIOR: A FIELD EXPERIMENT ON THE EFFECT OF BODY-WORN CAMERAS ON POLICE USE-OF-FORCE 8 (2013),

<http://www.policefoundation.org/sites/g/files/g798246/f/201303/The%20Effect%20of%20Body-Worn%20Cameras%20on%20Police%20Use-of-Force.pdf>

(<http://www.policefoundation.org/sites/g/files/g798246/f/201303/The%20Effect%20of%20Body-Worn%20Cameras%20on%20Police%20Use-of-Force.pdf>) [<http://perma.cc/74NX-AB74>] (<http://perma.cc/74NX-AB74>).

This dramatic reduction in the use of force indicates that body-worn cameras may have had a “civilizing” effect on officers, as the presence of a camera appeared to drastically lower the frequency with which officers “resorted to the use of physical force — including the use of OC spray (‘pepper spray’), batons, Tasers, firearms, or canine bites.”<sup>46</sup>

46. POLICE COMPLAINTS BD., ENHANCING POLICE ACCOUNTABILITY THROUGH AN EFFECTIVE ON-BODY CAMERA PROGRAM FOR MPD OFFICERS 3 (2014).

This civilizing effect may also extend to (or stem from) civilians who know they are being filmed, as some police officials believe “the visible presence of a camera [can] . . . compel highly agitated people to calm down more quickly.”<sup>47</sup>

47. David O'Reilly, *Evesham Police Chief Calls Cameras a 'Game Changer'*, PHILA. INQUIRER (Aug. 7, 2014), [http://articles.philly.com/2014-08-07/news/52519341\\_1\\_body-cameras-security-cameras-evesham-police-chief](http://articles.philly.com/2014-08-07/news/52519341_1_body-cameras-security-cameras-evesham-police-chief) ([http://articles.philly.com/2014-08-07/news/52519341\\_1\\_body-cameras-security-cameras-evesham-police-chief](http://articles.philly.com/2014-08-07/news/52519341_1_body-cameras-security-cameras-evesham-police-chief)) [<http://perma.cc/HB54-RKXG>] (<http://perma.cc/HB54-RKXG>). As one example, Lt. Joseph Friel pointed to footage of an officer attempting to subdue a tall, muscular man who had been kicked out of a movie theater. In the video, the officer is seen repeatedly asking the man to calm down and inquiring why he is so upset; ultimately, his mood improved, and he even began joking with the officers. *Id.* As the mayor of one New Jersey township, now entirely outfitted with police dashboard and body cameras, put it: “Some people are going to say, ‘Oh it’s Big Brother watching us,’ but look at what this does. People act better. It reduces altercations. This changes the game.” *Id.* The Rialto study also found that once members of the public were notified that they were being filmed, even agitated individuals tended to calm down. See POLICE COMPLAINTS BD., *supra* note 46, at 3.

Studies conducted in other locales have also found that body cameras reduce officers’ use of force in the field.<sup>48</sup>

48. WHITE, *supra* note 44, at 6 (“Several of the empirical studies have documented substantial decreases in citizen complaints (Rialto, Mesa, Plymouth, and Renfrewshire/Aberdeen studies) as well as in use of force by police (Rialto) and assaults on officers (Aberdeen). There is also anecdotal support for a civilizing effect reported elsewhere . . .”).

But “[q]uestions remain regarding the behavior dynamics that led to the decline in use of force,” which may be attributable to changes in officer behavior, in citizen behavior, a combination of the two, or changes in civilian reporting patterns (discussed below).<sup>49</sup>

49. *Id.* at 20; *see also id.* at 20–21.

It may also be that lower rates of police misconduct are due to an increased culture of accountability on the force as opposed to the cameras themselves, an outcome that could arguably be achieved through other types of departmental changes.

*(b) Improved Resolution of Civilian Complaints.* — Another benefit, intimately related to reducing instances of officer misconduct, is the ability of camera footage to facilitate efficient resolution of citizen complaints and lower the overall number of complaints filed in the first place.<sup>50</sup>

50. *See id.* at 23–24.

Rather than having to resolve a complaint based solely on “a credibility determination as between the complainant and one or more of the officers involved,” the supposed objectivity of the camera will ideally lead investigators to “more accurate findings.”<sup>51</sup>

51. **POLICE COMPLAINTS BD.**, *supra* note 46, at 3. Video footage may be particularly helpful in resolving the most common types of citizen complaints: excessive use of force, failure of an officer to provide identification upon request, and stop and frisks. *Id.* at 4.

Greater accuracy buttresses efficiency, since officers who did not engage in misconduct can be rapidly exonerated.<sup>52</sup>

52. *See id.* at 3–4.

The number of frivolous civilian complaints will likely also be reduced, as people become aware that their actions are on film, making it more difficult for them to prevail on questionable claims.

But a reduction in citizen complaints cannot necessarily be attributed to fewer instances of officer misconduct (the purported benefit discussed in section (a) above). Because this reduction in complaints could be due to individuals consciously choosing not to bring frivolous claims, as opposed to an actual reduction in misconduct by officers, it will be important to avoid conflating these two benefits when evaluating the efficacy of the cameras. Moreover, even if body cameras truly improve officer conduct *and* reduce civilian complaints, “[w]hether these reduced outcomes are persistent over time or just an initial change in the dynamic remains unclear”; thus, more sustained research is necessary to determine the ultimate effects of this technology. <sup>53</sup>

53. Jessica Glenza, *Body Cameras for Police Officers? Not So Fast, Say Researchers*, *THE GUARDIAN* (Dec. 4, 2014, 2:25 PM), <http://www.theguardian.com/us-news/2014/dec/04/body-cameras-police-eric-garner> (<http://www.theguardian.com/us-news/2014/dec/04/body-cameras-police-eric-garner>) [<http://perma.cc/N5AV-FHLX> (<http://perma.cc/N5AV-FHLX>)] (quoting Professor Michael D. White, an Arizona State University criminology professor and author of the Department of Justice handbook on police body cameras).

(c) *Improved Officer Training*. — Police departments also perceive these cameras as helpful in the context of officer training, because “recordings [can] be used for remedial training or correcting the behavior of individual officers against whom misconduct allegations have been filed.” <sup>54</sup>

54. POLICE COMPLAINTS BD., *supra* note 46, at 4.

Footage can be incorporated into training programs to demonstrate what actual, on-the-ground civilian encounters should (and should not) look like, and review of body-camera footage may be particularly useful in monitoring new officers. But this benefit does not necessarily require that *all* officers be outfitted with cameras, as videos taken on certain patrols could be used for training both within and between departments. Still, body cameras may prove most effective as training devices if supervisors are actually able to pull and review officers’ individual footage. <sup>55</sup>

55. *Id.* at 5. But this benefit is contingent on departmental review policies, as some police departments only allow supervisors to access footage if a civilian complaint has been made — prohibiting random screenings of officer conduct in the field. See POLICE EXEC. RESEARCH FORUM, IMPLEMENTING A BODY-WORN CAMERA PROGRAM 25 (2014) [hereinafter PERF REPORT].

(d) *Providing Effective Evidence for Trials.* — Footage from body cameras may help both prosecutors and defense attorneys by providing “objective evidence relating to whether a confession was voluntary, a search was consented to or justified, or a physical description matched a ‘lookout.’”<sup>56</sup>

56. POLICE COMPLAINTS BD., *supra* note 46, at 5.

A recent survey of prosecutors confirms this: ninety-six percent of prosecutors said that video evidence improved their ability to prosecute cases.<sup>57</sup>

57. INT’L ASS’N OF CHIEFS OF POLICE, THE IMPACT OF VIDEO EVIDENCE ON MODERN POLICING, at app. ii at 4 (2004).

In particular, video evidence has the advantage of “refresh[ing] the officer’s memory” and “verify[ing] the accuracy of written reports and statements surrounding [an] incident.”<sup>58</sup>

58. *Id.* at app. ii at 5.

Still, overreliance on video evidence raises several concerns: For one, as discussed below, film is not inherently objective.<sup>59</sup>

59. See *infra* section C.2(e).

It is also inevitable that video footage will not be available in every case, so creating such an expectation may be dangerous as juries could come to discount “other types of evidence, such as statements from police officers or other eyewitnesses.”<sup>60</sup>

60. HOME OFFICE, GUIDANCE FOR THE POLICE USE OF BODY-WORN



VIDEO DEVICES 7 (2007); *cf.* *Old Chief v. United States*, 519 U.S. 172, 188 & n.9 (1997).

(e) *Increasing Accountability and Transparency.* — Taken all together, the preceding benefits may lead to improved relations between the police and the communities they serve, assuming body cameras do in fact result in more respectful officer behavior and the disciplining of those officers who abuse their power. Especially if citizens are able to request footage of their encounters with the police, or if departments willingly release footage of disputed incidents, the current climate of distrust may improve. That so many Americans feel they would be safer if all police officers wore body cameras speaks to this technology’s potential to increase accountability and transparency. But, as will be discussed below, if increased accountability ultimately leads mostly to increased government surveillance, the public’s trust may instead be undermined. <sup>61</sup>

61. See *infra* section C.2(d).

## C.

1. “It’s not real.” <sup>62</sup>

62. Last words of John Crawford III before being shot and killed by police officers in an Ohio Walmart for carrying an unloaded toy gun. Nisha Chittal, *Cops Shoot and Kill Man Holding Toy Gun in Wal-Mart*, MSNBC (Aug. 13, 2014, 8:06 PM), <http://www.msnbc.com/msnbc/cops-shoot-and-kill-man-holding-toy-gun-walmart> (<http://www.msnbc.com/msnbc/cops-shoot-and-kill-man-holding-toy-gun-walmart>) [<http://perma.cc/4K2Z-U426> (<http://perma.cc/4K2Z-U426>) ].

On August 5, five days before Michael Brown’s death, John Crawford III entered the local Walmart with his girlfriend. <sup>63</sup>

63. Jon Swaine, *Doubts Cast on Witness’s Account of Black Man Killed by Police in Walmart*, THE GUARDIAN (Sept. 7, 2014, 10:37 AM), <http://www.theguardian.com/world/2014/sep/07/ohio-black-man-killed-by-police-walmart-doubts-cast-witnesss-account> (<http://www.theguardian.com/world/2014/sep/07/ohio-black-man-killed-by-police-walmart-doubts-cast-witnesss-account>) [<http://perma.cc/MRR8-ABVQ> (<http://perma.cc/MRR8-ABVQ>) ].

He was there to buy ingredients to make s'mores at a cookout with his family later that day. <sup>64</sup>

64. *Id.*

But instead of leaving with graham crackers, he was taken from the store in an ambulance — fatally shot by police officers in an aisle. <sup>65</sup>

65. *Id.*

Crawford was twenty-two years old. <sup>66</sup>

66. *Id.* Crawford was not the only casualty that day: “[F]ellow shopper Angela Williams, a 37-year-old nursing home worker reported to have suffered from a heart condition, was in cardiac arrest after collapsing trying to flee the melee. She died later that evening in hospital.” *Id.* She and Crawford left behind four and two children, respectively. *Id.*; Jill Drury, *Mom Died at Walmart, Trying to Save Kids After Shooting*, WDTN.COM (Aug. 21, 2014, 3:20 PM), <http://wdtn.com/2014/08/06/mother-of-four-collapsed-at-walmart-trying-to-save-her-kids> (<http://wdtn.com/2014/08/06/mother-of-four-collapsed-at-walmart-trying-to-save-her-kids>) [<http://perma.cc/YP8Z-XRKW> (<http://perma.cc/YP8Z-XRKW>)].

The Beavercreek Walmart in Ohio, the site of Crawford’s shooting, has over two hundred video cameras. <sup>67</sup>

67. Bearshelle Edmé & Jill Drury, *Police Release Dispatch Audio, Video of Walmart Shooting*, WDTN.COM (Aug. 21, 2014, 6:57 PM), <http://wdtn.com/2014/08/21/police-release-dispatch-audio-video-of-walmart-shooting> (<http://wdtn.com/2014/08/21/police-release-dispatch-audio-video-of-walmart-shooting>) [<http://perma.cc/LJ6B-EFPT> (<http://perma.cc/LJ6B-EFPT>)].

These cameras show Crawford on his cell phone, walking through the store. He then picks up an unloaded pellet gun, a product stocked on the Walmart shelves. <sup>68</sup>

68. Swaine, *supra* note 63.

At the same time, Ronald Ritchie — another patron — dials the police, reporting a black man walking around with a gun in the store. <sup>69</sup>

69. *Id.*

(Ritchie relayed this observation even though Ohio is an open-carry state. <sup>70</sup>)

70. See Charles C.W. Cooke, Op-Ed., *Do Black People Have Equal Gun Rights?*, N.Y. TIMES, Oct. 26, 2014, <http://www.nytimes.com/2014/10/26/opinion/sunday/do-black-people-have-equal-gun-rights.html> (<http://www.nytimes.com/2014/10/26/opinion/sunday/do-black-people-have-equal-gun-rights.html>) [<http://perma.cc/5JGU-9VSS>] (<http://perma.cc/5JGU-9VSS>)].

) Ritchie originally claimed that Crawford was pointing the toy gun at people, though he later recanted that statement. <sup>71</sup>

71. See Swaine, *supra* note 63. To view a video synching Ritchie's 911 call to the video footage of Crawford, which makes evident the discrepancies between the two, see Jon Swaine, 'It Was a Crank Call': Family Seeks Action Against 911 Caller in Walmart Shooting, THE GUARDIAN (Sept. 26, 2014, 4:02 PM), <http://www.theguardian.com/world/2014/sep/26/walmart-ohio-shooting-charges-911-caller-john-crawford> (<http://www.theguardian.com/world/2014/sep/26/walmart-ohio-shooting-charges-911-caller-john-crawford>) [<http://perma.cc/Z3EW-2YMF>] (<http://perma.cc/Z3EW-2YMF>)].

Officers responded to the scene with their guns drawn. The surveillance footage then shows them confronting Crawford and firing shots at him as he scrambles to retreat. <sup>72</sup>

72. To view this footage, see Elahe Izadi, *Ohio Wal-Mart Surveillance Video Shows Police Shooting and Killing John Crawford III*, WASH. POST (Sept. 25, 2014), <http://www.washingtonpost.com/news/post-nation/wp/2014/09/25/ohio-wal-mart-surveillance-video-shows-police-shooting-and-killing-john-crawford-iii> (<http://www.washingtonpost.com/news/post-nation/wp/2014/09/25/ohio-wal-mart-surveillance-video-shows-police-shooting-and-killing-john-crawford-iii>) [<http://perma.cc/YSG9-DBTU>] (<http://perma.cc/YSG9-DBTU>)].

Despite the fact that Crawford was holding a toy gun, that Ritchie recanted his earlier statement, and that the surveillance footage documented the entire police encounter (including officers firing while the toy gun was on the ground), a grand jury declined to indict either officer involved. <sup>73</sup>

73. Joe Coscarelli, *No Charges Against Ohio Police in John Crawford III Walmart Shooting, Despite Damning Security Video*, N.Y. MAG. (Sept. 24, 2014, 2:57 PM), <http://nymag.com/daily/intelligencer/2014/09/no-charges-john-crawford-iii-walmart-shooting-video.html> (<http://nymag.com/daily/intelligencer/2014/09/no-charges-john-crawford-iii-walmart-shooting-video.html>) [<http://perma.cc/W6Z3-AL87>] (<http://perma.cc/W6Z3-AL87>)].

Crawford's case thus became the third case in five years in which a Greene County, Ohio, grand jury failed to indict officers who had fatally shot civilians. <sup>74</sup>

74. See *id.* Another recent Ohio case involved Tamir Rice — a twelve-year-old African American boy — who was shot to death by Ohio police after someone called the police to report that Rice was “waving what looked like a gun in a park near [Rice's] home. Within seconds of arriving, a police officer shot [Rice], but [Rice's] gun turned out to be a toy used to fire plastic pellets.” Richard A. Oppel, Jr., *Police Shooting of Tamir Rice Is Ruled a Homicide*, **N.Y. TIMES** (Dec. 12, 2014), <http://www.nytimes.com/2014/12/13/us/police-shooting-of-tamir-rice-is-ruled-a-homicide.html> (<http://www.nytimes.com/2014/12/13/us/police-shooting-of-tamir-rice-is-ruled-a-homicide.html>). Rice's death, like King's beating and Crawford's shooting, was caught on camera. See Jordan Lebeau, *Cameras Didn't Save Tamir Rice, Eric Garner*, **BOSTON.COM** (Dec. 5, 2014, 6:41 PM), <http://www.boston.com/news/opinion/2014/12/05/cameras-didn-save-tamir-rice-eric-garner/rlnClocLy7c6bw1caequKK/story.html> (<http://www.boston.com/news/opinion/2014/12/05/cameras-didn-save-tamir-rice-eric-garner/rlnClocLy7c6bw1caequKK/story.html>) [<http://perma.cc/2QDL-4S2S> (<http://perma.cc/2QDL-4S2S>)] (discussing how Rice's death was captured on surveillance video). Rice's death has been ruled a homicide, and the officers are currently under investigation. See Oppel, *supra*.

2. Notwithstanding the potential benefits of body cameras discussed in section B, Crawford's death provides one reason to be skeptical that video footage will necessarily lead to more just outcomes in excessive-force cases. And as several critics have cautioned, the adoption of such a pervasive, indiscriminate technology may have unintended negative consequences. <sup>75</sup>

75. See, e.g., AJ Vicens, *Putting Body Cameras on Cops Is Hardly a Cure-All for Abuses*, **MOTHER JONES** (Aug. 21, 2014, 12:03 PM), <http://www.motherjones.com/politics/2014/08/chest-and-dash-cams-ferguson-police-abuse> (<http://www.motherjones.com/politics/2014/08/chest-and-dash-cams-ferguson-police-abuse>) [<http://perma.cc/PC7D-YH82> (<http://perma.cc/PC7D-YH82>)] (“[P]utting aside the fact that footage from a dashboard or chest-worn camera may not have negated what we’re seeing in Ferguson — where racial tension has been brewing for years, the result of a variety of factors — deploying such cameras isn’t necessarily the straightforward fix some observers make it out to be.”).

Because questions remain about whether body cameras will in fact increase police transparency and accountability, this section examines several potential drawbacks to body-camera proposals. These drawbacks should be given careful consideration to ensure that camera policies accomplish their intended objectives.

(a) *Locus of Control*. — So far, this Chapter has primarily included examples of police-civilian interactions that were filmed by citizens rather than by the police. The widespread circulation of these videos has been instrumental in shedding light on issues of police misconduct. <sup>76</sup>

76. Perhaps the most famous example of citizen surveillance was George Holliday's filming of the brutal beating of Rodney King by several Los Angeles police officers in the early 1990s. See John Carman, *The Story Behind the King Videotape*, **ST. PETERSBURG TIMES**, May 10, 1992, at 3A. After Holliday shared his tape with the local news, the story was picked up — playing nationwide on repeat, *id.*, and sparking one of the most significant controversies in modern American race relations.

In theory, body cameras offer this benefit on an unprecedented scale: unlike citizens, who will not always be present or who may choose not to record, a police force outfitted with body cameras could potentially document every officer-citizen encounter. But once the locus of control shifts to the officers, the very organization meant to be held accountable will be able to prevent these videos from being created in the first instance or shared after the fact. <sup>77</sup>

77. Marcus Jeter's case, discussed in section B.1, *supra*, captures this phenomenon: the police department failed to turn over the dashboard-camera footage from the second car until forced to do so nearly a year after Jeter's arrest, even though officers knew of its existence (and exonerating nature) that entire time. For an in-depth examination of how body cameras usually help police, as opposed to citizens, see Connie Fossi-Garcia & Dan Lieberman, *Investigation of 5 Cities Finds Body Cameras Usually Help Police*, **FUSION** (Dec. 7, 2014), <http://fusion.net/story/31986/investigation-of-5-cities-finds-body-cameras-usually-help-police> (<http://fusion.net/story/31986/investigation-of-5-cities-finds-body-cameras-usually-help-police>) [<http://perma.cc/R79W-NL4Z> (<http://perma.cc/R79W-NL4Z>)] (discussing a three-month investigation that "reviewed hundreds of pages of records from five police departments with body camera programs" and found "that the way body cameras are used usually [ensures that they] serve police more than citizens charging misconduct" and noting, in particular, "[i]n many use of force incidents, camera footage doesn't exist, is only partially available, or can't be found," and when it is available, "the footage usually favors the officer's account").

For instance, only two days after Michael Brown was killed, a New Orleans police officer shot "[an] unarmed black man while trying to take him into custody." <sup>78</sup>

78. Vicens, *supra* note 75.

The victim, Armand Bennet, spent four days in the intensive care unit and needed staples to treat the wound on his forehead. <sup>79</sup>



79. *Id.*

The officer had been wearing a body camera, but she had “apparently shut off her camera prior to the encounter.”<sup>80</sup>

80. *Id.*

Though the officer claimed she had turned the camera off just prior to the end of her shift, the shooting took place at 1:15 a.m., and her shift ended at 2:00 a.m.<sup>81</sup>

81. *Id.*

Although New Orleans police recently adopted body cameras in an effort to build trust between law enforcement and the public,<sup>82</sup>

82. See Martin Kaste, *Can Cop-Worn Cameras Restore Faith in New Orleans Police?*, **NPR** (May 22, 2014, 5:38 PM), <http://www.npr.org/blogs/alltechconsidered/2014/05/22/314912840/can-cop-worn-cameras-restore-faith-in-new-orleans-police> (<http://www.npr.org/blogs/alltechconsidered/2014/05/22/314912840/can-cop-worn-cameras-restore-faith-in-new-orleans-police>) [<http://perma.cc/F6KR-SZJW> (<http://perma.cc/F6KR-SZJW>)].

this sort of incident demonstrates how officers can still circumvent the technology to insulate themselves from oversight.<sup>83</sup>

83. This would not be the first time that technology has been oversold as a panacea for policing problems: after the Rodney King beating in Los Angeles, the LAPD required officers to wear voice recorders that would “switch on automatically when their cruiser sirens [were] activated.” Elise Hu, *Using Technology to Counter Police Mistrust Is Complicated*, **NPR** (Sept. 2, 2014, 12:10 PM), <http://www.npr.org/blogs/alltechconsidered/2014/09/02/345208359/using-technology-to-counter-police-mistrust-is-complicated> (<http://www.npr.org/blogs/alltechconsidered/2014/09/02/345208359/using-technology-to-counter-police-mistrust-is-complicated>) [<http://perma.cc/9S8P-YMTL> (<http://perma.cc/9S8P-YMTL>)] (quoting Sean Bonner, *Body Cameras and Law Enforcement*, **SBDC** (Aug. 31, 2014, 11:02 AM), <http://blog.seanbonner.com/2014/08/31/body-cameras-and-law-enforcement> (<http://blog.seanbonner.com/2014/08/31/body-cameras-and-law-enforcement>) [<http://perma.cc/Q7YK-SQAW> (<http://perma.cc/Q7YK-SQAW>)]). But it soon became clear that these recorders had “mysteriously” stopped working, and the department was eventually “forced to admit that their internal investigations showed that officers were purposefully breaking off the antennas on their recorders to disable them. Perhaps unsurprisingly the majority of the sabotaged recorders were in the Southeast division — a low income, high minority area with a long history of excessive force complaints.” *Id.* (quoting Bonner, *supra*).

Even an officer's *willful* refusal to record is not a fireable offense in New Orleans. <sup>84</sup>

84. Martin Kaste, *Even Police Body Cameras Can Lose Sight of the Truth*, **NPR** (Aug. 23, 2014, 11:41 AM), <http://www.npr.org/2014/08/23/342623830/even-police-body-cameras-can-lose-sight-of-the-truth> (<http://www.npr.org/2014/08/23/342623830/even-police-body-cameras-can-lose-sight-of-the-truth>) [<http://perma.cc/Z6UQ-4X2Z> (<http://perma.cc/Z6UQ-4X2Z>)]. This lack of accountability is deeply problematic: a recent report found that “[w]hen New Orleans police officers exert force in the field, most of those interactions still are not being recorded despite new department protocols to activate body-worn cameras . . . .” Ken Daley, *Cameras Not on Most of the Time When NOPD Uses Force, Monitor Finds*, **TIMES-PICAYUNE** (Sept. 4, 2014, 10:05 PM), [http://www.nola.com/crime/index.ssf/2014/09/cameras\\_not\\_on\\_most\\_of\\_the\\_tim.html](http://www.nola.com/crime/index.ssf/2014/09/cameras_not_on_most_of_the_tim.html) ([http://www.nola.com/crime/index.ssf/2014/09/cameras\\_not\\_on\\_most\\_of\\_the\\_tim.html](http://www.nola.com/crime/index.ssf/2014/09/cameras_not_on_most_of_the_tim.html)) [<http://perma.cc/QS5U-CS46> (<http://perma.cc/QS5U-CS46>)].

And if the treatment of dashboard-camera footage is any indication, some officers will also erase footage prior to its review — an action likely to go unnoticed or unpunished by supervisors. <sup>85</sup>

85. See Robinson Meyer, *Seen It All Before: 10 Predictions About Police Body Cameras*, **THE ATLANTIC** (Dec. 5, 2014, 7:15 AM), <http://www.theatlantic.com/technology/archive/2014/12/seen-it-all-before-10-predictions-about-police-body-cameras/383456> (<http://www.theatlantic.com/technology/archive/2014/12/seen-it-all-before-10-predictions-about-police-body-cameras/383456>) [<http://perma.cc/9NW4-VJ7A> (<http://perma.cc/9NW4-VJ7A>)]. One researcher found that twenty-three percent of dashboard-camera tapes in a police department's archive were either “blank or staticky.” Moreover, he discovered a practice whereby many departments left their video-evidence rooms — where degaussing machines are usually stored — unlocked. *Id.* He concluded that “[supervisors] don't want to know” about improper use, *id.* (internal quotation marks omitted), and that they had cultivated a “studied inattentiveness” to the improper use of these machines to erase recorded footage, *id.* (internal quotation mark omitted).

Even for properly recorded and stored footage, pressing concerns about public access remain. Many police departments currently do not allow private individuals or the media to access footage, <sup>86</sup>

86. See, e.g., Liam Dillon, *Police Body Camera Videos Will Stay Private — At Least for Now*, **VOICE SAN DIEGO** (Mar. 19, 2014), <http://voiceofsandiego.org/2014/03/19/police-body-camera-videos-will-stay-private-at-least-for-now> (<http://voiceofsandiego.org/2014/03/19/police-body-camera-videos-will-stay-private-at-least-for-now>) [<http://perma.cc/VZ5Y-SFJN> (<http://perma.cc/VZ5Y-SFJN>)] (discussing the San Diego Police Department's decision not to release body-camera footage of two shootings that occurred while officers were wearing cameras — despite public-records requests).

and the open-records laws in most states make it possible for departments to deny access indefinitely. While body-camera footage should constitute a public record under disclosure laws, most states have disclosure exemptions for records involved in a law enforcement investigation. <sup>87</sup>

87. See, e.g., IND. CODE § 5-14-3-4(b)(1) (2014) (exempting “[i]nvestigatory records of law enforcement agencies”); MASS. GEN. LAWS ch. 4, § 7, cl.26(f) (2014) (exempting “investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest”); W. VA. CODE § 29B-1-4(a) (4) (2014) (same for law enforcement records).

The definition of an “investigation” is malleable, and courts may be particularly inclined to defer to officers when it comes to matters of public safety. Some courts have ruled that law enforcement video footage does not fall under the exemption for criminal investigatory records; <sup>88</sup>

88. See, e.g., *Paff v. Ocean Cnty. Prosecutor’s Office*, No. OCN-L-1645-14, 2014 WL 5139407 (N.J. Super. Ct. Law Div. Oct. 2, 2014) (dashboard cameras); *Paff v. Ocean Cnty. Prosecutor’s Office*, No. OCN-L-1645-14, 2014 WL 3886839 (N.J. Super. Ct. Law Div. July 31, 2014) (same). In the *Paff* cases, a New Jersey Superior Court judge ruled (over the government’s objection) both that dashboard-camera footage is a public record, and that such footage is not covered by the public records laws’ exemption for criminal investigatory records. The judge reasoned that “OPRA’s criminal investigatory records exception does not render otherwise public government records confidential because they document some aspect of a crime.” *Paff*, 2014 WL 3886839, at \*4.

however, this type of litigation is in its early stages, and in many states the public (including individuals featured on the tapes) may remain unable to access the footage. <sup>89</sup>

89. See, e.g., Dillon, *supra* note 86.

Although wholesale public access would likely prove undesirable, efforts by officers to thwart the goals of a body-camera regime do raise the question of *who* stands to benefit most from this technology. <sup>90</sup>

90. Given that police and prosecutors can use the footage in court to prosecute individuals caught committing crimes on camera, see *INT’L ASS’N CHIEFS POLICE*, *supra* note 57, at 21, those most likely to be disadvantaged by the footage are low-income, minority individuals because of the heavy police presence in their neighborhoods.

Some departments, for example, allow officers to review video footage before making a statement on the record about an incident. As one police chief explained:

If you make a statement that you used force because you thought a suspect had a gun but the video later shows that it was actually a cell phone, it looks like you were lying. . . . An officer should be given the chance to make a statement using all of the evidence available; otherwise, it looks like we are just trying to catch an officer in a lie. <sup>91</sup>

91. *PERF REPORT*, *supra* note 55, at 29 (quoting Topeka Police Chief Ron Miller).

This asymmetric access to the footage is therefore problematic as it allows officers to adapt their testimony in order to bolster their credibility while civilian witnesses cannot do the same.

(b) *Privacy*. — Privacy is a counterpoint to access: increasing transparency necessarily means more people will view body-camera footage, which will frequently feature civilians who may not want the recordings of themselves shared. This type of access raises the issue of whether officers must affirmatively warn all citizens that they are being recorded. The ACLU, for one, has called for notice to citizens “wherever practicable,” potentially in the form of “an easily visible pin or sticker saying ‘lapel camera in operation’ or words to that effect.” <sup>92</sup>

92. Stanley, *Police Body-Mounted Cameras*, *supra* note 14.

But questions remain, especially about the appropriateness of “police recordings made inside private homes” given the footage’s “uniquely intrusive nature.” <sup>93</sup>

93. *Id.*

Officers' ability to review tapes, slow them down, and enhance images means that a recorded search of a home or a vehicle can lead to the discovery of evidence that would otherwise have gone unnoticed.

Beyond initial police-citizen encounters, the long-term digital storage of those interactions, especially intimate interactions (such as recordings of domestic disputes<sup>94</sup>

94. Despite the highly personal nature of these encounters, police departments are in fact eager to use body cameras to resolve domestic violence cases: some commentators believe that the cameras will allow courts to see “just how bad it was that night” and will allow battered women to avoid facing their partners in court after a violent incident. See *Push for Body Cameras in Domestic Violence Cases*, ABC NEWS 4 (Sept. 18, 2014, 6:57 PM), <http://www.abcnews4.com/story/26571784/push-for-body-cameras-in-domestic-violence-cases> (<http://www.abcnews4.com/story/26571784/push-for-body-cameras-in-domestic-violence-cases>) [<http://perma.cc/3UMU-L4B3> (<http://perma.cc/3UMU-L4B3>)].

), also raises privacy concerns. It is unclear whether filmed individuals will have a right to request that the footage be deleted or not be shared with the public.<sup>95</sup>

95. For example, under the court's rulings in *Paff*, any member of the public likely can request access to footage from an officer's body camera, which may intrude upon the privacy of the taped individual. See *supra* note 88; see also *Video: Washington Agencies Overwhelmed by Records Requests May Drop Body Cams*, POLICE (Nov. 11, 2014), <http://www.policemag.com/channel/technology/news/2014/11/11/washington-agencies-overwhelmed-by-records-requests-may-drop-body-cams.aspx> (<http://www.policemag.com/channel/technology/news/2014/11/11/washington-agencies-overwhelmed-by-records-requests-may-drop-body-cams.aspx>) [<http://perma.cc/6UED-LJ5F> (<http://perma.cc/6UED-LJ5F>)] (discussing a request by an unidentified citizen — the owner of a YouTube account, “Police Video Requests,” dedicated to body and dash cam videos — for “every second of body cam video” ever recorded by the department).

Footage taken inside the home could, for instance, be requested by other citizens (like neighbors), even though the privacy implications of these sorts of requests remain largely unexplored. Contextual policies thus need to be developed about when cameras should stop rolling — for example, during interviews of sexual assault victims — and when footage should cease to be stored. Without further guidance on these issues, civilians' privacy may be violated or, equally problematic, police may raise privacy concerns as an excuse to curtail public oversight.



(c) *Costs and Storage*. — As more departments acquire body cameras, and as officers' cameras roll each day, police departments will inevitably amass a colossal amount of footage, much of it likely irrelevant to any disputes over police-civilian interactions. While the start-up cost of outfitting a force with body cameras is not trivial for cash-strapped departments, the costs of storing and transmitting this data can be particularly staggering: some departments have already spent hundreds of thousands or even millions of dollars managing their data. <sup>96</sup>

96. PERF REPORT, *supra* note 55, at 32 (describing the data storage costs as “crippling” for some departments and noting that the New Orleans Police Department expects to spend \$1.2 million over five years on its body-camera program, with most expenditures going toward data storage).

However, these costs may be offset by savings on litigation, if cameras do in fact lead to fewer complaints and more efficient resolution of police misconduct cases. <sup>97</sup>

97. Litigating citizen complaints has proven immensely expensive: for instance, the Oakland Police Department spent a total of \$13,149,000 in fiscal year 2010–2011 on legal costs for officer misconduct, Ali Winston, *Police-Related Legal Costs Spike in Oakland*, E. BAY EXPRESS (June 27, 2012), <http://www.eastbayexpress.com/oakland/police-related-legal-costs-spike-in-oakland/Content?oid=3260236> (<http://www.eastbayexpress.com/oakland/police-related-legal-costs-spike-in-oakland/Content?oid=3260236>) [<http://perma.cc/4HNQ-JYFD> (<http://perma.cc/4HNQ-JYFD>)], and the Chicago Police Department spent \$84.6 million in 2013 for misconduct settlements, judgments, and legal fees, Andy Shaw, *City Pays Heavy Price for Police Brutality*, CHI. SUN TIMES (Apr. 14, 2014, 2:23 AM), <http://politics.suntimes.com/article/chicago/city-pays-heavy-price-police-brutality/fri-04112014-1002pm> (<http://politics.suntimes.com/article/chicago/city-pays-heavy-price-police-brutality/fri-04112014-1002pm>) [<http://perma.cc/LLA2-URDF> (<http://perma.cc/LLA2-URDF>)].

Still, this price tag leaves open the question of who exactly will bear the costs of this new technology — especially when politicians are wary of raising taxes while the country recovers from the Great Recession. <sup>98</sup>

98. See U.S. DEP'T OF JUSTICE, THE IMPACT OF THE ECONOMIC DOWNTURN ON AMERICAN POLICE AGENCIES 13 (2011) (estimating that between 12,000 and 15,000 police officers were laid off as a result of recent budget cuts).

In New Jersey, one proposed legislative answer has been to increase fines on certain defendants to finance the state's body-camera program: in particular, individuals convicted of DUIs and sex offenses would pay higher penalties. <sup>99</sup>

99. S. 2518, 216th Leg., Reg. Sess. (N.J. 2014),  
[http://www.njleg.state.nj.us/2014/Bills/S3000/2518\\_11.PDF](http://www.njleg.state.nj.us/2014/Bills/S3000/2518_11.PDF)  
[\[http://www.njleg.state.nj.us/2014/Bills/S3000/2518\\_11.PDF\]](http://www.njleg.state.nj.us/2014/Bills/S3000/2518_11.PDF) [\[http://perma.cc/9MG3-TC7F](http://perma.cc/9MG3-TC7F)  
[\]\(http://perma.cc/9MG3-TC7F\)\]](http://perma.cc/9MG3-TC7F).

This type of defendant-funded policing initiative raises concerns about profit motives in the criminal justice system. <sup>100</sup>

100. See *supra* ch. I.

It also demonstrates that even though a broad coalition of support has formed around body cameras, it will likely be the most vulnerable populations (and those most likely to be negatively affected by this technology, given the disproportionate police presence in low-income, minority neighborhoods) that are forced to foot the bill. If that is the case, it may fairly be asked whether body cameras are indeed a necessity or whether politicians are committed to such reform efforts only when it doesn't cost them political capital. Reformers should be cognizant of the regressive effects this type of funding scheme would have, and should search for other means of financing the body-camera initiative.

(d) *Surveillance State*. — In a post-9/11 world, the addition of yet another form of government surveillance should not go unexamined: recent technological advances have allowed the state to move beyond the use of traditional electronic surveillance devices — like wiretaps and bugs — toward more pervasive surveillance techniques. <sup>101</sup>

101. See CHRISTOPHER SLOBOGIN, *PRIVACY AT RISK*, at ii (2007) (discussing “the [government’s] use of sophisticated technology to observe our daily activities,” as “[o]ur wanderings, our work, and our play can now be monitored not only through binoculars and other types of telescopic lenses but also with night scopes, tracking mechanisms, satellite cameras, and devices that detect heat and images through walls,” and our transactional data can be accessed “via snoopware, commercial data brokers, and ordinary Internet searches”).

From the Snowden leaks <sup>102</sup>

102. In June 2013, Edward Snowden, a former CIA technician, leaked classified documents detailing the National Security Agency's (NSA) daily collection of phone records from millions of cell phone customers. See Glenn Greenwald, *NSA Collecting Phone Records of Millions of Verizon Customers Daily*, **THE GUARDIAN** (Jun. 6, 2013, 6:05 AM), <http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order> (<http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>) [<http://perma.cc/9CT7-HQ4U> (<http://perma.cc/9CT7-HQ4U>)]. The NSA and the Obama Administration have both faced rampant criticism for these infringements on civilian privacy, since further leaks revealed the NSA's attempts to "circumvent widely used web encryption technologies," frequent requests for data from large tech companies such as Google and Facebook, and daily collection of millions of text messages from around the world. Lorenzo Franceschi-Bicchierai, *The 10 Biggest Revelations from Edward Snowden's Leaks*, **MASHABLE** (Jun. 5, 2014, 2:47 PM), <http://mashable.com/2014/06/05/edward-snowden-revelations> (<http://mashable.com/2014/06/05/edward-snowden-revelations>) [<http://perma.cc/96F8-Y38H> (<http://perma.cc/96F8-Y38H>)].

to reports of police drone use, <sup>103</sup>

103. See, e.g., Phil Willon & Melanie Mason, *Governor Vetoes Bill that Would Have Limited Police Use of Drones*, **L.A. TIMES** (Sept. 28, 2014, 7:09 PM), <http://www.latimes.com/local/political/la-me-ln-governor-vetoes-bill-to-limit-police-use-of-drones-20140928-story.html> (<http://www.latimes.com/local/political/la-me-ln-governor-vetoes-bill-to-limit-police-use-of-drones-20140928-story.html>) [<http://perma.cc/87NA-CD4M> (<http://perma.cc/87NA-CD4M>)] (discussing California Governor Jerry Brown's veto of a bill that would have required law enforcement agencies to obtain warrants before using drones for surveillance of citizens); see also Jennifer O'Brien, Comment, *Warrantless Government Drone Surveillance: A Challenge to the Fourth Amendment*, 30 **J. MARSHALL J. INFO. TECH. & PRIVACY L.** 155, 165–66 (2013) (noting that President Obama signed into law the FAA Modernization and Reform Act of 2012, which "expressly directs the FAA to permit law enforcement operation of unmanned aircraft that weigh less than 4.4 pounds under specified restrictions").

citizens are more conscious than ever of being watched by their government. <sup>104</sup>

104. Indeed, the media, the public, and even some politicians have vocalized ardent criticisms of the government's ever-expanding surveillance apparatus. See, e.g., Spencer Ackerman & Paul Lewis, *NSA Surveillance Challenged in Court as Criticism Grows over US Data Program*, **THE GUARDIAN** (Jun. 11, 2013, 5:44 PM), <http://www.theguardian.com/world/2013/jun/11/nsa-surveillance-challenged-court-data> (<http://www.theguardian.com/world/2013/jun/11/nsa-surveillance-challenged-court-data>) [<http://perma.cc/H77A-CLJ3> (<http://perma.cc/H77A-CLJ3>)] (describing, first, a lawsuit filed by the ACLU in response to the Snowden leaks and, second, Senate legislative proposals to increase government transparency); Al Gore, **TWITTER** (June 5, 2013, 6:39 PM),

<https://twitter.com/algore/status/342455655057211393>  
 (<https://twitter.com/algore/status/342455655057211393>) [<https://perma.cc/J8YS-AZPJ>]  
 (<https://perma.cc/J8YS-AZPJ>)] (“Is it just me, or is secret blanket surveillance obscenely outrageous?”).

Moreover, “mission creep” on the part of camera manufacturers has already begun: at least one city has made plans to outfit its parking attendants with body cameras,<sup>105</sup>

105. Jessica Glenza, *Miami Beach Plans for Body-Worn Cameras on Meter Maids and Police*, **THE GUARDIAN** (Aug. 21, 2014, 9:58 AM), <http://www.theguardian.com/world/2014/aug/21/police-body-cameras-miami-beach-city-workers> (<http://www.theguardian.com/world/2014/aug/21/police-body-cameras-miami-beach-city-workers>) [<http://perma.cc/QD6A-5VBN> (<http://perma.cc/QD6A-5VBN>)]; see also Jay Stanley, *Body-Worn Cameras Should Not Expand Beyond Law Enforcement*, **ACLU** (Aug. 29, 2014, 12:34 PM), <https://www.aclu.org/blog/criminal-law-reform-immigrants-rights-technology-and-liberty-free-speech-national-security/body> (<https://www.aclu.org/blog/criminal-law-reform-immigrants-rights-technology-and-liberty-free-speech-national-security/body>) [<https://perma.cc/F5PW-57AM> (<https://perma.cc/F5PW-57AM>)] (cautioning against this sort of expansion because it brings the downsides of privacy invasion without the benefits of police oversight).

and some advocates have called for expanding cameras into other arenas, like the classroom.<sup>106</sup>

106. See, e.g., Reihan Salam, *Tape Everything*, **SLATE** (Aug. 15, 2014, 11:34 AM), [http://www.slate.com/articles/news\\_and\\_politics/politics/2014/08/ferguson\\_police\\_officers\\_should\\_be\\_forced\\_to](http://www.slate.com/articles/news_and_politics/politics/2014/08/ferguson_police_officers_should_be_forced_to) ([http://www.slate.com/articles/news\\_and\\_politics/politics/2014/08/ferguson\\_police\\_officers\\_should\\_be\\_forced\\_to](http://www.slate.com/articles/news_and_politics/politics/2014/08/ferguson_police_officers_should_be_forced_to)) [<http://perma.cc/4N43-A96C> (<http://perma.cc/4N43-A96C>)] (“But why stop at video recording the police? . . . [T]here are many public servants who have considerable power over others and who are shielded from scrutiny in the absence of video recording. Public school teachers and administrators are the most obvious example.”). This expansion might make it easier for police to arrest students for school infractions, an issue highlighted and problematized in Chapter II. See *supra* ch. II.

So although police body cameras have the potential to benefit citizens and officers alike, they nevertheless represent another substantial step toward a surveillance state. Police departments in recent decades have become increasingly militarized,<sup>107</sup>

107. See generally **RADLEY BALKO**, *RISE OF THE WARRIOR COP* (2013).

complete with intelligence departments,<sup>108</sup>

108. See, e.g., *Criminal Intelligence Division*, VA. ST. POLICE, [http://www.vsp.state.va.us/BCI\\_CID.shtm](http://www.vsp.state.va.us/BCI_CID.shtm) ([http://www.vsp.state.va.us/BCI\\_CID.shtm](http://www.vsp.state.va.us/BCI_CID.shtm)) (last visited Mar. 1, 2015) [<http://perma.cc/4RTP-YL7S> (<http://perma.cc/4RTP-YL7S>)] (noting that the primary purpose of this *state* police division is to “identify, document, and disseminate criminal intelligence concerning persons involved in organized crime, terrorist groups, and those crimes involving multi-jurisdictional or serial crimes”).

devices that mimic cell phone towers,

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109. See, e.g., Cory Bennett, *Judge Unseals Info on Secret Cellphone Spying*, THE HILL (Nov. 21, 2014, 5:29 PM), <http://thehill.com/policy/cybersecurity/225074-judge-unseals-secret-cell-spying-details> (<http://thehill.com/policy/cybersecurity/225074-judge-unseals-secret-cell-spying-details>) [<http://perma.cc/ZY5H-BLS5> (<http://perma.cc/ZY5H-BLS5>)]].

and facial recognition software.

110

110. See, e.g., Sebastian Anthony, *UK, the World’s Most Surveilled State, Begins Using Automated Face Recognition to Catch Criminals*, EXTREME TECH (July 17, 2014, 8:03 AM), <http://www.extremetech.com/extreme/186435-uk-the-worlds-most-surveilled-state-begins-using-automated-face-recognition-to-catch-criminals> (<http://www.extremetech.com/extreme/186435-uk-the-worlds-most-surveilled-state-begins-using-automated-face-recognition-to-catch-criminals>) [<http://perma.cc/C9NT-NCRK> (<http://perma.cc/C9NT-NCRK>)] (“The British police will be using NEC’s NeoFace technology, which can match faces from crime scene photos or videos against a database of images in just a few seconds. Combined with the highest density of CCTV cameras of any country in the world, police body-worn cameras that are constantly recording, and a CSI-like smartphone and tablet app that allows for face and fingerprint matching in the field, it is rather hard to be a criminal in the UK nowadays.”).

Facial recognition software in particular may pose a threat to civilian privacy when coupled with body cameras:

[T]he increasing effectiveness of facial recognition software, even in consumer products like Facebook, means that simply recording an image of a person (in a private or public space) can lead to further identification. . . . Officer-mounted wearable cameras, paired with facial recognition, could easily become much like the current crop of automated license readers, constantly reading thousands of faces (license plates), interpreting identity (plate number), and cross-checking this information against national and local crime databases in real-time.

111



111. Bryce Clayton Newell, *Crossing Lenses: Policing's New Visibility and the Role of "Smartphone Journalism" as a Form of Freedom-Preserving Reciprocal Surveillance*, 2014 U. ILL. J.L. TECH. & POL'Y 59, 90. With the advancement of technology, it may also become possible to review years of stored body-camera footage using facial recognition software, looking for "cold" hits.

While not necessarily "inimical to individual liberty," this rapid expansion of police oversight may do less to empower civilians to "watch their watchers," and more to enable the government to effectively track, detain, and arrest individuals. <sup>112</sup>

112. See *id.* Given the number of primarily low-income, minority individuals who have outstanding warrants for unpaid fines or other minor offenses, see *supra* ch. I, pp. 1727–29, this combination of body cameras and facial recognition software may prove especially insidious.

Indeed, many policing initiatives that have been adopted in the name of "protecting" civilians have later been used against them. <sup>113</sup>

113. For example, wiretapping laws were originally written to ensure that law enforcement respected "the privacy rights of individuals." Travis S. Triano, Note, *Who Watches the Watchmen? Big Brother's Use of Wiretap Statutes to Place Citizens in Timeout*, 34 CARDOZO L. REV. 389, 391–96 (2012). But since their inception, these statutes have instead been used to arrest and prosecute citizens for alleged violations of their states' wiretapping statutes, including for filming the police. See *id.* at 396; see also *infra* section D.

Past experiences should inform present debates over national adoption of body cameras, and proponents should be particularly careful to consider the long-term ramifications of normalizing this technology.

(e) *The "Objectivity" of Video Evidence.* — A final, fundamental concern regarding body cameras goes to the heart of their functionality: the reliability of the video footage they produce. This footage is, undoubtedly, the main advantage of the cameras in that it allows for ex post review of officer conduct in the field. But the perceived "objectivity" of video evidence also creates a danger of overreliance. <sup>114</sup>

114. See Howard M. Wasserman, *Orwell's Vision: Video and the Future of Civil Rights Enforcement*, 68 MD. L. REV. 600, 620 (2009) ("The certainty that video purports to provide . . . is more myth than reality."); cf. SUSAN SONTAG, ON PHOTOGRAPHY 5–6 (1977) ("A photograph passes for incontrovertible proof that a given thing happened. . . . Whatever the limitations (through amateurism)

or pretensions (through artistry) of the individual photographer, a photograph — any photograph — seems to have a more innocent, and therefore more accurate, relation to visible reality than do other mimetic objects.”).

“Video purports to be an objective, unbiased, transparent observer of events that evenhandedly reproduces reality for the viewer,” and “[f]rom an evidentiary standpoint, video evidence often will be overwhelming proof at trial.”<sup>115</sup>

115. Wasserman, *supra* note 114, at 619.

Even with body cameras rolling at all times, though, the picture may not capture either “what happened outside the camera’s view or the causation for actions shown . . . depend[ing] on ‘the camera’s perspective (angles) and breadth of view (wide shots and focus).’”<sup>116</sup>

116. *Id.* at 620 (quoting Jessica Silbey, *Cross-Examining Film*, 8 U. MD. L.J. **RACE RELIGION GENDER & CLASS** 17, 29 (2008)). It is likely that the “source of a recording also might affect viewer perception,” as more or less legitimacy may be given to footage provided by the police, as opposed to the press, bystanders, or the civilian involved in the encounter. *Id.* at 640.

Perspective may have an outsized influence on a factfinder’s impression of the video: for instance, mock juries shown a first-person interrogation tape without the officer on screen are “significantly less likely to find an interrogation coercive, and more likely to believe in the truth and accuracy of the confession,” than are jurors who are shown the identical interrogation but from a wider angle that includes the officer.<sup>117</sup>

117. Jennifer L. Mnookin, *Can a Jury Believe What It Sees?*, **N.Y. TIMES**, July 14, 2014, <http://www.nytimes.com/2014/07/14/opinion/videotaped-confessions-can-be-misleading.html> (<http://www.nytimes.com/2014/07/14/opinion/videotaped-confessions-can-be-misleading.html>).

This sort of distortion is especially concerning given that body-camera footage will always be filmed from the perspective of the officer, making it easier for a jury to credit this perspective.

Beyond the technological limitations of these cameras, an empirical study conducted by Professor Dan Kahan illustrates that even video footage thought to be unambiguous <sup>118</sup>

118. In particular, the Supreme Court relied on the video of a purportedly high-speed chase in *Scott v. Harris*, 550 U.S. 372 (2007), to find that a police officer was justified in using potentially deadly force in response.

is susceptible to multiple interpretations depending on the “cultural outlook[]” of the individual viewing the tape. <sup>119</sup>

119. Dan Kahan et al., *Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837, 903 (2009). Identity-defining factors such as race, age, socioeconomic status, education, cultural orientation, and party affiliation all affected the viewer's interpretation of the video. *Id.* at 867–70.

These sorts of implicit biases may subtly affect how viewers — in their living room or in the courtroom — process the story told by body-camera footage. This phenomenon may also allow for the unconscious incorporation of implicit biases when determining whether an officer's actions were “reasonable” under the circumstances for purposes of an indictment or conviction. <sup>120</sup>

120. See *infra* section D, discussing the “reasonableness” standard used in excessive force cases.

Given that body-camera footage (with all its fallibilities) will inevitably be used as an effective tool for the state in prosecuting defendants caught on film, <sup>121</sup>

121. For example, officers are being trained to film interviews with domestic violence victims on the scene (with the victim's consent) and to try to capture the assault itself on video, as this provides “enough evidence to move forward with the case, even if the victim ultimately declines to prosecute.” PERF REPORT, *supra* note 55, at 9.

it again must be asked *who* in fact benefits most from the adoption of this technology if officers are not also held accountable even when captured on tape. Because video evidence will likely prove singularly powerful in these sorts of

excessive force cases, careful consideration must be given to how this type of evidence can be manipulated or distorted — both intentionally and unintentionally — in a manner that systematically favors the officers. <sup>122</sup>

122. The lack of an indictment in Garner’s case, despite readily available footage from a bystander that graphically depicts the officer placing Garner in the deadly chokehold, makes this concern all the more profound: how likely then will an indictment be in cases that feature such interactions solely from the perspective of the officer’s body camera?

## D.

As the foregoing sections demonstrate, the effective adoption of police body cameras presents many challenges for lawyers and policymakers who must balance the positive goals of this initiative with deep and legitimate concerns about misuse of this powerful technology. Eric Garner’s case is also a tragic reminder of the need to pursue other policing reforms in conjunction with body-camera initiatives because the presence of a camera is no guarantee that officers will temper their use of force or that meaningful justice will be served. Many promising legal proposals have already been offered; for example, some scholars have called for a reevaluation of the capacious “reasonableness” standard <sup>123</sup>

123. *Graham v. Connor*, 490 U.S. 386, 395 (1989) (“[A]ll claims that law enforcement officers have used excessive force — deadly or not — in the course of an arrest . . . should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard . . .”).

currently used to evaluate the conduct of officers who have allegedly used excessive force. <sup>124</sup>

124. See, e.g., Nancy Gertner, Op-Ed., *There Will Be More Fergusons*, **BOS. GLOBE** (Nov. 25, 2014), <http://www.bostonglobe.com/opinion/2014/11/24/surprise-ferguson-grand-jury-didn-indict-police-officer/zf9Un1ZTqrEKKzTgOOJBOL/story.html> (<http://www.bostonglobe.com/opinion/2014/11/24/surprise-ferguson-grand-jury-didn-indict-police-officer/zf9Un1ZTqrEKKzTgOOJBOL/story.html>) [<http://perma.cc/8ALD-SG7M>] (<http://perma.cc/8ALD-SG7M>)] (cautioning that the “reasonableness” standard may be too deferential to officers, sending the message to “[s]hoot first, think later, and . . . count on being exonerated.”).

Others have questioned the Court's existing doctrine on standing, which prevents a "victim[] of police violence from [prospectively] asking [a] federal court[] to help stop deadly practices," unless she is able to show that she is *personally* likely to suffer the same abuse in the future. <sup>125</sup>

125. See, e.g., Shakeer Rahman & Sam Barr, Op-Ed., *Eric Garner and the Legal Rules that Enable Police Violence*, N.Y. TIMES (Dec. 5, 2014), <http://www.nytimes.com/2014/12/06/opinion/eric-garner-and-the-legal-rules-that-enable-police-violence.html> (<http://www.nytimes.com/2014/12/06/opinion/eric-garner-and-the-legal-rules-that-enable-police-violence.html>).

Advocates are also pushing for more responsible police training <sup>126</sup>

126. See, e.g., Seth Stoughton, *How Police Training Contributes to Avoidable Deaths*, THE ATLANTIC (Dec. 12, 2014, 8:00 AM), <http://www.theatlantic.com/national/archive/2014/12/police-gun-shooting-training-ferguson/383681> (<http://www.theatlantic.com/national/archive/2014/12/police-gun-shooting-training-ferguson/383681>) [<http://perma.cc/G89Y-XP9D> (<http://perma.cc/G89Y-XP9D>)] ("In most police shootings, officers don't shoot out of anger or frustration or hatred. They shoot because they are afraid. And they are afraid because they are constantly barraged with the message that they should be afraid, that their survival depends on it.").

and greater community engagement. <sup>127</sup>

127. See, e.g., Andrew Steele, *Gary Residents Tout Citizen Review Board to Curb Police Confrontations*, TIMES NW. IND. (Dec. 13, 2014, 8:00 PM), [http://www.nwitimes.com/news/local/lake/gary-residents-tout-citizen-review-board-to-curb-police-confrontations/article\\_10c1b9b5-c427-54c2-a2a8-c90945d48145.html](http://www.nwitimes.com/news/local/lake/gary-residents-tout-citizen-review-board-to-curb-police-confrontations/article_10c1b9b5-c427-54c2-a2a8-c90945d48145.html) ([http://www.nwitimes.com/news/local/lake/gary-residents-tout-citizen-review-board-to-curb-police-confrontations/article\\_10c1b9b5-c427-54c2-a2a8-c90945d48145.html](http://www.nwitimes.com/news/local/lake/gary-residents-tout-citizen-review-board-to-curb-police-confrontations/article_10c1b9b5-c427-54c2-a2a8-c90945d48145.html)) [<http://perma.cc/R7VG-37Y8> (<http://perma.cc/R7VG-37Y8>)].

The grand jury process has come under particular scrutiny given how exceptionally difficult it has proven to indict police officers in excessive-force cases like Garner's. <sup>128</sup>

128. The high frequency of nonindictments in cases involving police officers stands in stark contrast to the ease of obtaining an indictment in regular cases. See Ben Casselman, *It's Incredibly Rare for a Grand Jury to Do What Ferguson's Just Did*, FIFTYTHREE (Nov. 24, 2014, 9:30 PM), <http://fivethirtyeight.com/datalab/ferguson-michael-brown-indictment-darren-wilson>



(<http://fivethirtyeight.com/datalab/ferguson-michael-brown-indictment-darren-wilson>)  
<http://perma.cc/2998-8K4L> (<http://perma.cc/2998-8K4L>)]]; see also *id.* (“U.S. attorneys prosecuted 162,000 federal cases in 2010 . . . . Grand juries declined to return an indictment in 11 of them.”).

The addition of “special prosecutors” who do not work with local police on a daily basis may be especially effective, because these special prosecutors would be more likely to prosecute such cases impartially, without an undue sense of loyalty or pressure. <sup>129</sup>

129. See, e.g., Paul Butler, *The System Must Counteract Prosecutors’ Natural Sympathies for Cops*, N.Y. TIMES: ROOM FOR DEBATE (Dec. 4, 2014, 3:05 PM), <http://www.nytimes.com/roomfordebate/2014/12/04/do-cases-like-eric-garners-require-a-special-prosecutor/the-system-must-counteract-prosecutors-natural-sympathies-for-cops> (<http://www.nytimes.com/roomfordebate/2014/12/04/do-cases-like-eric-garners-require-a-special-prosecutor/the-system-must-counteract-prosecutors-natural-sympathies-for-cops>).

One equally important but often overlooked legal priority is the need to safeguard the role of individuals who document and disseminate video footage of police-civilian encounters. This sort of “sousveillance” <sup>130</sup>

130. This term, coined by Steve Mann, refers to the mounting of cameras “on people in low places, rather than upon buildings and establishments in high places” to allow the marginalized to use technology to “mirror and confront bureaucracies and authoritative organizations such as police agencies.” Laura Huey et al., *Cop Watching in the Downtown Eastside: Exploring the Use of (Counter) Surveillance as a Tool of Resistance*, in SURVEILLANCE AND SECURITY 149, 158 (Torin Monahan ed., 2006) (quoting Steve Mann, *Sousveillance*, WEARCAM.ORG (2002), <http://www.wearcam.org/sousveillance.htm> (<http://www.wearcam.org/sousveillance.htm>) (<http://perma.cc/QTZ7-GNE8> (<http://perma.cc/QTZ7-GNE8>)]).

is worth protecting, body cameras or no, because it has often been the powerful scenes captured by vigilant citizens (like the recording of Garner’s death) that have spurred the country to confront latent issues of police brutality, long suspected but too often ignored. <sup>131</sup>

131. See *supra* Introduction, pp. 1708–09.

Recent cases such as *Glik v. Cunniffe*, <sup>132</sup>

132. 655 F.3d 78 (1st Cir. 2011) (holding that citizens have a First Amendment right to film and record

officers in public places).

*ACLU of Illinois v. Alvarez*,<sup>133</sup>

133. 679 F.3d 583 (7th Cir. 2012) (granting a preliminary injunction against enforcement of Illinois's wiretapping law, ensuring that the ACLU could continue to record police officers in the field).

and *Gericke v. Begin*<sup>134</sup>

134. 753 F.3d 1 (1st Cir. 2014) (reaffirming the First Amendment right to film police officers, including during traffic stops).

indicate a willingness on the part of courts to protect this vital First Amendment right, but the proliferation of body cameras may make civilians feel as if they no longer need to record officers in the field. Moreover, police may feel more justified in telling citizens to cease recording,<sup>135</sup>

135. *Cf. Wasserman*, *supra* note 114, at 600; *see also id.* at 602–07.

and the courts may be more willing to accept this as “reasonable” if body-camera footage is expected to exist in every case.<sup>136</sup>

136. *Cf. Scott H. Greenfield, A Small Right with a Huge Loophole, SIMPLE JUSTICE* (May 27, 2014), <http://blog.simplejustice.us/2014/05/27/a-small-right-with-a-huge-loophole> (<http://blog.simplejustice.us/2014/05/27/a-small-right-with-a-huge-loophole>) [<http://perma.cc/J6N6-XK2F>] (<http://perma.cc/J6N6-XK2F>)] (noting that *Gericke* sanctioned “[r]easonable restrictions on the exercise of the right to film [to] be imposed when the circumstances justify them,” *id.* (quoting *Gericke*, 753 F.3d at 7) (internal quotation mark omitted), and arguing that the “reasonableness” standard means “you have the constitutional First Amendment right to record police until they tell you to stop, because reasons, at which point you don’t,” *id.*).

But civilian recordings can provide an additional (perhaps crucial) perspective,<sup>137</sup>

137. *See supra* section C.2(e) (critiquing the “objectivity” of video).

adding further context to an encounter. And because this type of footage is ultimately controlled by civilians themselves, rather than curated by the police, it has the unique ability to empower traditionally powerless individuals to document and expose police abuses within their communities. <sup>138</sup>

138. *Cf. Detroit Free Press v. Ashcroft*, 303 F.3d 681, 683 (6th Cir. 2002) (“In our democracy, based on checks and balances, neither the Bill of Rights nor the judiciary can second-guess government’s choices. The only safeguard on this extraordinary governmental power is the public, deputizing the press as the guardians of their liberty.”).

Courts and legislators discussing the proper administration of body cameras should therefore be mindful of simultaneously promoting the continued vitality of citizen-initiated surveillance of the police. <sup>139</sup>

139. Wasserman, *supra* note 114, at 648 (“We maintain the balance of power over availability of video and audio recording of public encounters only by recognizing a liberty to record — that is, recognizing that Big Brother cannot interfere with the public’s ability to watch him.”).

## E.

“What’s the future for me? . . . [F]or my child, for my son? What is his future?”

— Unknown protestor to Benjamin Carr, Garner’s stepfather <sup>140</sup>

140. These pleading words were spoken immediately after the grand jury declined to indict Officer Pantaleo for his deadly use of a chokehold. Eyder Peralta, *The Sentiment in New York Captured in a 25-Second Audio Clip*, **NPR: THE TWO-WAY** (Dec. 4, 2014, 7:56 AM), <http://www.npr.org/blogs/thetwo-way/2014/12/04/368422790/the-sentiment-in-new-york-captured-in-a-25-second-audio-clip> (<http://www.npr.org/blogs/thetwo-way/2014/12/04/368422790/the-sentiment-in-new-york-captured-in-a-25-second-audio-clip>) [<http://perma.cc/TB5F-WELW> (<http://perma.cc/TB5F-WELW>)] (describing the exchange as capturing “the anger, the desperation and the resolve to keep things peaceful in New York”).

Balancing the benefits and drawbacks of this powerful new technology is not an easy task, and the decision to equip police departments with cameras should not be made lightly. Once such a program is deployed, it is “increasingly difficult to have second thoughts or to scale back.”<sup>141</sup>

141. Kevin Johnson, *Police Body Cameras Offer Benefits, Require Training*, USA TODAY (Sept. 12, 2014, 6:21 PM), <http://www.usatoday.com/story/news/nation/2014/09/12/police-body-cameras/15522059> (<http://www.usatoday.com/story/news/nation/2014/09/12/police-body-cameras/15522059>) [<http://perma.cc/BB6J-9X2K> (<http://perma.cc/BB6J-9X2K>)] (quoting Chuck Wexler, Executive Director of the Police Executive Research Forum).

Expedient adoption therefore should not be prioritized over reasoned policymaking: the use of body cameras raises several significant legal questions, including what the default presumption should be when footage has gone missing or is unusable;<sup>142</sup>

142. See Scott H. Greenfield, *The Missing Video Presumption*, SIMPLE JUSTICE (Mar. 30, 2014), <http://blog.simplejustice.us/2014/03/30/the-missing-video-presumption> (<http://blog.simplejustice.us/2014/03/30/the-missing-video-presumption>) [<http://perma.cc/B99T-6HG4> (<http://perma.cc/B99T-6HG4>)]. Scott Greenfield has proposed four possible presumptions for missing or unusable footage: (i) reversion to the traditional “he said/she said” analysis, (ii) a presumption that favors the police, (iii) a presumption that favors the defendant, or (iv) litigation over fault for video failure, and a negative presumption that is applied against the police only if they are responsible. See *id.*

the proper source of funding; whether parties who are filmed by the police, particularly in intimate exchanges, have a right to view (or delete) that footage; and what the contours of public access to body-camera footage should be.

Policymakers, citizens, and police departments must think carefully about these and other drawbacks to a body-camera regime to make sure that, if this technology is to be adopted, it is used effectively and ultimately improves the quality of police services. Citizens should also remain vigilant — observing and recording the conduct of police within their communities rather than complacently allowing themselves to be surveilled by the state. And finally, wider systemic changes must be undertaken in conjunction with the deployment of body cameras to ensure that our legal process truly provides justice for all, rather than simply justice for some.

**Tags:** *Local Government, Policing, Privacy, Technology*

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HARVARD LAW REVIEW © 2015



## HB 308

Department of Legislative Services  
Maryland General Assembly  
2015 Session

## FISCAL AND POLICY NOTE

House Bill 308  
Judiciary

(Delegate Conaway, *et al.*)

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**Public Safety - Law Enforcement Officers - Video Cameras**

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This bill authorizes all “law enforcement officers” in the State, excluding officers on detective duty, to wear a video camera affixed to the officer’s uniform while on duty. A law enforcement agency must preserve a video recording made under the bill for at least 30 calendar days. A law enforcement agency must develop policies and procedures to execute the bill’s provisions.

The bill also makes it lawful for a law enforcement officer, in the course of the officer’s regular duty, to intercept an oral communication if the interception is being made under the bill’s authorization for law enforcement officers to wear video cameras.

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**Fiscal Summary**

**State Effect:** None. All State law enforcement agencies may already employ the use of video cameras by law enforcement officers. The bill’s provision relating to the interception of an oral communication by a law enforcement officer using a video camera is not expected to have a direct State fiscal impact. Revenues are not affected.

**Local Effect:** None. All local law enforcement agencies may already employ the use of video cameras by law enforcement officers. The bill’s provision relating to the interception of an oral communication by a law enforcement officer using a video camera is not expected to have a direct local fiscal impact. Revenues are not affected.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** A “law enforcement officer” means an individual who in an official capacity is authorized by law to make arrests and is a member of one of the following law enforcement agencies:

- the Department of State Police (DSP);
- the Police Department of Baltimore City;
- the Baltimore City School Police Force;
- the Housing Authority of Baltimore City Police Force;
- the Baltimore City Watershed Police Force;
- the police department, bureau, or force of a county, municipality, or bi-county agency;
- the office of the sheriff of a county;
- the Maryland Transportation Authority Police;
- the police forces of the Maryland Department of Transportation, the Department of Natural Resources, the Department of Health and Mental Hygiene, the Department of General Services, and the Department of Labor, Licensing, and Regulation;
- the Field Enforcement Bureau of the Comptroller’s Office;
- the Crofton Police Department;
- the police forces of the University System of Maryland and Morgan State University;
- the Office of the State Fire Marshal;
- the Ocean Pines Police Department;
- the police forces of Baltimore City Community College and Hagerstown Community College;
- the Internal Investigation Unit of the Department of Public Safety and Correctional Services (DPSCS); or
- the Warrant Apprehension Unit of the Division of Parole and Probation within DPSCS.

“Law enforcement officer” does not include:

- an individual who serves at the pleasure of the Police Commissioner of Baltimore City;
- an individual who serves at the pleasure of the appointing authority of a charter county;
- the police chief of a municipal corporation;
- an officer who is in probationary status on initial entry into the law enforcement agency except if an allegation of brutality in the execution of the officer’s duties is made; or

- a fire and explosive investigator in Anne Arundel, Montgomery, Prince George's, or Worcester counties, or the cities of Annapolis or Hagerstown, as defined in the Criminal Procedure Article.

### **Current Law/Background:**

#### *Use of Body-worn Cameras*

In a 2014 report by the Police Executive Research Forum, [Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned](#), it was stated that any police department considering the use of body-worn cameras (BWCs) must have well designed policies in place or public trust in the use of the cameras may be undermined. Another 2014 report underwritten by the U.S. Department of Justice, Office of Justice Programs (DOJ/OJP), *Police Officer Body-Worn Cameras: Assessing the Evidence*, concluded that:

There is little evidence regarding most of the perceived benefits and drawbacks of the technology. For example, little is known about citizen attitudes toward BWCs, most notably whether the technology increases trust, legitimacy, and transparency of the police. The potential for the technology to serve as a training tool for police is also largely unexplored. Moreover, the privacy implications of BWCs, for both citizens and police officers, are not clearly understood and may vary considerably as a result of differences in state law.

Simply put, there is not enough evidence to offer a definitive recommendation regarding the adoption of BWCs by police. Departments considering BWCs should proceed cautiously, consider the issues outlined in this review, and recognize that most of the claims made about the technology are untested.

These reports and others were cited in the December 2014 report to the chairs of the Senate Judicial Proceedings Committee and the House Judiciary Committee by the Governor's Office of Crime Control and Prevention (GOCCP) on the findings of the Workgroup on the Implementation and Use of Body Worn Cameras by Law Enforcement, which met during the 2014 interim. The workgroup found that, while such cameras have many potential benefits, their use also "raises some difficult issues for members of the public, government agencies, civil liberties advocates, and even the officers who wear the devices." However, despite the fact that GOCCP concluded that more research should be done on this subject, GOCCP also found that the DOJ/OJP report cautions against drawing firm conclusions with respect to BWCs because available research is either limited or has design flaws. The workgroup concluded that BWCs have the potential to be useful tools for improving police/community relations, improving the criminal justice system, and modifying the behavior of both police and citizens. The full report of the workgroup can be found [here](#).

According to DSP, as of January 16, 2015, the following local law enforcement agencies in the State have already purchased and/or deployed BWCs for field use:

- Berwyn Heights Police Department;
- Cambridge Police Department;
- Capital Heights Police Department;
- Cheverly Police Department;
- Cottage City Police Department;
- Denton Police Department;
- Federalsburg Police Department;
- Forest Heights Police Department (pilot program);
- Fruitland Police Department;
- Harford County Sheriff's Office (field testing four cameras);
- Hurlock Police Department;
- Hyattsville Police Department;
- Laurel Police Department;
- Mount Rainier Police Department;
- Pokomoke City Police Department;
- Princess Anne Police Department;
- Rising Sun Police Department (one camera);
- Snow Hill Police Department; and
- Upper Marlboro Police Department (pilot, testing).

Additional agencies are considering the purchase and deployment of such equipment.

In December 2014, the Baltimore City Council voted to require BWCs for all city police officers. However, the Mayor vetoed the bill and awaits recommendations from a mayoral task force that will address issues of cost and privacy. The Baltimore City Police Commissioner has publically advocated a limited pilot program.

In October 2014, the Metropolitan Police Department in Washington, DC, began a pilot program testing the use of BWCs on police officers. A total of 165 officers participate in the pilot program, including volunteers from all seven police districts in the city. Each officer is working with five different camera models over a six-month period and will provide written feedback on each camera model.

The Laurel Police Department has had an on-body camera program for nearly four years. The police chief calls the cameras "a huge success" and says complaints about his officers

have dropped and training has improved. The cameras and related equipment, including data storage, in current use in the City of Laurel are the AXON flex units available through TASER International, Inc. The cost for each camera was about \$500. The City of Laurel has been outfitting its full patrol force at a rate of about 25% per year, with about 50% (25 officers) currently outfitted with an AXON unit. While the operational life of each camera is expected to be five years, the City of Laurel budgets for cameras on a three-year basis. The current three-year costs for each law enforcement body camera in Laurel is about \$2,000, which includes the camera, storage, and data uploading. The City of Laurel has an annual contract for data storage in the amount of \$1,050 for up to 300 gigabytes of storage. Laurel officers patrol on 10-hour shifts and download the data from each camera at the end of each shift, a process that takes about 30 minutes. Stored data is maintained for a period of six months, unless known to be needed for a criminal trial or related matters. The Laurel video units do record audio.

### *National and International Developments*

According to the National Conference of State Legislatures, several states have introduced legislation in 2015 regarding BWCs for police officers.

Police in London, England began using BWCs on police officers in May 2014. Recent announcements of the use of BWCs by law enforcement officers in major U.S. cities have included the following notices:

- New York City – 54 officers in six precincts will begin wearing the cameras as a pilot program;
- Los Angeles – the city will purchase 7,000 cameras for police officers to wear while on patrol;
- Philadelphia – launched a pilot body-camera program in which more than two dozen officers will wear the cameras while on duty for six months; and
- Chicago – the city police department will begin testing BWCs on officers in early 2015 as part of a pilot project.

In addition, law enforcement officers in Cleveland, Ohio began wearing BWCs as part of a program to outfit city officers with the devices in February 2015. Cleveland spent \$2.4 million to outfit nearly all of the city's 1,510 officers with BWCs. The recordings will be maintained on an evidence collection website and will be subject to open public records requests in Ohio.

The U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ), produced *A Primer on Body-Worn Cameras for Law Enforcement* in September 2012, which stated that a BWC can be attached to various body areas, including



the head (by helmet, glasses, or other means) or to the body (by pocket, badge, or other means). A BWC has the capability to record officer interactions that previously could only be captured by in-car or interrogation room camera systems.

NIJ also states that there are many specification issues to consider before purchasing a camera system. The system requirements and trade-offs are dependent on the intended use, budget, unit cost, interoperability, operating environment, and other factors. According to NIJ, specifications to consider include battery life, video quality, recording limits, night recording capabilities, camera focal width, camera placement, and radio integration capability. NIJ also includes audio recording capabilities under specifications to consider.

### *Maryland Wiretapping and Electronic Surveillance Act (Wiretap Act)*

Under Maryland's Wiretap Act, it is unlawful to willfully intercept any wire, oral, or electronic communication. Under the Act, "intercept" is defined, in part, as "the... acquisition of the contents of any... oral communication through the use of any... device." Therefore, the Wiretap Act does not regulate a video recording that does not contain an audio component. The statute does authorize the interception of an oral communication if all participants have given prior consent (sometimes called "two-party consent"). Maryland is 1 of 12 two-party consent states, most of which spell out clearly that the consent is required only in circumstances where there is a "reasonable expectation of privacy."

The Act does provide specified exceptions, including one for a law enforcement officer who intercepts an oral communication in the regular course of the officer's duty, so long as the officer (1) initially lawfully detained a vehicle during a criminal investigation or for a traffic violation; (2) is a party to the oral communication; (3) has been identified as a law enforcement officer to the other parties to the communication prior to any interception; (4) informs all other parties to the communication of the interception at the beginning of the communication; and (5) makes the interception as part of a videotape recording.

Each interception in violation of the Wiretap Act may be prosecuted as a felony, punishable by up to five years imprisonment, and/or a \$10,000 fine. A person who is the victim of a violation of the Wiretap Act has a civil cause of action against the wiretapper for damages, attorney's fees, and litigation costs.

**State Fiscal Effect:** State law enforcement agencies may already employ the use of video cameras by law enforcement officers. It is assumed that any expansion of the use of video cameras by State agencies, and the development of any related policies and procedures, is only done within budgeted resources and likely exceeds the bill's minimum preservation requirement.

It is also assumed that the bill's exception to wiretapping and electronic surveillance provisions may lend itself to greater operational efficiencies for State law enforcement units employing video recording devices. The extent to which such efficiencies may lead to greater numbers of arrests or prosecutions cannot be reliably predicted.

**Local Fiscal Effect:** All local law enforcement agencies may already authorize the use of video cameras by law enforcement officers. It is assumed that any expansion of the use of video cameras by local agencies, and the development of any related policies and procedures, is only done within budgeted resources and likely exceeds the bill's minimum preservation requirement.

It is also assumed that the bill's exception to wiretapping and electronic surveillance provisions may lend itself to greater operational efficiencies for local law enforcement units employing video recording devices. The extent to which such efficiencies may lead to greater numbers of arrests or prosecutions cannot be reliably predicted.

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### Additional Information

**Prior Introductions:** HB 116 of 2014, a similar bill, passed the House with amendments and received an unfavorable report from the Senate Judicial Proceedings Committee.

**Cross File:** None.

**Information Source(s):** Calvert, Howard, Montgomery, and Prince George's counties; cities of Frederick and Havre de Grace; Baltimore City; Department of Natural Resources; Department of General Services; Department of Health and Mental Hygiene; Comptroller's Office; Department of Labor, Licensing, and Regulation; Department of State Police; Morgan State University; Department of Public Safety and Correctional Services; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

**Fiscal Note History:** First Reader - March 9, 2015  
min/lgc

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Analysis by: Guy G. Cherry

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## HB 533

**Department of Legislative Services**  
Maryland General Assembly  
2015 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 533  
Judiciary

(Delegate Sydnor, *et al.*)

Judicial Proceedings

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**Public Safety - Law Enforcement Officers - Body-Worn Digital Recording Device  
and Electronic Control Device**

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This emergency bill requires the Police Training Commission (PTC), by January 1, 2016, to develop and publish online a policy for the issuance and use of a body-worn camera (BWC) by a law enforcement officer that addresses specified issues and procedures. The bill makes it lawful for a law enforcement officer in the course of the officer's regular duty to intercept an oral communication with a "body-worn digital recording device" or an "electronic control device" capable of recording video and oral communications under specified circumstances. The bill also establishes a Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers to study and make recommendations to PTC and the General Assembly, by October 1, 2015, regarding the best practices for the use of body cameras by a law enforcement officer. The bill specifies the membership and duties of the commission, which must be staffed by the Governor's Office of Crime Control and Prevention (GOCCP) and the Department of State Police (DSP).

The bill does not *mandate* the use of body-worn digital recording devices or electronic control devices by law enforcement agencies or law enforcement officers while on duty.

The bill terminates June 1, 2016.

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**Fiscal Summary**

**State Effect:** The bill's changes are not anticipated to significantly affect State finances, as discussed below.

**Local Effect:** The bill's changes are not anticipated to significantly affect local finances, as discussed below.

**Small Business Effect:** Minimal or none. Any future opportunities for small businesses in the State cannot be reliably estimated.

## Analysis

**Bill Summary:** Under the bill, the interception of an oral communication by a law enforcement officer is lawful if (1) the officer is in uniform or prominently displaying the officer's badge or other insignia; (2) the officer is making reasonable efforts to conform to standards for the use of either type of device capable of recording video and oral communications; (3) the officer is a party to the oral communication; (4) the officer notifies, as soon as practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so; and (5) the oral interception is being made as part of a videotape or digital recording.

The online policy developed and published by PTC pursuant to the bill must address:

- the testing of BWCs to ensure adequate functioning;
- the procedure for the law enforcement officer to follow if the camera fails to properly operate at the beginning of or during the officer's shift;
- when recording is mandatory, prohibited, or discretionary;
- when consent of the subject being recorded is required;
- when a recording may be ended;
- providing notice of a recording;
- notification requirements when another individual becomes a party to the communication following the initial notification;
- access to and confidentiality of recordings;
- the secure storage of data;
- review and use of recordings;
- retention of recordings;
- dissemination and release of recordings;
- consequences for violations of the agency's body-worn camera policy;
- specific protections for individuals when there is an expectation of privacy in private or public places; and
- any additional issues determined to be relevant in the implementation and use of BWCs by law enforcement officers.

Members of the Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers may not receive compensation, but may receive reimbursement for expenses under the standard State travel regulations.

A jurisdiction that starts a pilot program for the use of BWCs or electronic control devices before the issuance of the policy by PTC is exempt from specified State wiretap and electronic surveillance provisions for the duration of the pilot program. Upon the conclusion of such a pilot program, a jurisdiction's fully implemented program must conform to those provisions. A jurisdiction that has already established a program to use BWCs or electronic devices on or before the bill's effective date is not subject to those provisions until the issuance of the policy by PTC.

A "body-worn digital recording device" means a device worn on the person of a law enforcement officer that is capable of recording video and intercepting oral communications. An "electronic control device" means a portable device designed as a weapon capable of injuring, immobilizing, or inflicting pain on an individual by the discharge of electrical current.

**Current Law/Background:** In a 2014 report by the Police Executive Research Forum, [Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned](#), it was stated that any police department considering the use of body cameras must have well designed policies in place or public trust in the use of the cameras may be undermined. Another 2014 report underwritten by the U.S. Department of Justice, Office of Justice Programs (DOJ/OJP), *Police Officer Body-Worn Cameras: Assessing the Evidence*, concluded that:

There is little evidence regarding most of the perceived benefits and drawbacks of the technology. For example, little is known about citizen attitudes toward BWCs, most notably whether the technology increases trust, legitimacy, and transparency of the police. The potential for the technology to serve as a training tool for police is also largely unexplored. Moreover, the privacy implications of BWCs, for both citizens and police officers, are not clearly understood and may vary considerably as a result of differences in state law.

Simply put, there is not enough evidence to offer a definitive recommendation regarding the adoption of BWCs by police. Departments considering BWCs should proceed cautiously, consider the issues outlined in this review, and recognize that most of the claims made about the technology are untested.

These reports and others were cited in the December 2014 report to the chairs of the Senate Judicial Proceedings Committee and the House Judiciary Committee by GOCCP on the findings of the Workgroup on the Implementation and Use of Body Worn Cameras by Law Enforcement, which met during the 2014 interim. The workgroup found that, while such cameras have many potential benefits, their use also "raises some difficult issues for members of the public, government agencies, civil liberties advocates, and even the officers who wear the devices." However, despite the fact that GOCCP concluded that more



research should be done on this subject, GOCCP also found that the DOJ/OJP report cautions against drawing firm conclusions with respect to BWCs because available research is either limited or has design flaws. The workgroup concluded that BWCs have the potential to be useful tools for improving police/community relations, improving the criminal justice system, and modifying the behavior of both police and citizens. The full report of the workgroup can be found [here](#).

According to DSP, as of January 16, 2015, the following local law enforcement agencies in the State have already purchased and/or deployed BWCs for field use:

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the pilot program, including volunteers from all seven police districts in the city. Each officer is working with five different camera models over a six-month period and will provide written feedback on each camera model.

The Laurel Police Department has had an on-body camera program for nearly four years. The police chief calls the cameras “a huge success” and says complaints about his officers have dropped and training has improved. The cameras and related equipment, including data storage, in current use in the City of Laurel are the AXON flex units available through TASER International, Inc. The cost for each camera was about \$500. The City of Laurel has been outfitting its full patrol force at a rate of about 25% per year, with about 50% (25 officers) currently outfitted with an AXON unit. While the operational life of each camera is expected to be five years, the City of Laurel budgets for cameras on a three-year basis. The current three-year costs for each law enforcement body camera in Laurel is about \$2,000, which includes the camera, storage, and data uploading. The City of Laurel has an annual contract for data storage in the amount of \$1,050 for up to 300 gigabytes of storage. Laurel officers patrol on 10-hour shifts and download the data from each camera at the end of each shift, a process that takes about 30 minutes. Stored data is maintained for a period of six months, unless known to be needed for a criminal trial or related matters. The Laurel video units do record audio.

#### *National and International Developments*

According to the National Conference of State Legislatures, several states have introduced legislation in 2015 regarding BWCs for police officers.

Police in London, England began using BWCs on police officers in May 2014. Recent announcements of the use of BWCs by law enforcement officers in major U.S. cities have included the following notices:

- New York City – 54 officers in six precincts will begin wearing the cameras as a pilot program;
- Los Angeles – the city will purchase 7,000 cameras for police officers to wear while on patrol;
- Philadelphia – launched a pilot body-camera program in which more than two dozen officers will wear the cameras while on duty for six months; and
- Chicago – the city police department will begin testing BWCs on officers in early 2015 as part of a pilot project.

In addition, law enforcement officers in Cleveland, Ohio began wearing BWCs as part of a program to outfit city officers with the devices in February 2015. Cleveland spent \$2.4 million to outfit nearly all of the city’s 1,510 officers with BWCs. The recordings

will be maintained on an evidence collection website and will be subject to open public records requests in Ohio.

The U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ), produced *A Primer on Body-Worn Cameras for Law Enforcement* in September 2012, which stated that a BWC can be attached to various body areas, including the head (by helmet, glasses, or other means) or to the body (by pocket, badge, or other means). A BWC has the capability to record officer interactions that previously could only be captured by in-car or interrogation room camera systems.

NIJ also states that there are many specification issues to consider before purchasing a camera system. The system requirements and trade-offs are dependent on the intended use, budget, unit cost, interoperability, operating environment, and other factors. According to NIJ, specifications to consider include battery life, video quality, recording limits, night recording capabilities, camera focal width, camera placement, and radio integration capability. NIJ also includes audio recording capabilities under specifications to consider.

#### *Maryland Wiretapping and Electronic Surveillance Act (Wiretap Act)*

Under Maryland's Wiretap Act, it is unlawful to willfully intercept any wire, oral, or electronic communication. Under the Act, "intercept" is defined, in part, as "the... acquisition of the contents of any... oral communication through the use of any... device." Therefore, the Wiretap Act does not regulate a video recording that does not contain an audio component. The statute does authorize the interception of an oral communication if all participants have given prior consent (sometimes called "two-party consent"). Maryland is 1 of 12 two-party consent states, most of which spell out clearly that the consent is required only in circumstances where there is a "reasonable expectation of privacy."

The Act does provide specified exceptions, including one for a law enforcement officer who intercepts an oral communication in the regular course of the officer's duty, so long as the officer (1) initially lawfully detained a vehicle during a criminal investigation or for a traffic violation; (2) is a party to the oral communication; (3) has been identified as a law enforcement officer to the other parties to the communication prior to any interception; (4) informs all other parties to the communication of the interception at the beginning of the communication; and (5) makes the interception as part of a videotape recording.

Each interception in violation of the Wiretap Act may be prosecuted as a felony, punishable by up to five years imprisonment, and/or a \$10,000 fine. A person who is the victim of a violation of the Wiretap Act has a civil cause of action against the wiretapper for damages, attorney's fees, and litigation costs.

**State Fiscal Effect:** PTC can develop and publish a policy for the issuance and use of BWCs with existing budgeted resources. Any expense reimbursements for commission members and staffing costs for GOCCP and DSP are assumed to be minimal and absorbable within existing budgeted resources. The bill's exceptions to wiretapping and electronic surveillance provisions are not expected to have a significant operational or fiscal impact on the courts or State law enforcement agencies.

The bill does not *require* the use of body-worn digital recording devices or electronic control devices by State law enforcement officers. It is assumed that no State agency would put such a program in place without the operational and financial wherewithal to do so. It is assumed that the bill may lend itself to greater operational efficiencies for State law enforcement units employing such devices. The extent to which such efficiencies may lead to greater numbers of arrests or prosecutions cannot be reliably predicted.

**Local Fiscal Effect:** The bill's exceptions to wiretapping and electronic surveillance provisions are not expected to have a significant operational or fiscal impact local law enforcement agencies.

The bill does not *require* the use of body-worn digital recording devices or electronic control devices by local law enforcement officers. It is assumed that no local jurisdiction would put such a program in place without the operational and financial wherewithal to do so. It is assumed that the bill may lend itself to greater operational efficiencies for local law enforcement units employing such devices. The extent to which such efficiencies may lead to greater numbers of arrests or prosecutions cannot be reliably predicted.

It is also assumed that any local jurisdictions that already use such body-worn devices, such as the City of Laurel, can make any required changes to conform their programs to PTC policies with existing local resources.

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### Additional Information

**Prior Introductions:** None..

**Cross File:** SB 628 (Senator Klausmeier) - Judicial Proceedings.

**Information Source(s):** Calvert, Howard, and Montgomery counties; cities of Bowie, Laurel, and Takoma Park; Governor's Office of Crime Control and Prevention; Department of Natural Resources; Department of General Services; Judiciary (Administrative Office of the Courts); Department of State Police; Maryland Department of Transportation; Morgan State University; National Conference of State Legislatures; U.S. Department of Justice; BBC News; *New York Times*; cleveland.com; Huffington Post; Reuters; Department of Legislative Services

HB 533/ Page 7

**Fiscal Note History:** First Reader - February 24, 2015  
min/lgc Revised - House Third Reader/Updated Information –  
March 24, 2015  
Revised - Enrolled Bill - April 28, 2015

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## SENATE BILL 482

E4, D3, E2

EMERGENCY BILL

5lr0978

CF HB 627

By: Senators Ramirez, Madaleno, Montgomery, Raskin, and Waugh ~~Zirkin, Gladden, and Muse~~ Muse, and Klausmeier

Introduced and read first time: February 6, 2015

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: April 4, 2015

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Public Safety – Law Enforcement Officers – Body-Worn Cameras** Digital  
 3 Recording Device and Electronic Control Device

4 FOR the purpose of ~~requiring a law enforcement officer to activate both the audio and visual~~  
 5 ~~recording capabilities of a body worn camera under certain circumstances; requiring~~  
 6 ~~a certain camera, once activated, to continue recording until a certain event;~~  
 7 ~~providing that a law enforcement officer may not use a certain camera to record an~~  
 8 ~~individual engaged in certain activities, with a certain exception; providing that a~~  
 9 ~~recording made under certain circumstances may not be used to identify certain~~  
 10 ~~persons; requiring a certain law enforcement officer to provide a certain notice to the~~  
 11 ~~subject of a certain recording; providing certain requirements for recording on~~  
 12 ~~private property under certain circumstances; providing for requests to turn the~~  
 13 ~~camera off under certain circumstances; requiring a certain law enforcement agency~~  
 14 ~~to establish certain policies; limiting the use or review of certain recordings for~~  
 15 ~~certain purposes; requiring a certain log to be maintained and updated under certain~~  
 16 ~~circumstances; requiring an unedited copy of a certain recording to be maintained;~~  
 17 ~~providing that the subject of a certain recording is a certain person in interest;~~  
 18 ~~providing that it is lawful under a certain provision of law for a law enforcement~~  
 19 ~~officer to intercept a certain oral communication; providing for the application of this~~  
 20 ~~Act; and generally relating to law enforcement officers and body worn cameras~~  
 21 establishing that it is lawful under a certain provision of law for a law enforcement  
 22 officer to intercept a certain oral communication with a certain device under certain  
 23 circumstances; requiring the Maryland Police Training Commission to develop and  
 24 publish a certain policy; establishing the Commission Regarding the Implementation

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



and Use of Body Cameras by Law Enforcement Officers; providing for the composition, chair, and staffing of the Commission; prohibiting a member of the Commission from receiving certain compensation, but authorizing the reimbursement of certain expenses; requiring the Commission to study and make recommendations regarding the use of body cameras by a law enforcement officer; requiring the Commission to report its findings and recommendations to the Maryland Police Training Commission and the General Assembly on or before a certain date; providing that a certain jurisdiction is not subject to certain provisions of law for a certain period under certain circumstances; making this Act an emergency measure; providing for the termination of a certain provision of this Act; defining certain terms; and generally relating to the interception of oral communications.

~~BY adding to~~

~~Article – Public Safety~~

~~Section 3–510~~

~~Annotated Code of Maryland~~

~~(2011 Replacement Volume and 2014 Supplement)~~

BY adding to

Article – Courts and Judicial Proceedings

Section 10–402(c)(11)

Annotated Code of Maryland

(2013 Replacement Volume and 2014 Supplement)

BY adding to

Article – Public Safety

Section 3–510

Annotated Code of Maryland

(2011 Replacement Volume and 2014 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
That the Laws of Maryland read as follows:

**Article – Courts and Judicial Proceedings**

10–402.

**(c) (11) (i) 1. IN THIS PARAGRAPH THE FOLLOWING WORDS HAVE  
THE MEANINGS INDICATED.**

**2. “BODY–WORN DIGITAL RECORDING DEVICE” MEANS A  
DEVICE WORN ON THE PERSON OF A LAW ENFORCEMENT OFFICER THAT IS CAPABLE  
OF RECORDING VIDEO AND INTERCEPTING ORAL COMMUNICATIONS.**

1                               3.     “ELECTRONIC CONTROL DEVICE” HAS THE MEANING  
2 STATED IN § 4-109 OF THE CRIMINAL LAW ARTICLE.

3                               (ii) IT IS LAWFUL UNDER THIS SUBTITLE FOR A LAW  
4 ENFORCEMENT OFFICER IN THE COURSE OF THE OFFICER’S REGULAR DUTY TO  
5 INTERCEPT AN ORAL COMMUNICATION WITH A BODY-WORN DIGITAL RECORDING  
6 DEVICE OR AN ELECTRONIC CONTROL DEVICE CAPABLE OF RECORDING VIDEO AND  
7 ORAL COMMUNICATIONS IF:

8                               1.     THE LAW ENFORCEMENT OFFICER IS IN UNIFORM OR  
9 PROMINENTLY DISPLAYING THE OFFICER’S BADGE OR OTHER INSIGNIA;

10                              2.     THE LAW ENFORCEMENT OFFICER IS ~~CONFORMING~~  
11 MAKING REASONABLE EFFORTS TO CONFORM TO STANDARDS IN ACCORDANCE WITH  
12 § 3-510 OF THE PUBLIC SAFETY ARTICLE FOR THE USE OF BODY-WORN DIGITAL  
13 RECORDING DEVICES OR ELECTRONIC CONTROL DEVICES CAPABLE OF RECORDING  
14 VIDEO AND ORAL COMMUNICATIONS;

15                              3.     THE LAW ENFORCEMENT OFFICER IS A PARTY TO THE  
16 ORAL COMMUNICATION;

17                              4.     LAW ENFORCEMENT NOTIFIES, AS SOON AS IS  
18 PRACTICABLE, THE INDIVIDUAL THAT THE INDIVIDUAL IS BEING RECORDED,  
19 UNLESS IT IS UNSAFE, IMPRACTICAL, OR IMPOSSIBLE TO DO SO; AND

20                              5.     THE ORAL INTERCEPTION IS BEING MADE AS PART OF  
21 A VIDEOTAPE OR DIGITAL RECORDING.

22                                               Article – Public Safety

23     3-510.

24                              ~~(A) THIS SECTION APPLIES TO A LAW ENFORCEMENT OFFICER WHO IS~~  
25 ~~PROVIDED WITH A BODY-WORN CAMERA TO WEAR WHILE ON DUTY.~~

26                              ~~(B) (1) A LAW ENFORCEMENT OFFICER SHALL ACTIVATE BOTH THE~~  
27 ~~AUDIO AND VISUAL RECORDING CAPABILITIES OF A BODY-WORN CAMERA WHEN THE~~  
28 ~~LAW ENFORCEMENT OFFICER IS RESPONDING TO A CALL FOR SERVICE OR AT THE~~  
29 ~~INITIATION OF A LAW ENFORCEMENT OR INVESTIGATIVE ENCOUNTER BETWEEN THE~~  
30 ~~LAW ENFORCEMENT OFFICER AND A MEMBER OF THE PUBLIC.~~

31                              ~~(2) SUBJECT TO SUBSECTION (D) OF THIS SECTION, ONCE~~  
32 ~~ACTIVATED, A BODY-WORN CAMERA SHALL CONTINUE RECORDING UNTIL:~~

~~(I) THE CONCLUSION OF THE ENCOUNTER;~~

~~(II) THE LAW ENFORCEMENT OFFICER HAS LEFT THE SCENE; OR~~

~~(III) A SUPERVISOR, ON CAMERA, HAS AUTHORIZED THE  
RECORDING TO CEASE.~~

~~(C) (1) A LAW ENFORCEMENT OFFICER MAY NOT USE A BODY WORN  
CAMERA TO RECORD AN INDIVIDUAL ENGAGED IN A CONSTITUTIONALLY  
PROTECTED ACTIVITY, INCLUDING A DEMONSTRATION, A PROTEST, OR AN  
ATTENDANCE AT A RELIGIOUS FUNCTION, MEETING, OR SIMILAR ACTIVITY, UNLESS  
THE LAW ENFORCEMENT OFFICER HAS A REASONABLE SUSPICION THAT A CRIMINAL  
ACTIVITY IS OCCURRING.~~

~~(2) A VIDEO TAKEN OF A CONSTITUTIONALLY PROTECTED ACTIVITY  
UNDER THIS SUBSECTION MAY NOT BE USED TO IDENTIFY PERSONS PRESENT AT  
THE ACTIVITY WHO ARE NOT SUSPECTED OF BEING ENGAGED IN ILLEGAL ACTIVITY.~~

~~(D) (1) A LAW ENFORCEMENT OFFICER WEARING A BODY WORN CAMERA  
SHALL NOTIFY A SUBJECT OF A RECORDING THAT THE SUBJECT IS BEING RECORDED  
AS CLOSE TO THE INCEPTION OF THE ENCOUNTER AS REASONABLY POSSIBLE.~~

~~(2) (I) WHEN A LAW ENFORCEMENT OFFICER WEARING A  
BODY WORN CAMERA ENTERS ON PRIVATE PROPERTY WITHOUT A WARRANT OR IN  
A NONEMERGENCY SITUATION, THE LAW ENFORCEMENT OFFICER SHALL NOTIFY  
ALL PERSONS PRESENT THAT A CAMERA IS RECORDING AND PROVIDE ANY PERSON  
PRESENT THE OPTION TO REQUEST THE CAMERA BE TURNED OFF.~~

~~(II) IF A REQUEST DESCRIBED IN SUBPARAGRAPH (I) OF THIS  
PARAGRAPH IS MADE, THE LAW ENFORCEMENT OFFICER SHALL RECORD THE  
REQUEST ON VIDEO BEFORE THE BODY WORN CAMERA IS TURNED OFF.~~

~~(III) IN THE EVENT OF CONTRADICTING REQUESTS FROM MORE  
THAN ONE PERSON DURING AN ENCOUNTER, THE LAW ENFORCEMENT OFFICER  
SHALL RECORD THE CONTRADICTING REQUESTS AND CONTINUE RECORDING,  
UNLESS AND UNTIL THE PERSONS MAKING THE REQUESTS CAN BE SEPARATED.~~

~~(3) (I) WHEN A LAW ENFORCEMENT OFFICER WITH A  
BODY WORN CAMERA BEGINS AN ENCOUNTER WITH A PERSON WHO REPORTS A  
CRIME, PROVIDES INFORMATION REGARDING A CRIME OR AN ONGOING POLICE  
INVESTIGATION, CLAIMS TO BE THE VICTIM OF A CRIME, OR REQUESTS TO SPEAK  
WITH THE OFFICER, AND THE PERSON IS FREE TO END THE ENCOUNTER, THE  
OFFICER IMMEDIATELY SHALL PROVIDE NOTICE THAT THE BODY WORN CAMERA IS~~

## SENATE BILL 482

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~~RECORDING AND PROVIDE THE PERSON WITH THE OPTION TO HAVE THE CAMERA  
TURNED OFF.~~

~~(H) A LAW ENFORCEMENT OFFICER SHALL RECORD A REQUEST  
TO TURN OFF THE BODY WORN CAMERA BEFORE THE CAMERA IS TURNED OFF.~~

~~(E) A LAW ENFORCEMENT AGENCY THAT ISSUES A BODY WORN CAMERA TO  
A LAW ENFORCEMENT OFFICER SHALL ESTABLISH A POLICY RELATING TO THE USE  
OF BODY WORN CAMERAS, INCLUDING:~~

~~(1) THE TESTING OF BODY WORN CAMERAS TO ENSURE ADEQUATE  
FUNCTIONING; AND~~

~~(2) THE PROCEDURE FOR THE LAW ENFORCEMENT OFFICER IF THE  
CAMERA FAILS TO PROPERLY OPERATE AT THE BEGINNING OF OR DURING THE LAW  
ENFORCEMENT OFFICER'S SHIFT.~~

~~(F) USE OR REVIEW OF A RECORDING MADE UNDER THIS SECTION IS  
ALLOWED ONLY:~~

~~(1) FOR A LAW ENFORCEMENT AGENCY'S INTERNAL AND EXTERNAL  
INVESTIGATIONS OF MISCONDUCT;~~

~~(2) FOR A LAW ENFORCEMENT AGENCY'S INTERNAL AUDITING,  
SUPERVISION, OR TRAINING PURPOSES;~~

~~(3) IN THE EVENT THE LAW ENFORCEMENT AGENCY HAS  
REASONABLE SUSPICION THAT THE RECORDING CONTAINS EVIDENCE OF A CRIME;~~

~~(4) IN THE INVESTIGATION, PROSECUTION, OR DEFENSE OF  
CRIMINAL OR CIVIL ACTIONS;~~

~~(5) IN RESPONSE TO PUBLIC RECORDS REQUESTS; OR~~

~~(6) FOR EXTERNAL AUDITING.~~

~~(G) THE STORED VIDEO AND AUDIO DATA FROM A BODY WORN CAMERA  
MAY NOT, IN WHOLE OR IN PART:~~

~~(1) BE USED TO CREATE A DATABASE OR POOL OF MUG SHOTS;~~

~~(2) BE USED IN PHOTO ARRAYS; OR~~



~~(3) BE OTHERWISE SEARCHED USING FACIAL OR VOICE RECOGNITION SOFTWARE.~~

~~(H) (1) IF A LAW ENFORCEMENT OFFICER REVIEWS A RECORDING BEFORE THE LAW ENFORCEMENT OFFICER WRITES A STATEMENT ABOUT THE ENCOUNTER THAT WAS RECORDED, THE LAW ENFORCEMENT OFFICER SHALL NOTE THE FACT THAT THE RECORDING WAS REVIEWED IN THE WRITTEN STATEMENT.~~

~~(2) (I) A LOG OF ALL ACTIVITY RELATING TO EACH RECORDING MADE UNDER THIS SECTION SHALL BE MAINTAINED.~~

~~(H) EVERY TIME A RECORDING UNDER THIS SECTION IS VIEWED, COPIED, DELETED, OR EDITED, THE INDIVIDUAL ACCESSING THE RECORDING SHALL LOG THE IDENTITY OF THE PERSON ACCESSING THE VIDEO, WHAT WAS DONE, AND WHEN.~~

~~(HH) IN THE EVENT A RECORDING MADE UNDER THIS SECTION IS EDITED, AN UNEDITED COPY OF THE RECORDING SHALL BE MAINTAINED.~~

~~(I) THE SUBJECT OF A RECORDING UNDER THIS SECTION IS A PERSON IN INTEREST WITH RESPECT TO THE RECORDING UNDER § 4-351 OF THE GENERAL PROVISIONS ARTICLE.~~

ON OR BEFORE JANUARY 1, 2016, THE MARYLAND POLICE TRAINING COMMISSION SHALL DEVELOP AND PUBLISH ONLINE A POLICY FOR THE ISSUANCE AND USE OF A BODY-WORN CAMERA BY A LAW ENFORCEMENT OFFICER THAT ADDRESSES:

(1) THE TESTING OF BODY-WORN CAMERAS TO ENSURE ADEQUATE FUNCTIONING;

(2) THE PROCEDURE FOR THE LAW ENFORCEMENT OFFICER TO FOLLOW IF THE CAMERA FAILS TO PROPERLY OPERATE AT THE BEGINNING OF OR DURING THE LAW ENFORCEMENT OFFICER'S SHIFT;

(3) WHEN RECORDING IS MANDATORY;

(4) WHEN RECORDING IS PROHIBITED;

(5) WHEN RECORDING IS DISCRETIONARY;

(6) WHEN RECORDING MAY REQUIRE CONSENT OF A SUBJECT BEING RECORDED;

## SENATE BILL 482

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(7) WHEN A RECORDING MAY BE ENDED;

(8) PROVIDING NOTICE OF RECORDING;

(9) ACCESS TO AND CONFIDENTIALITY OF RECORDINGS;

(10) THE SECURE STORAGE OF DATA FROM A BODY-WORN CAMERA;

(11) REVIEW AND USE OF RECORDINGS;

(12) RETENTION OF RECORDINGS;

(13) DISSEMINATION AND RELEASE OF RECORDINGS;

(14) CONSEQUENCES FOR VIOLATIONS OF THE AGENCY'S BODY-WORN  
CAMERA POLICY;

(15) NOTIFICATION REQUIREMENTS WHEN ANOTHER INDIVIDUAL  
BECOMES A PARTY TO THE COMMUNICATION FOLLOWING THE INITIAL  
NOTIFICATION;

(16) SPECIFIC PROTECTIONS FOR INDIVIDUALS WHEN THERE IS AN  
EXPECTATION OF PRIVACY IN PRIVATE OR PUBLIC PLACES; AND

(17) ANY ADDITIONAL ISSUES DETERMINED TO BE RELEVANT IN THE  
IMPLEMENTATION AND USE OF BODY-WORN CAMERAS BY LAW ENFORCEMENT  
OFFICERS.

~~Article — Courts and Judicial Proceedings~~

~~10-402.~~

~~(c) (11) IT IS LAWFUL UNDER THIS SUBTITLE FOR A LAW ENFORCEMENT  
OFFICER IN THE COURSE OF THE OFFICER'S REGULAR DUTY TO INTERCEPT AN ORAL  
COMMUNICATION IN ACCORDANCE WITH § 3-510 OF THE PUBLIC SAFETY ARTICLE.~~

~~SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to  
apply only prospectively and may not be applied or interpreted to have any effect on or  
application to any recording made before the effective date of this Act.~~

~~SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
October 1, 2015.~~

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) There is a Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers.

(b) The Commission consists of the following members:

(1) one member of the Senate of Maryland, appointed by the President of the Senate;

(2) one member of the House of Delegates, appointed by the Speaker of the House;

(3) the Secretary of State Police or the Secretary's designee;

(4) the Attorney General or the Attorney General's designee;

(5) the Public Defender or the Public Defender's designee;

(6) one representative of the Governor's Office of Crime Control and Prevention;

(7) one representative of the Maryland Fraternal Order of Police;

(8) one representative from each of the five major local law enforcement agencies in the State, as determined and appointed by the Governor;

(9) one representative of a law enforcement agency that currently utilizes body cameras to record law enforcement officer activities, as appointed by the chair of the Commission;

(10) one representative of the American Civil Liberties Union;

(11) one representative of the National Association for the Advancement of Colored People;

(12) one representative of the Maryland Sheriff's Association;

(13) three representatives of the general public, appointed by the Governor;  
~~and~~

(14) two experts in any field deemed relevant for the purpose of the Commission, as determined and appointed by the chair of the Commission; and

(15) one representative of the Maryland Chiefs of Police Association; and

(16) one representative of CASA de Maryland.

## SENATE BILL 482

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1       (c)     The Governor shall appoint a chair of the Commission from among its  
2 members.

3       (d)     The Governor's Office of Crime Control and Prevention and the Department  
4 of State Police shall provide staff for the Commission.

5       (e)     A member of the Commission:

6             (1)     may not receive compensation as a member of the Commission; but

7             (2)     is entitled to reimbursement for expenses under the Standard State  
8 Travel Regulations, as provided in the State budget.

9       (f)     The Commission shall study and make recommendations regarding the best  
10 practices for the use of body cameras by a law enforcement officer.

11       (g)     On or before October 1, 2015, the Commission shall report its findings and  
12 recommendations to the Maryland Police Training Commission and, in accordance with §  
13 2-1246 of the State Government Article, the General Assembly.

14       SECTION 3. AND BE IT FURTHER ENACTED, That:

15             (1)     A jurisdiction that commences a pilot program for the use of body-worn  
16 cameras or electronic control devices before the issuance of a policy established in  
17 accordance with § 3-510 of the Public Safety Article is not subject to § 10-402(c)(11)(ii)2 of  
18 the Courts and Judicial Proceedings Article for the duration of the pilot program.

19             (2)     On the conclusion of a pilot program described in this section, a  
20 jurisdiction's fully implemented program shall conform to § 10-402(c)(11)(ii)2 of the Courts  
21 and Judicial Proceedings Article.

22       SECTION 4. AND BE IT FURTHER ENACTED, That a jurisdiction that has  
23 established a program to use body-worn cameras or electronic devices on or before the date  
24 this Act becomes effective is not subject to § 10-402(c)(11)(ii)2 of the Courts and Judicial  
25 Proceedings Article until a policy is issued in accordance with § 3-510 of the Public Safety  
26 Article.

27       SECTION ~~3~~ 5. AND BE IT FURTHER ENACTED, That this Act is an emergency  
28 measure, is necessary for the immediate preservation of the public health or safety, has  
29 been passed by a yea and nay vote supported by three-fifths of all the members elected to  
30 each of the two Houses of the General Assembly, and shall take effect from the date it is  
31 enacted. Section 2 of this Act shall remain effective through June 1, 2016, and, at the end  
32 of June 1, 2016, with no further action required by the General Assembly, Section 2 of this  
33 Act shall be abrogated and of no further force and effect.

## SB 628

**Department of Legislative Services**  
Maryland General Assembly  
2015 Session

**FISCAL AND POLICY NOTE**

Senate Bill 628

(Senator Klausmeier)

Judicial Proceedings

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**Wiretapping and Electronic Surveillance - Body-Worn Digital Recording Device  
and Electronic Control Device - Exception**

---

This bill make it lawful for a law enforcement officer in the course of the officer's regular duty to intercept an oral communication with a "body-worn digital recording device" or an "electronic control device" capable of recording video and oral communications if (1) the officer is a party to the oral communication; (2) the officer, if reasonable under the circumstances, has been identified as a law enforcement officer to the other parties to the oral communication before the oral interception; and (3) the oral interception is being made as part of a videotape or digital recording.

---

**Fiscal Summary**

**State Effect:** Minimal. The bill's exceptions to wiretapping and electronic surveillance provisions are not expected to have a significant operational or fiscal impact on the courts. It is assumed that the bill may lend itself to greater operational efficiencies for State law enforcement units employing body-worn digital recording devices or electronic control devices. The extent to which such efficiencies may lead to greater numbers of arrests or prosecutions cannot be reliably predicted.

**Local Effect:** Minimal. It is assumed that the bill may lend itself to greater operational efficiencies for local law enforcement units employing body-worn digital recording devices or electronic control devices. The extent to which such efficiencies may lead to greater numbers of arrests or prosecutions cannot be reliably predicted.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** “Body-worn digital recording device” means a device worn on the person of a law enforcement officer that is capable of recording video and intercepting oral communications.

“Electronic control device” means a portable device designed as a weapon capable of injuring, immobilizing, or inflicting pain on an individual by the discharge of electrical current.

### Current Law/Background:

#### *Wiretapping*

Under The Maryland Wiretapping and Electronic Surveillance Act (Wiretap Act), it is unlawful to willfully intercept any wire, oral, or electronic communication. Under the Act, “intercept” is defined, in part, as “the... acquisition of the contents of any... oral communication through the use of any... device.” Therefore, the Wiretap Act does not regulate a video recording that does not contain an audio component. The statute does authorize the interception of an oral communication if all participants have given prior consent (sometimes called “two-party consent”). Maryland is 1 of 12 two-party consent states, most of which spell out clearly that the consent is required only in circumstances where there is a “reasonable expectation of privacy.”

The Act does provide specified exceptions, including one for a law enforcement officer who intercepts an oral communication in the regular course of the officer’s duty, so long as the officer (1) initially lawfully detained a vehicle during a criminal investigation or for a traffic violation; (2) is a party to the oral communication; (3) has been identified as a law enforcement officer to the other parties to the communication prior to any interception; (4) informs all other parties to the communication of the interception at the beginning of the communication; and (5) makes the interception as part of a videotape recording.

Each interception in violation of the Wiretap Act may be prosecuted as a felony, punishable by up to five years imprisonment, and/or a \$10,000 fine. A person who is the victim of a violation of the Wiretap Act has a civil cause of action against the wiretapper for damages, attorney’s fees, and litigation costs.

#### *Electronic Control Devices*

The Police Training Commission (PTC) requires, for entrance-level police training and annually for in-service level police conducted by the State and each county and municipal police training school, that the curriculum and minimum courses of study include special

training in the proper use of electronic control devices for specified police officers, consistent with established law enforcement standards and constitutional provisions. Training for the certification of law enforcement officers in the State may be conducted at PTC facilities or at any of 20 police training academies in the State certified by PTC. There are approximately 16,000 certified police officers in Maryland.

### *Use of Body-worn Cameras*

In December 2014, the Baltimore City Council voted to require body cameras for all city police officers. However, the Mayor vetoed the bill and awaits recommendations from a mayoral task force that will address issues of cost and privacy. The Baltimore City Police Commissioner has publically advocated a limited pilot program.

According to the Department of State Police, as of January 16, 2015, the following local law enforcement agencies in the State have already purchased and/or deployed body-worn cameras for field use:

- Berwyn Heights Police Department;
- Cambridge Police Department;
- Capital Heights Police Department;
- Cheverly Police Department;
- Cottage City Police Department;
- Denton Police Department;
- Federalsburg Police Department;
- Forest Heights Police Department (pilot program);
- Fruitland Police Department;
- Harford County Sheriff's Office (field testing four cameras);
- Hurlock Police Department;
- Hyattsville Police Department;
- Laurel Police Department;
- Mount Rainier Police Department;
- Pokomoke City Police Department;
- Princess Anne Police Department;
- Rising Sun Police Department (one camera);
- Snow Hill Police Department;
- Upper Marlboro Police Department (pilot, testing);

Additional police agencies are considering the purchase and deployment of such equipment.

The Laurel Police Department has had an on-body camera program for nearly four years. The police chief calls the cameras “a huge success” and says complaints about his officers have dropped and training has improved. In October 2014, the Metropolitan Police Department in Washington, DC, began a pilot program testing the use of body cameras on police officers. A total of 165 officers participate in the pilot program, including volunteers from all seven police districts in the city. Each officer is working with five different camera models over a six-month period and will provide written feedback on each camera model.

According to the National Conference of State Legislatures, several states have introduced legislation in 2015 regarding body-worn cameras for police officers.

Police in London, England began using body-worn cameras on police officers in May 2014. Recent announcements of the use of body-worn cameras by law enforcement officers in major U.S. cities have included the following notices:

- New York City – 54 officers in six precincts will begin wearing the cameras as a pilot program;
- Los Angeles – the city will purchase 7,000 cameras for police officers to wear while on patrol;
- Philadelphia – launched a pilot body camera program in which more than two dozen officers will wear the cameras while on duty for six months; and
- Chicago – the city police department will begin testing body cameras on officers in early 2015 as part of a pilot project.

In addition, law enforcement officers in Cleveland, Ohio began wearing body cameras as part of a program to outfit city officers with the devices in February 2015. Cleveland spent \$2.4 million to outfit nearly all of the city’s 1,510 officers with body-worn cameras. The recordings will be maintained on an evidence collection website and will be subject to open public records requests in Ohio.

The U.S. Department of Justice, Office of Justice Programs, National Institute of Justice, produced *A Primer on Body-Worn Cameras for Law Enforcement* in September 2012. The report states that body-worn cameras can be attached to various body areas, including the head (by helmet, glasses, or other means) or to the body (by pocket, badge, or other means). The cameras have the capability to record officer interactions that previously could only be captured by in-car or interrogation room camera systems.

---

### Additional Information

**Prior Introductions:** None.

**Cross File:** HB 533 (Delegate Sydnor, *et al.*) - Judiciary.

**Information Source(s):** Governor's Office of Crime Control and Prevention, Judiciary (Administrative Office of the Courts), Department of State Police, City of Laurel, National Conference of State Legislatures, U.S. Department of Justice, BBC News, *New York Times*, Cleveland.com, Huffington Post, Reuters, Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2015  
min/lgc

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Analysis by: Guy G. Cherry

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Larry Hogan  
*Governor*

Boyd K. Rutherford  
*Lt. Governor*

Christopher B. Shank  
*Executive Director*

## STATE OF MARYLAND

### Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers Frederic N. Smalkin, Chairman

September 16, 2015

The Honorable Thomas V. Mike Miller, President of the Maryland Senate  
 State House, H-107  
 Annapolis, MD 21401 – 1991

The Honorable Michael Erin Busch, Speaker of the Maryland House of Delegates  
 State House, H-101  
 Annapolis, MD 21401 – 1991

Colonel William M. Pallozzi, Chairman  
 Maryland Police Training Commission  
 6852 4th Street  
 Sykesville, MD 21784

Gentlemen:

I have the honor of forwarding hereby, in accordance with Section 2(g) of Chapters 128 and 129 (2015 Session), the Final Report of this Commission.

All of the Findings as to Best Practices were agreed upon by a majority of voting Commissioners after review of a substantial amount of written material and after a public meeting with discussion and debate over numerous alternatives. The Recommendation to the General Assembly is endorsed by a substantial majority of the Commissioners.

I would be remiss if I did not note the extraordinary staff assistance I have received as Chairman of this Commission from the Governor's Office of Crime Control and Prevention, especially from Donald Hogan, Esq., and Ms. Rachel Kesselman. I would be remiss if I were not also to note the diligence with which all the Commissioners approached and carried out their duties as such. The time was short and the issues were important, and both Staff and Commissioners cooperated in producing a final product that will, I trust, be of assistance to law enforcement agencies across the State as they formulate policies for the use of the new technology which we have studied.

Very respectfully,

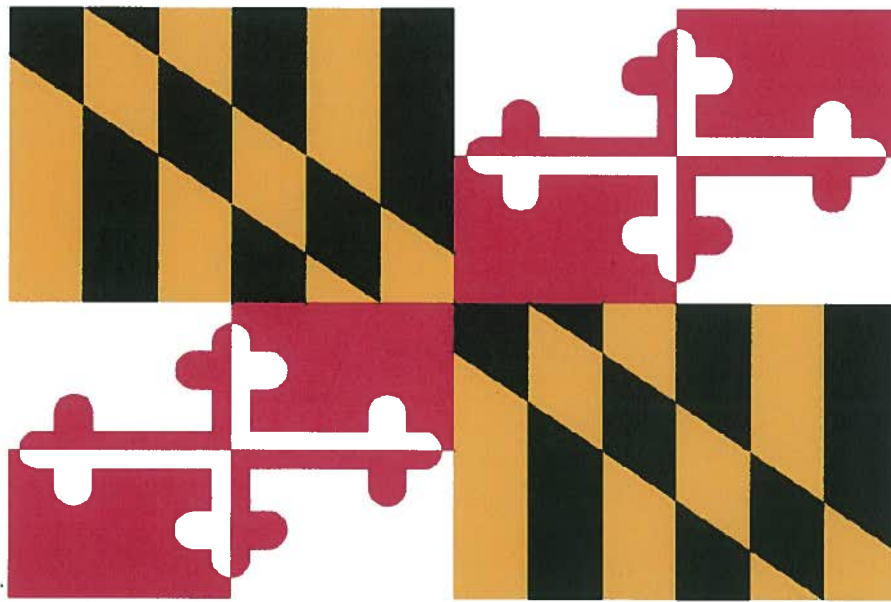
*Original 151*

Frederick N. Smalkin

cc: Governor Larry Hogan  
 Encl.



# **Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers**



***Final Report, Including Findings as to Best Practices and a  
Recommendation to the General Assembly  
September 16, 2015***

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## **ACKNOWLEDGEMENTS**

This Report of The *Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers* is the result of hard work, valuable input, and dedication from numerous individuals. State and local law enforcement representatives, legislators, community advocates, a victim's rights' representative, and state and local governmental representatives were exceptionally generous with their time and supportive feedback. Their participation in the Initial Meeting on August 4, 2015, and the Decision Meeting on September 1, 2015, as well as their feedback, suggestions, and recommendations were invaluable for the *Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers Final Report*. The completion, timeliness, and comprehensiveness of this Report would not have been possible without their active participation and support.

## **ROSTER OF COMMISSIONERS**

The Commission was composed of 23 members, including state and local law enforcement representatives, two legislators, community advocates, a victim's rights' representative, and state and local governmental representatives, and a Chairman appointed by Governor Hogan.

**Carlos F. Acosta, Esq.**

Prince George's County Police Department

**Captain Ross R. Passman**

Anne Arundel County Police Department

**Russell Butler, Esq.**

Maryland Crime Victims' Resource Center, Inc.

**Victor Ramirez**

Maryland State Senate

**Mr. Vincent Canales, President**

Maryland State Fraternal Order of Police

**David Rocah, Esq.**

ACLU of Maryland

**Paul DeWolfe, Jr., Esq.**

Office of Public Defender

**Stephanie J. Robinson, Esq.**

Mayor's Office of Public Safety

**Chief John M. Fitzgerald**

Village of Chevy Chase Police Department

**Frederic N. Smalkin**

Chairman

**Secretary David Garcia**

Department of Information Technology

**J. Charles Smith, III, Esq.**

Frederick County State's Attorney

**Phillip Hinkle, Esq.**

Charles County Sheriff's Office

**Mr. Gerald Stansbury, President**

Maryland Conference NAACP

**Chief Douglas Holland**

Hyattsville Police Department

**Delegate Charles E. Sydnor**

House of Delegates

**Zenita Hurley, Esq.**

Office of Attorney General

**Captain Michael Wahl**

Montgomery County Police Department

**Nicole Jassie, Esq.**

CASA de Maryland

**Major Mark Warren**

Baltimore County Police Department

**Colonel William Pallozzi**

Maryland State Police

**Council President Bernard C. "Jack" Young**

Baltimore City Council

**Mr. Edward Parker**

Governor's Office of Crime Control &  
Prevention

## **BACKGROUND**

Preface: Chapters 128 and 129 (2015), *Public Safety – Law Enforcement Officers – Body-Worn Digital Recording Device and Electronic Control Device*, established the **Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers (Commission)**. Under the provisions of these emergency Acts, the Commission was directed to study and make findings and recommendations as to best practices regarding the use of body cameras by law enforcement officers and to report its findings and recommendations to the Maryland Police Training Commission and the General Assembly by October 1, 2015.

Because the Commission was required to report its findings and recommendations within a very short period of time, several model policies were examined and compared to identify similarities and differences.<sup>1</sup> To assist the Commission in meeting its goals, various components of these model policies were analyzed and compiled into a “Working Document,” with respect to the criteria established in the *Public Safety Article, § 3-510*.<sup>2</sup> That document, the model policies, and other background documents were distributed to Commissioners at the Initial Meeting, on August 4, 2015, for their consideration and in preparation for the Decision Meeting, scheduled for September 1, 2015. Other helpful materials were subsequently distributed to the Commissioners between the two meetings.

Prior to the Decision Meeting, which was duly held as a public meeting in Annapolis on September 1, 2015, some Commissioners submitted recommended amendments/alternatives to those in the “Working Document.” These submissions were distributed to all Commissioners for their consideration. Additional amendments/alternatives were put forward by Commissioners orally or in writing during the Decision Meeting. After discussion of all alternatives, votes were taken as to each item, save one, to determine which of the alternative wordings put before the Commissioners would be adopted as recommended best practices. All choices at the September 1<sup>st</sup> meeting were by majority vote of those Commissioners present and voting. Consideration of one item was postponed for further study, and that item was subsequently settled upon by a majority of those Commissioners voting by email. A majority of the Commissioners voted to make a recommendation to the General Assembly regarding the Maryland Public Information Act (MPIA).

<sup>1</sup> Model policies were retrieved from the following: Spokane Police Department, Ferguson Police Department, IACP, New Jersey Division of Criminal Justice, New Orleans Police Department, ACLU, and Fraternal Order of Police (FOP).

<sup>2</sup> The statute reads in pertinent part: “On or before January 1, 2016, the Maryland Police Training Commission shall develop and publish online a policy for the issuance and use of body-worn camera a law enforcement officer that address: (1) the testing of body-worn cameras to ensure adequate functioning; (2) the procedure for the law enforcement officer to follow if the camera fails to properly operate at the beginning of or during the law enforcement officer’s shift; (3) when recording is mandatory; (4) when recording is prohibited; (5) when recording is discretionary; (6) when recording may require consent of a subject being recorded; (7) when a recording may be ended; (8) providing notice of recording; (9) access to and confidentiality of recordings; (10) the secure storage of data from a body-worn camera; (11) review and use of recordings; (12) retention of recordings; (13) dissemination and release of recordings; (14) consequences for violations of the agency’s body-worn camera policy; (15) notification requirements when another individual becomes a party to the communication following the initial notification; (16) specific protections for individuals when there is an expectation of privacy in private or public places; and (17) any additional issues determined to be relevant in the implementation and use of body-worn cameras by law enforcement officers.”



**Definition: Body Worn Camera (BWC)**

As referenced in Chapters 128 and 129 (2015), a “Body Worn Camera (BWC)” means:

1. A device worn on a person of a law enforcement officer that is capable of recording video and intercepting oral communications; or
2. A portable device designed as a weapon capable of injuring, immobilizing, or inflicting pain on an individual by the discharge of electrical current which is capable of recording video and oral communications.

**Initial Meeting**

The Initial Meeting was held on Tuesday, August 4, 2015, in the Joint Hearing Room, Department of Legislative Services Building, 90 State Circle, Annapolis, Maryland, 21401. This meeting was attended by a majority of the Commissioners, who received a binder with the following documents: (1) Chairman Welcome Letter; (2) Senate Bill 482 (Ch. 128) and Fiscal and Policy Note; (3) “Working Document;” and (4) Model Policies from the following: ACLU; Ferguson Police Department; Fraternal Police Department; IACP; New Jersey Division of Criminal Justice; New Orleans Police Department; and Spokane Police Department. These documents were distributed at the meeting, although most of the materials had been previously emailed to the Commissioners for their consideration when identifying best practices.

Because the adoption of best practices would serve as a one-size-fit all for the entire State of Maryland, Commissioners were invited to submit comments/suggestions via the Body Camera Commission email address ([dlbodycamerasmembers\\_goccp@maryland.gov](mailto:dlbodycamerasmembers_goccp@maryland.gov)) so that every Commissioner could view each others’ input. Once submitted, all comments/suggestions were gathered and compiled by the Governor’s Office of Crime Control & Prevention (GOCCP). Comments and suggestions provided by the public were also circulated by GOCCP to the Commissioners for their review and consideration.

**Decision Meeting**

The Decision Meeting was duly held as a public meeting on Tuesday, September 1, 2015, in the Joint Hearing Room at the Department of Legislative Services Building. This meeting was attended by 22 Commissioners who received additional information pertaining to the Decision Meeting, to include: (1) Memorandum from Chairman, dated August 27, 2015; (2) Initial Meeting Minutes; (3) Montgomery County Police Chief J. Thomas Manger Letter of August 11, 2015; (4) Why Trust the National Body-Worn Camera Toolkit, U.S. Department of Justice; (5) BWC Toolkit, U.S. Department of Justice; (6) Mayor Stephanie Rawlings-Blake’s Working Group on the Use and Implementation of Body-Worn Cameras, Final Recommendations, dated April 3, 2015; (7) Law Enforcement Commission Members Memorandum of August 25, 2015; (8) Law Enforcement Commission Members Joint Recommendations; (9) Victim Language for Consideration submitted by Commissioner Butler; (10) Comments on Working Document – Commissioner Jassie, MCASA; (11) letter from Ryan P. Harkins, Microsoft Corporation, dated August 25, 2015; (12) Comments on Working Document – Suzanne Sangree, Baltimore City Office of Law; (13) Office of Attorney General Comments on Body Camera

Commission dated August 26, 2015; (14) letter from Natasha Mehu, Maryland Association of Counties, dated August 28, 2015; and (15) Secretary of Information and Technology David A. Garcia BWC Recommendations. These documents were provided to Commissioners for their review and consideration.

In response to Chapters 128 and 129 (2015), *Public Safety – Law Enforcement Officers – Body-Worn Digital Recording Device and Electronic Control Device*, the Commission was tasked to study and make findings and recommendations as to best practices regarding the use of body cameras by law enforcement officers, with respect to the criteria established in the *Public Safety Article, § 3-510*. Using the “Working Document” as a guide to address the statutory criteria item-by-item, each item was called up *seriatim*. Once an item was called, Commissioners were invited to propose amendments/alternatives for each item, which was followed by discussion regarding such proposals. Once the discussion on a particular item reached its conclusion, Commissioners were asked to vote by individual voice poll as to the chosen alternative for the item, by number. Items listed within the “Working Document” were always listed as alternative #1 and all amendments/alternatives proposed by the “Law Enforcement Commission Members Joint Recommendations” were always listed as alternative #2. All subsequent proposals were listed as alternative #3, and so forth. All votes were recorded by staff from GOCCP. Those alternatives which received a majority of the votes cast were adopted and are set forth as the final best practices findings of the Commission.

## **FINDINGS AS TO BEST PRACTICES**

- A. Testing:** Prior to beginning each shift, the assigned agency member shall perform a function test of the BWC in accordance with the manufacturer's recommendations and agency policy.
- B. Malfunctions:** Upon discovering a BWC malfunction, agency members shall promptly report the malfunction to a supervisor or other appropriate authority in accordance with agency policy regarding malfunctions.
- C. Mandatory Activation.** Subject to paragraph three of this recommendation below, officers shall begin recording with their BWCs in the below circumstances unless doing so would be unsafe, impossible, or impractical. If officers are unable to begin recording with the BWC due to circumstances making it unsafe, impossible, or impractical to do so, officers shall begin recording with the BWC at the first reasonable opportunity to do so.
1. At the initiation of a call for service or other activity that is investigative or enforcement in nature, or an encounter between the officer and a member of the public that is investigative or enforcement in nature; and
  2. Any encounter that becomes confrontational after the initial contact.
  3. When victims, witnesses, or other individuals wish to make a statement or share information, but refuse to do so while being recorded, or request that the camera be turned off, officers may turn off the BWC in order to obtain the statement or information. If the encounter begins when the BWC is not actively recording, the law enforcement officer may, but is not required to, temporarily activate the BWC for the sole purpose of documenting the person's refusal to be recorded.
- D. Prohibited Activation.** A law enforcement officer shall not activate a camera to record:
1. Agency personnel during routine administrative activities; or
  2. Non-work related personal activity.
- E. Ending a Recording.** Once recording with a BWC has been initiated, officers shall not end the recording until:
1. The event or encounter has fully concluded; or
  2. The officer leaves the scene and anticipates no further involvement in the event; or
  3. A supervisor or agency policy has authorized that a recording may cease because the officer is no longer engaged in a related enforcement or investigative activity; or
  4. When victims, witnesses, or other individuals wish to make a statement or share information, but refuse to do so while being recorded, or request that the camera be turned off, officers may turn off the BWC in order to obtain the statement or information.
- F. Notification.**
1. Except as otherwise exempted by law, a law enforcement officer shall notify, as soon as is practicable, the individual that the individual is being recorded, unless it is unsafe, impractical, or impossible to do so.

2. This notice provision is satisfied even if another individual becomes a party to the communication after the initial notice has been provided.

#### **G. Confidentiality.**

1. Leased or purchased BWC equipment and all recordings are the property of the law enforcement agency, and only BWC equipment approved by agency policy shall be worn.
2. Except as authorized by agency policy, copying, releasing, altering, erasing, or allowing unauthorized viewing of an agency video recording (or portion thereof) is prohibited and may subject an officer to disciplinary action.

#### **H. Required Storage and Maintenance of Recording.**

1. All files shall be securely saved and stored in accordance with agency policy.
2. Each agency's written policy shall include standards and procedures that address:
  - a. Security and access control
  - b. Creation of audit trails and access logs
3. Each agency shall retain an unedited original version of stored body worn camera footage, and should log anytime the footage is viewed, for what length of time and by whom, as well as any copying or editing.

#### **I. Review of Recordings.**

1. Agencies' written policies shall include when members may view BWC recordings. Reasons to view and use of recordings may include, but are not limited to:
  - a. Report writing or preparation of other official documents;
  - b. Court preparation;
  - c. Review of prosecution evidence;
  - d. Victim/witness/suspect statements;
  - e. Crime scenes;
  - f. Statement of charges;
  - g. Administrative investigations;
  - h. Training;
  - i. Performance review;
  - j. Incident critique;
  - k. Maryland Public Information Act (MPIA) requests;
  - l. Policy compliance; and
  - m. Disclosures required by law.
2. Additional considerations:
  - a. A BWC recording of a constitutionally protected activity may not be used to identify persons present at the activity who are not suspected of being engaged in illegal activity or in need of assistance.
  - b. The stored video and audio data from a body worn camera may not:
    - i. Be used to create a database or pool of mug shots;
    - ii. Be used as fillers in photo arrays; or

- iii. Be searched using facial or voice recognition software.
  - c. This subsection does not prohibit an agency from using recognition software to analyze the recording of a particular incident when a supervisory law enforcement officer has reason to believe that a specific suspect or person in need of assistance may be a subject of a particular recording.
- J. Retention of Recordings.** An agency's written policy shall include retention period(s) for BWC recordings.
- K. Dissemination and Release.** BWC video/audio recordings from body cameras will be released as required by the MPIA or other governing law.
- L. Training and Discipline.**
- 1. Agencies shall ensure that officers are trained on agency policy and the operation of the BWC equipment prior to use in the field. Training shall also include alternative methods for effective notification of recording to persons with special needs or limited English proficiency.
  - 2. Agencies' written policies shall state that violations of the agency BWC policy may result in discipline.
- M. Discretionary Activation.** When not otherwise prohibited by law or agency policy, officers may begin recording with their BWC in circumstances when they determine that doing so would be beneficial to the public interest.
- N. Written Policy Required.** Each law enforcement agency shall develop and issue a written policy for using BWCs that is consistent with state law and regulations issued by the Maryland Police Training Commission prior to implementing a BWC program.
- O. Incident Reports.** Incident reports should note any use of BWC.
- P. Agency BWC Policies.** BWC policies of agencies shall be made available to the public.



## **RECOMMENDATION TO THE GENERAL ASSEMBLY**

After discussion at an open meeting, and by a substantial majority, the Commission respectfully and strongly recommends to the General Assembly of Maryland that it consider forthwith amending the Maryland Public Information Act (Annotated Code of Maryland, General Provisions Article §§ 4-101 through 4-601) to incorporate provisions specifically governing the release of audio/video recordings captured by a law enforcement officer's body-worn camera, to include but not limited to, those recordings which depict victims of violent crimes and domestic abuse.

**SUBMISSION**

Respectfully submitted, this 16<sup>th</sup> day of September, 2015.

Frederic N. Smalkin  
Chief Judge, United States District  
Court, District of Maryland (Ret.)  
Chairman

## **APPENDIX**



# Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers

## *Meeting Minutes*

The Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers (Commission) was held on Tuesday, August 4, 2015 at the Department of Legislative Services Building, 90 State Circle, Annapolis, Maryland, 21401. The following Commissioners attended: Chief Judge Frederic N. Smalkin, U.S. District Court of Maryland (Retired), Chairman; Delegate Charles E. Sydnor, House of Delegates; Colonel William Pallozzi, Maryland State Police; Zenita Hurley, Esquire, Office of Attorney General; Paul DeWolfe, Jr., Esquire, Office of Public Defender; Mr. Edward Parker, Governor's Office of Crime Control and Prevention (GOCCP); Secretary David Garcia, Department of Information Technology; Mr. Vincent Canales, President, State Fraternal Order of Police; Carlos Acosta, Esquire, Prince George's County Police Department; Captain Michael Wahl, Montgomery County Police Department; Captain Ross R. Passman, Anne Arundel County Police Department; Major Mark Warren, Baltimore County Police Department; Chief Douglas Holland, Hyattsville Police Department; David Rocah, Esquire, ACLU of Maryland; Mr. Gerald Stansbury, President, Maryland Conference NAACP; Karen Kruger (for Phillip Hinkle, Esquire, Charles County Sheriff's Office), Maryland Sheriff's Association; Council President Bernard C. "Jack" Young, Baltimore City Council; J. Charles Smith, III, Esquire, Frederick County State's Attorney; Chief John M. Fitzgerald, Village of Chevy Chase Police Department; and Nicole Jassie, Esquire, CASA de Maryland.

### **Greetings & Introductions**

Chairman Smalkin called the meeting to order at 10:14 a.m. and welcomed all attendees. He introduced himself as a retired judge for the U.S. District Court of Maryland and mentioned that he previously served as Chairman of the Maryland Governor's Emergency Management Advisory Council. He thanked the Commissioners for their attendance, and extended an additional thanks to three individuals who are with GOCCP: Edward Parker, Don Hogan, and Rachel Kesselman. The three individuals were asked to introduce themselves which was followed by an introduction of each Commissioner.

### **Introductions of Commissioners**

Commissioners were asked to state their name and provide some background information with regards to their knowledge and expertise. After each member introduced his/herself, Chairman Smalkin expressed how pleased he was that everyone accepted this position and to work with one another. He further pointed out the broad range of expertise of the commission members.

### **Scope of the Commission's Mission**

Chairman Smalkin stated the Commission's mission is not to recommend whether law enforcement agencies should be required to use body cameras. The mission is to supply Maryland Police Training Commission (MPTC) with "best practices." MPTC is charged with adopting regulations by December 31, 2015, that will be applicable to all police agencies in the State which use body cameras. The

Commission report will also be sent to the General Assembly for their consideration. The report is due by October 1, 2015.

### **Time for Study & Comment**

Chairman Smalkin mentioned that every Commissioner received a binder (Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers) with ten different tabs. The binder was distributed at the meeting, although most of the materials had been previously emailed to each commissioner. The third tab provides the *working document* which was drafted using several model policies. Each policy was examined and viewed as a starting point for identifying “best practices.”

Chairman Smalkin stated that this *working document* must serve as a one-size fit all. He asked Chief Fitzgerald how many municipalities are in Chevy Chase in which he replied eleven. Chairman Smalkin also mentioned that there are about 3,000 officers in Baltimore City so a one-size fit all is often difficult but needed – it should mirror Goldilocks where it is not too hot or too cold.

In elegant document drafting, Chairman Smalkin said, your job is to make everything possible but nothing inevitable. Although there may be some inevitable items, we want a reasonable document – this was the premise of the document.

Chairman Smalkin mentioned that comments/suggestions may be submitted to an email account (via GOCCP website) so every Commissioner can view each others’ input – there will also be an email for use by the public to comment or submit information. He also stated that comments made by individual Commissioners will be gathered by GOCCP so all information will be combined. GOCCP will also circulate public comments.

In preparation for the next meeting, Chairman Smalkin briefly discussed three topics that will likely be discussed in greater detail on September 1, 2015: Public Information Act (PIA), notice, and records retention.

In reference to PIA (disclosure of data), public records fall under Maryland’s PIA Law, and will also include body camera data. The Police Training Commission does not have authority to alter State statutes.

With regards to notice, there are three issues with this: (1) should police officers have to tell an individual that he/she is being recorded; (2) should the notice be contained in the Miranda Rights; and (3) concerns about non-English speaking persons. While some people may say a blinking light serves to indicate the use of a camera, this could also place police in danger. Because of this, it was thought to use constructive notice in which the camera would be “labeled” as such because most languages understand this term.

In reference to records retention, the issue is how long should data be retained? In Delaware, Troopers retain dashboard camera data for approximately 90 days; however, this is different than body cameras because they work in conjunction with a computer.

Chairman Smalkin asked Secretary Garcia how many terabytes are used in Baltimore City. Secretary Garcia replied by stating approximately 648 at any given time for CCTV. Chairman Smalkin stated that



the retention for this is very expensive and the cost per day for storage and the number of people needed to run the system would be tremendous. Because of this, practical and logistical considerations were drafted in the *working document* in which individual departments would have discretion based on what they can afford.

### **Plenary Meeting of Commission (September 1, 2015)**

Chairman Smalkin stated that every Commissioner will need to take their binder home and bring it back for the next meeting. Due to the short turn around, Chairman Smalkin charged the Commissioners to review the *working document* provided in their binders. He stated that each item within the *working document* is sourced to a model policy and also cross referenced to the House Bill 533/Senate Bill 482 to serve as a roadmap.

Chairman Smalkin mentioned that a Plenary Meeting will occur on September 1, 2015 with the purpose of reviewing the *working document*. The commission will work through the various items and vote on each. If a proposed amendment is made, this will be voted on by the Commission in which a majority vote will rule. Because each item will be viewed by the Commission, one-by-one, Chairman Smalkin mentioned that the Plenary Meeting is scheduled for an entire day. The Plenary Meeting will be held on Tuesday, September 1, 2015 from 10:00 a.m. until 4:00 p.m. in the Joint Hearing Room of the Legislative Services Building in Annapolis, Maryland.

### **Results of September 1, 2015 Proceedings**

Chairman Smalkin stated that after the Plenary Meeting the results will be prepared as the commission's report to MPTC and the General Assembly.

### **Comments & Suggestions**

Chairman Smalkin asked the Commissioners if they had any questions, and invited individuals to make comments and/or suggestions.

Delegate Frank Conaway, Jr., representing the 40<sup>th</sup> District introduced himself, stating he was the first legislator to introduce the body camera bill. Delegate Barbara Roberson from Baltimore City, Chair of Black Caucus and a University of Baltimore graduate, also introduced herself. Chairman Smalkin welcomed them both.

### **Adjournment**

In closing, Chairman Smalkin mentioned that two motions are not debatable: "motion to table" and "motion to adjourn." A motion was then made to adjourn which was followed by a second. The meeting adjourned at 11:01 a.m.



# Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers

## *Meeting Minutes*

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The Commission Regarding the Implementation and Use of Body Cameras by Law Enforcement Officers (Commission) was held on Tuesday, September 1, 2015, at the Department of Legislative Services Building, 90 State Circle, Annapolis, Maryland, 21401. The following Commissioners attended: Chief Judge Frederic N. Smalkin, U.S. District Court of Maryland (Retired), Chairman; Delegate Charles E. Sydnor, House of Delegates; Colonel William Pallozzi, Maryland State Police; Zenita Hurley, Esquire, Office of Attorney General; Paul DeWolfe, Jr., Esquire, Office of Public Defender; Mr. Edward Parker, Governor's Office of Crime Control and Prevention (GOCCP); Secretary David Garcia, Department of Information Technology; Mr. Vincent Canales, President, State Fraternal Order of Police; Carlos Acosta, Esquire, Prince George's County Police Department; Captain Michael Wahl, Montgomery County Police Department; Captain Ross R. Passman, Anne Arundel County Police Department; Major Mark Warren, Baltimore County Police Department; Chief Douglas Holland, Hyattsville Police Department; David Rocah, Esquire, ACLU of Maryland; Mr. Gerald Stansbury, President, Maryland Conference NAACP; Phillip Hinkle, Esquire, Charles County Sheriff's Office; Maryland Sheriff's Association; Council President Bernard C. "Jack" Young, Baltimore City Council; J. Charles Smith, III, Esquire, Frederick County State's Attorney; Chief John M. Fitzgerald, Village of Chevy Chase Police Department; Nicole Jassie, Esquire, CASA de Maryland; Senator Victor Ramirez, Maryland State Senate; Russell Butler, Esquire, Maryland Crime Victims' Resource Center, Inc.; and Stephanie Robinson, Esquire, Mayor's Office of Public Safety.

### **Welcome**

Chairman Smalkin called the meeting to order at 10:08 a.m. and welcomed all attendees to the Decision Meeting. He introduced himself and then went around the room and asked for a roll-call to identify all present members. Chairman Smalkin asked for a motion to approve the minutes from the Initial Meeting which took place on August 4, 2015. There were no oppositions so this motion to approve carried unanimously.

### **Items in the Working Document**

The process by which the "Working Document" was created was briefly explained and how several model policies were examined with the ultimate thought of merging one with the bill. Using this document, Chairman Smalkin explained that each Item would be called up *seriatim*. Once an Item was called, Commissioners were allowed to propose an amendment/alternative to the Item which followed by some discussion regarding the proposed alternative(s). Once a discussion for the particular Item reached its conclusion, Chairman Smalkin called for a vote of the Commissioners, by individual voice poll as to the chosen alternative for the Item, by number. This process occurred for each Item with the exception of Item H. Required Storage and Maintenance of Recording, which was reserved for further

vote by email. All votes were recorded by GOCCP Staff in which the final “best practice” adoption was determined by the alternatives that received the highest number of votes.

Chief Fitzgerald made a motion for Rachel Kesselman to forward the final “best practice” adoption document to all Commissioners to ensure accuracy in the language that was captured.

### **Adjournment**

In closing, Chairman Smalkin mentioned that with the exception of Item H, the discussion for the remaining Items has ended. The meeting adjourned at 6:47 p.m.

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*A Newspaper of Record*



Vol. 26, No. 37 • 50¢

FREE EDITION

Thursday, July 23, 2015

# County Securing Funds For Body Cameras

By Michael Sykes II  
Staff Writer

UPPER MARLBORO – The Prince George's County Police Department has broken another barrier in its search for funding to begin a pilot program for the installation of body cameras, but some County Council members have concerns about the cost and implementation.

"In this profession, technology is always out front," Prince George's County Police Chief Magaw said. "We started testing body cameras last January. So this is not in response to Fergu-

son or anything else. This is a new technology that would help with our transparency."

The department is "very close" to acquiring \$200,000 in federal funding, according to Magaw, for the pilot program. The money, which would come from a federal grant, would put 100 cameras on officers in the field, he said. Overall, he said, the department will need cameras for 1,000 officers, which would cost \$3.5 million over a three-year period. That total excludes the staff and salary needs for maintenance, he said.

Cameras are expensive, Ma-

gaw said, but are something the police department must start using.

"We've got to start down this road," he said. "We really do. It's just the right thing to do."

Councilwoman Karen Toles said she has concerns about how much the program will cost the county. While a body camera program in the county is essential, she said, the county must have the means to pay for it.

"Before we roll out a pilot we need to look at what is going to come from the state. To me, that is important," Toles said. "I commend our smaller jurisdic-

tions for having (the program), but they can afford that. We simply cannot. From a fiscal standpoint, I am greatly concerned. Particularly off the comments from this budget season."

Behind the school system, Toles said, the PGPD gets the largest budget contribution from the county. This program is needed for the county, she said, but they must work with state officials to find more funding for body cameras.

The department is looking to start the pilot program in September or October, Magaw said, and the department will attempt to se-

cure more funding for the program from the federal government in order to expand the program during the pilot's implementation.

Alan Lee, an information technology manager for the police department, said the funding the department already has to equip eight to 10 police squadrons with body cameras. They will run the program for to eight months, he said, and the results from the program determine how the department should fund for a body camera.

See "body cameras" page

## County refuses to release applicants' names

By Candace Rojo Keyes  
Special to The Sentinel

UPPER MARLBORO – Eight people have applied for the Board of Education seat vacated by Dan Kaufman, but county officials refused to disclose the names of the applicants to The Sentinel.

Tehani Collazo, the county executive's education policy advisor, said County Executive Rushern Baker III's office will not release the names, citing issues of confidentiality and privacy. The legal counsel for Baker suggested that under the Maryland Public Information Act (MPIA) general provisions (GP) four through 101 and beyond, they have a justification for withholding names since they are only in the "accepting applications" stage of selecting an at-large board member.

"If you are simply jotting down a list of names to consider for the BOE vacancy, a strong argument can be made that the list of names could be withheld as an 'intra-agency letter or memorandum' under the MPIA exemption, found under GP 4-344," Collazo said in an email response to The Sentinel.

In addition, the legal counsel advised that because the application process remains ongoing, all information pertaining to the applicants will come from the application documents, which are also considered "personal documents."

"If you are at the stage where you are accepting applications, under GP 4-311, the names of those seeking appointment to an office may not be disclosed if the information is derived from their applications because they would be considered as 'personnel

records,'" Collazo said.

Baker's legal counsel sought the rulings of the case of Office of the Governor v. Washington Post Company from 2000 and a letter from Assistant Attorney General Kathryn M. Rowe to Senator Leo E. Green in 2002. The case in 2000 ruled that government officials have no obligation under the MPIA to disclose any memoranda, letter, or similar internal government documents, which contain confidential conversations, that are used in the decision-making process. The letter from Rowe to Green speaks specifically to the release of the names applicants to the Board of Education citing applications as personal records, which are prohibited from being disclosed under law.

See "county" page E-4



PHOTO BY CANDACE ROJO KEYES

Dr. Henry A. Wise Jr. High School's new field is complete. The lights are up and the turf has been put down as football season quickly approaches.



# NEWS

## Police hoping to implement body cameras by October

From "body cameras" page E-1

program in the next fiscal year.

"It would be enough for us to really, physically start to track what is going on out there," Lee said.

The benefits of the program are "self-explanatory," Lee said. The cameras will help ensure the department's transparency, speed up the process in certain cases and help in preparation for trials, he said.

But some things still need to be sorted out, Lee said. The department must find out the best way to store the recordings they receive, what policies to implement around public acquisition of the recordings, when officers are able to record and other policies, he said.

"Things like redaction can

always come into play with wanting to block out non-involved parties," Lee said. "These are gigantic issues that we want resolved before we put the cameras out on the street."

Councilwoman Andrea Harrison said the PGPD would benefit from having some of these policies solved before they acquire the cameras and start the pilot program. One thing the police department will have to do to accommodate this program, she said, is expand the IT department.

"The one question I would have is how many staff would be required to do that?" Harrison said. "That all comes into the cost of the program."

Redaction of portions of recordings and the quality of admissible evidence are two things

that will need to be settled within the program, Harrison said. However, she said, with the PGPD being part of MACO and seeing the implementation of different body camera programs around the country, the department should be able to solve those issues.

"We can look at their best practices and lessons learned," Harrison said. "I am going to suggest that, even before we begin to implement the pilot program, that we look at what legislation may be needed."

The department should also consider creating a program, Harrison said, for citizens to show them what evidence is admissible and when officers can record and what their rights when officers record are.

Currently, Magaw said, there are two officers in the IT depart-

ment that currently work with in-car cameras. Those officers would also be authorized to work with body cameras as well, he said.

However, Magaw said, ideally the department would need at least five more officers to properly maintain the body camera program. Those seven officers would be placeholders, he said, until the department was able to fill their positions with civilian IT specialists.

Councilman Todd Turner agreed with Harrison and suggested that the PGPD look at some of the examples of body camera programs around the county and the country to see what legislation may be needed even before they install their pilot program.

"Maybe I'm just wearing my

legal hat, but for us to go forward with the pilot project with having some legal authorization to do it, either at the state or at county level, I'd have some questions," Turner said. "We need to check that before we move forward with the pilot program."

All of the previous issues mentioned about storage and redaction are going to continue to be issues, Turner said, but is essential for the department to move forward as every body has

"Not that we're going to have answers to all of the questions out there, but I think we need to have a legal basis before we do it first," Turner said. "That's going to create other issues if an incident occurs with somebody while they're doing the pilot program."

## County will not release names of applicants for vacant BOE seat

From "county" page E-1

While Baker's office cites the law as justification for not disclosing the applicants' names, some citizens involved in Prince George's County Public Schools said they feel the county administration needs to have more transparency.

Felicia Meadows, an employee and "product" of Prince George's County Public Schools, said she believes one person shouldn't have "sole responsibility in the selection of something that affects a large organization."

"There is a distrust of political officials overall, therefore

transparency is needed to regain the trust of the people," Meadows said. "In every other arena, full disclosure of applicants is made available to ensure that candidates are qualified and can meet the needs of the positions for which they are applying."

Meadows said she hopes Baker will select a board member who is dedicated to the needs of the children in the district, rather than personal agendas.

"People who are selected to sit on the Board should have a vested interest in education and our children and not use their position for personal or professional gain," Meadows said.

## Discussion of county's financial future begins

By Michael Sykes, II  
Staff Writer

UPPER MARLBORO – After months of intense budget discussion, the County Council and Deputy Chief Administrative Officer of Finance and Budget Tom Himler sat down to discuss the county's financial future and how to eliminate structural deficit.

There have been many suggestions to fix the economy, said Councilman Derrick Leon Davis, but the structural deficit is still projected to hang between \$40 and \$80 million over the next year.

"At some point we need to see solutions. The reality is that we've talked about this and we know the problem. We have a structural deficit," Davis said. "We've uncovered and realized the magnitude of these problems. A lot of things have contributed to this."

To change the economy, Davis said, job growth has to happen. The county government must get control of "their own revenue reality," he

said. There have been some impediments in doing that, Davis said, but they must be overcome.

The equation for a solution is simple, Himler said. The county must either increase revenues or cut costs in order to reduce their structural deficit.

Finding ways to do that, he said, is difficult because of the dedication the county has to real property and personal property taxes. Those revenues make up 75 percent of the county's income, he said.

"We have to look to see if there are revenues we can raise or cost cuts. Maybe we have a conversation. How do you look at and have a discussion with the citizens about raising revenue," Himler said. "Or maybe the government is too big. Maybe we're doing too many things. I think that has to be part of the conversation."

The structural deficit will not be fixed by doing one thing or another, Himler said, but possibly considering doing both things. "It has to be a combination of things," he said.

"The key in coming out of a recession is we have to get creative in creating jobs in the county."

The County needs to determine what their priorities are, said Councilwoman Andrea Harrison. The newly established Blue Ribbon Commission can help them determine what their priorities should be moving forward and help them direct their expenditures in a way that will benefit citizens.

The commission, established by council resolution, will propose policies to the council and the County Executive, Rushern Baker, over the next year to address the county's deficit issues. They will collect, review and discuss competitive budget data and information regarding the county's fiscal health, policies and practices to strengthen its tax base.

"I would think that once their priorities are established, we'll be better off," Harrison said. "And thinking the Blue Ribbon Commission should help us find those priorities."

### See news?

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editor-pg@thesentinel.com







**Action Items: MOTION #142-10-15 2016 Legislative Priority: Statewide Voting Reforms**

**SUBJECT: 2016 Legislative Priority: Statewide Voting Reforms**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #142-10-15

I move that the Mayor and Council add the request for a statewide voting reforms as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.

**BACKGROUND:**

Please see attached motion form submitted by Councilmember Solomon.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

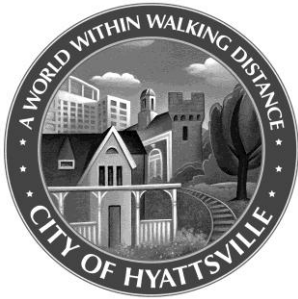
**STRATEGIC GOALS**

**Goal:** Goal 4 - Foster Excellence in All City Operations

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/2/2015



## Council Agenda Form

|                                             |                                                |                |
|---------------------------------------------|------------------------------------------------|----------------|
| <b>MOTION # 142-10-15</b>                   |                                                | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>10/2/2015         | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/5/2015 |                |
| <b>SUBMITTED BY: CM Joseph Solomon</b>      |                                                |                |
| <b>DEPARTMENT: Hyattsville City Council</b> |                                                |                |

**TITLE OF MOTION: 2016 Legislative Priority: Statewide Voting Reforms**

**RECOMMENDATION:**

*I move that the Mayor and Council add the request for a statewide voting reforms as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.*

**BACKGROUND:**

The Hyattsville City Council seeks to adopt FY2016 legislative priorities for discussion with State and County representation during a November 2015 Legislative breakfast.

The State of Maryland should continue a tradition of providing full and equal access to participation in the electoral process by adopting voting

- Automatic Voter Registration  
Every resident of the State of Maryland who interacts with the Maryland Motor Vehicle Administration should be registered as voter in the State of Maryland.  
Oregon – Passed, California – Considering
- Same Day Voter Registration
  - Sharing County poll books with local jurisdiction to allow municipalities to adopt same day voter registration ordinance
- Tenant Civic Participation  
Provides equal access to candidates for apartment renters.

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

\_\_\_\_\_  
**Tracey E. Nicholson, City Administrator**

**STRATEGIC GOALS AND ACTIONS:**

Goal 4 – Foster excellence in all City operations Action  
4.1 – Provide prompt, effective, and efficient customer service

**SUPPORTING DOCUMENTATION:**

1.

**CURRENT YEAR BUDGET IMPACT:**



**Action Items: MOTION #143-10-15 2016 Legislative Priority: Collective Bargaining for College Athletes**

**SUBJECT: 2016 Legislative Priority: Collective Bargaining for College Athletes**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #143-10-15

I move that the Mayor and Council adopt collective bargaining for college athletes as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.

**BACKGROUND:**

Please see attached motion form submitted by Councilmember Solomon.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

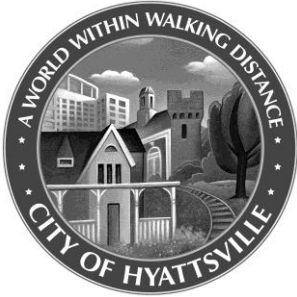
**STRATEGIC GOALS**

**Goal:** Goal 4 - Foster Excellence in All City Operations

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/2/2015



## Council Agenda Form

|                                             |                                                |                |
|---------------------------------------------|------------------------------------------------|----------------|
| <b>MOTION # 143-10-15</b>                   |                                                | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>10/2/2015         | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/5/2015 |                |
| <b>SUBMITTED BY:</b> CM Joseph Solomon      |                                                |                |
| <b>DEPARTMENT:</b> Hyattsville City Council |                                                |                |

**TITLE OF MOTION:** 2016 Legislative Priority: Collective Bargaining for College Athletes

**RECOMMENDATION:**

*I move that the Mayor and Council adopt collective bargaining for college athletes as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.*

**BACKGROUND:**

The Hyattsville City Council seeks to adopt FY2016 legislative priorities for discussion with State and County representation during a November 2015 Legislative breakfast.

The State of Maryland should recognize the right for athletes in the University of Maryland system to unionize and collectively bargain for fair compensation.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

\_\_\_\_\_  
Tracey E. Nicholson, City Administrator

**STRATEGIC GOALS AND ACTIONS:**

Goal 4 – Foster excellence in all City operations Action  
4.1 – Provide prompt, effective, and efficient customer service

**SUPPORTING DOCUMENTATION:**

**CURRENT YEAR BUDGET IMPACT:**



**Action Items: MOTION #144-10-15 2016 Legislative Priority: Local Complementary Education Funding**

**SUBJECT: 2016 Legislative Priority: Local Complementary Education Funding**

**SECTION: Action Items**

**RECOMMENDED ACTION:**

Motion #144-10-15

I move that the Mayor and Council adopt local education funding as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.

**BACKGROUND:**

Please see attached motion form submitted by Councilmember Solomon.

**NEXT STEPS:**

n/a

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

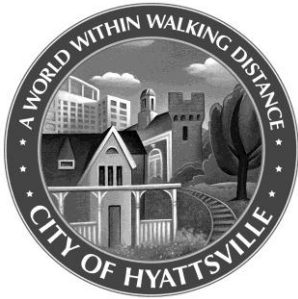
**Goal:** Goal 4 - Foster Excellence in All City Operations

**FISCAL IMPACT:**

None

  
Tracey Nicholson, City Administrator 10/2/2015





## Council Agenda Form

|                                             |                                                |                |
|---------------------------------------------|------------------------------------------------|----------------|
| <b>MOTION # 144-10-15</b>                   |                                                | <b>DRAFT #</b> |
| <b>DATE SUBMITTED:</b><br>10/2/2015         | <b>DATE TO GO BEFORE COUNCIL:</b><br>10/5/2015 |                |
| <b>SUBMITTED BY:</b> CM Joseph Solomon      |                                                |                |
| <b>DEPARTMENT:</b> Hyattsville City Council |                                                |                |

**TITLE OF MOTION: 2016 Legislative Priority: Local Complementary Education Funding**

**RECOMMENDATION:**

*I move that the Mayor and Council adopt local education funding as a City of Hyattsville FY2016 legislative priority to be presented at the City's November 2015 Legislative Breakfast.*

**BACKGROUND:**

The Hyattsville City Council seeks to adopt FY2016 legislative priorities for discussion with State and County representation during a November 2015 Legislative breakfast.

**Allowing Municipalities to Provide Funding to Schools within their Municipal Borders**

The State of Maryland should allow municipalities to provide complimentary funding for capital improvements, programing, and operating costs. It should be recognized that municipal contributions are in addition to State and County funding and should not be considered or required in developing the PGCPs annual budget.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

**CITY ADMINISTRATOR / DEPARTMENT DIRECTOR COMMENT:** (must be approved by City Administrator):

\_\_\_\_\_  
Tracey E. Nicholson, City Administrator

**STRATEGIC GOALS AND ACTIONS:**

Goal 4 – Foster excellence in all City operations Action  
4.1 – Provide prompt, effective, and efficient customer service

**SUPPORTING DOCUMENTATION:**

1.

**CURRENT YEAR BUDGET IMPACT:**



Hyattsville City Council  
4310 Gallatin Street, 3<sup>rd</sup> floor  
Hyattsville, MD 20781

Meeting: 10/5/2015 8:00 PM  
Department: Community & Econ Dev  
Prepared by: Jim Chandler  
Sponsors: At the Request of the City Administrator  
DOC ID: (ID # 1290)

8.1

**Discussion Items: Preliminary Prince George's Plaza TDDP: Recommendations**

**SUBJECT: Preliminary Prince George's Plaza TDDP: Recommendations**

**SECTION: Discussion Items**

**BACKGROUND:**

Please see attached memo.

**NEXT STEPS:**

The Council is tentatively scheduled to take action on this item during the Council Meeting of October 19, 2015.

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

n/a

**STRATEGIC GOALS**

**Goal:** Goal 2 – Ensure the Long-Term Economic Viability of the City

  
Tracey Nicholson, City Administrator 10/2/2015



## City of Hyattsville

# Memo

To: Mayor and Council  
Tracey Nicholson, City Administrator

From: Jim Chandler, Director of Community & Economic Development, Assistant City Administrator

CC: Katie Gerbes, Community Planner

Date: October 1, 2015

Re: Preliminary Prince George's Plaza TDDP: Recommendations

The purpose of this memorandum is to provide the City Council with a set of recommendations with respect to the Preliminary Prince George's Plaza Transit District Development Plan.

Attached to this memorandum is a spreadsheet detailing a series of recommendations included in the Preliminary Plan organized by major topic, chapter, page and recommendation number as it is written in the Plan.

The spreadsheet document does not include responses to every recommendation included in the Plan, but rather recommendations that may significantly alter the built environment, transportation network, are significant changes in public policy and those that recommend the City of Hyattsville serve as a lead agency for implementing a specific recommendation.

The spreadsheet reflects comments and recommendations of the Hyattsville Planning Committee, which has participated in this planning effort over the past several months. The Committee reviewed the Plan and adopted a series of recommendations at its meeting on September 29<sup>th</sup>.

City Staff has provided comments and/or recommendation for each of the items identified on the spreadsheet. Over the next two weeks, staff will continue to review the Preliminary Plan and may identify additional recommendations and/or provide additional comments to the City Council for consideration at its next meeting on October 19<sup>th</sup>.

I am requesting that the City Council to review the Preliminary Plan and recommendations provided so that the City is prepared to adopt and submit comments on Monday, October 19<sup>th</sup>. The City's correspondence will be provided to the M-NCPPC Planning Board at the public hearing scheduled for 7:00 PM on October 22<sup>nd</sup> at the County Administration Building in Upper Marlboro. I anticipate providing the M-NCPPC Planning Board & Staff with a similarly formatted document, but will replace the Planning Committee and Staff comments with the adopted positions of the City Council.

|   | Transportation Demand Management | East West Highway | Townhouse Standards | Historic Placemaking | Density | Street Standards | Tree Canopy | Direct City Involvement | Recommendation Number | Recommendation                                                                                                                                                                                                                                                                                                                                                                               | Chapter | Page | Planning Committee Comments                                              | City Staff Recommendation                                                                                                       |
|---|----------------------------------|-------------------|---------------------|----------------------|---------|------------------|-------------|-------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|------|--------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| 1 | X                                |                   |                     |                      |         |                  |             |                         |                       | A fully implemented transportation demand management program for the Transit District including non-automotive transportation choices and comprehensive management of on- and off-street parking within the area.                                                                                                                                                                            | 3       | 78   | Favor: 8, Against: 1                                                     | Support as written.                                                                                                             |
| 2 | X                                |                   |                     |                      |         |                  |             |                         | TM17.1                | Create a parking management district for the Transit District. This district may operate as part of the Transportation Demand Management District, the City of Hyattsville, the Prince George's County Revenue Authority, the Business Improvement District, or as an independent entity. The district will help manage shared parking resources and generate revenues for the TDM District. | 3       | 96   | Favor: 8, Against: 1                                                     | Support as written; acknowledges that the City is a participant but that no one entity has the burden of managing on one's own. |
| 3 | X                                |                   |                     |                      |         |                  |             |                         | TM20                  | Create a formal structure to manage transportation demand and provide for managed provision of trip reduction measures and other transportation alternatives within the Transit District.                                                                                                                                                                                                    | 3       | 97   | Favor: 9, Against: 0                                                     | Support as written.                                                                                                             |
| 4 | X                                |                   |                     |                      |         |                  |             |                         | TM20.1                | Pursuant to Sec. 20A-204, the County Council should authorize and establish a Prince George's Plaza Transportation Demand Management District (TDMD)                                                                                                                                                                                                                                         | 3       | 97   | Favor: 9, Against: 0                                                     | Support as written.                                                                                                             |
| 5 | X                                |                   |                     | X                    |         |                  |             |                         | TM20.4                | Within 30 days of approval of the TDDP, the City of Hyattsville or the Planning Board should petition the County Council to establish a Transportation Demand Management District.                                                                                                                                                                                                           | 3       | 97   | Favor: 9, Against: 0                                                     | Support as written.                                                                                                             |
| 6 | X                                |                   |                     |                      |         |                  |             |                         | TM20.3                | All property owners should belong to the Transportation Demand Management District.                                                                                                                                                                                                                                                                                                          | 3       | 97   | Favor: 9, Against: 0                                                     | Support as written.                                                                                                             |
| 7 | X                                |                   |                     |                      |         |                  |             |                         |                       | Subsequent to the creation of a Transportation Demand Management District for the Prince George's Plaza Transit District, no permits shall be issued to any applicant for construction within the Transit District unless the applicant is a member of the Transportation Management Association.                                                                                            | 5       | 259  | Favor: 8, Against: 1                                                     | Support as written.                                                                                                             |
| 8 | X                                |                   |                     |                      |         |                  |             |                         | TM20.2                | To expedite the establishment of a Transportation Management Association and provide transportation alternative to residents of, workers in and visitors to the Transit District, the County Council should consider using its discretion through Sec. 20A-204 to implement the provisions of the TDMD prior to failure of an intersection or other congestion-related trigger.              | 3       | 97   | Favor: 9, Against: 0<br>Should include a non-auto driver mode share goal | Support as written; enables the process to begin by enabling a parking management authority.                                    |



**Attachment: TDDP Comments (PC and City) (1290 : Preliminary Prince George's Plaza TDDP: Recommendations)**

| Transportation Demand Management<br>East West Highway<br>Townhouse Standards<br>Historic Placemaking<br>Density<br>Street Standards<br>Tree Canopy<br>Direct City Involvement<br>Recommendation Number |   |  |  |  |  |  |  |       | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Chapter | Page | Planning Committee Comments                                                                                                                                                                                                                                                                                                                                                                                                                                    | City Staff Recommendation                                                                                                                                                                           |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--|--|--|--|--|--|-------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3                                                                                                                                                                                                      | X |  |  |  |  |  |  | TM3.2 | Pursuant to the Transit District Standards, which establish the maximum block size of 500 feet, and requires individual blocks to be separated by streets, construct new streets to connect MD 410 and Belcrest Road with Toledo Terrace. Construct these connections as portions of the current Mall at Prince George's site is redeveloped. If north-south connections are constructed as part of a redevelopment of the property between Toledo Terrace and the Mall at Prince George's, connect and align new streets on the current Mall at Prince Georges property with these streets to create the desired grid, and vice versa: if the current mall property redevelops first, connect and align new north-south streets between the mall property and Toledo Terrace. To create the desired grid pattern, the following general locations are encouraged: As the Mall at Prince Georges redevelops, extend the western Metro entry road north from Belcrest Center Drive, through the main entrance of the Mall, through where the Mall stands, to Toledo Terrace; Extend Freedom Way west to Toledo Terrace; extend Editor's Park Drive north; formalize the extension of Toledo Terrace south of MD 410 as a public street; Extend Belcrest Center Drive west to connect with Toledo Terrace Extended; Extend America Boulevard north and west to connect with Belcrest Road; Extend Northwest Drive south to at least Toledo Road Extended. Streets constructed to address this strategy located within the City of Hyattsville may be dedicated or conveyed to the City, subject to the City's approval. | 3       | 83   | Favor: 8, Against: 1<br>*Only references Mall, not mall property which includes stores like Target.<br>*Why is the grid only on a small section of the Transit District? It should extend past Toledo Terrace.<br>*There is an issue with wording, it should be plural but instead is singular, leading to confusion.<br>*There is no street section provided, specifications should be spelled out to give property owners an expectation of what is to come. | Support the concept with the understanding that the new streets are part of a phased redevelopment and don't force existing sites to be demolished explicitly to accommodate the building of roads. |
| 1                                                                                                                                                                                                      | X |  |  |  |  |  |  | TM4.1 | Reconstruct MD 410 as a Complete and Green Street with accommodations for pedestrians, bicyclists, transit users, and drivers. Emphasis should be placed on providing ample sidewalks, street trees, and protected bike lanes that give travelers multiple options through the corridor and can reduce vehicle trips. Reduce through travel lanes from six to four.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 3       | 85   | Favor: 7, Against: 2                                                                                                                                                                                                                                                                                                                                                                                                                                           | Support, asking to put the vehicle counts and unit counts from proposed multifamily buildings in the immediate proximity be placed in the plan.                                                     |

| Transportation Demand Management<br>East West Highway<br>Townhouse Standards<br>Historic Placemaking<br>Density<br>Street Standards<br>Tree Canopy<br>Direct City Involvement |   |  |  |  |  |  |  |       | Recommendation Number                                                                                                                                                    | Recommendation | Chapter | Page                                                                                                                                                                                                                            | Planning Committee Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | City Staff Recommendation |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--|--|--|--|--|--|-------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|---------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
|                                                                                                                                                                               |   |  |  |  |  |  |  |       |                                                                                                                                                                          |                |         |                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                           |
| 2                                                                                                                                                                             | X |  |  |  |  |  |  | TM4.1 | Reclassify MD 410 as a Minor Urban Arterial.                                                                                                                             | 3              | 85      | Favor: 5, Against: 2, Abstain: 2                                                                                                                                                                                                | Support, given that the definition of "Minor Urban Arterial" is the same as Federal Highway Administration's, which states that minor urban arterials "serve major activity centers, highest traffic volume corridors, and longest trip deamnds; carry high proportion of total urban travel on minimum of mileage; interconnect and provide continuity for major rural corridors to accommodate trips entering and leaving urban areas and movements through the urban area; serve demand for intra-area travel between the central business district and outlying residential areas." |                           |
| 3                                                                                                                                                                             | X |  |  |  |  |  |  | TM4.2 | As an interim step, restripe MD 410 to test the Road Diet concept showing in Figure 6.                                                                                   | 3              | 86      | Favor: 7, Against: 2<br>* There needs to be clarification, it appears that the "interim" diet is the same as the permanent solution. *Any barriers that would separate the bike lane from traffic aren't noted on the diagrams. | The restriping appears to be a permanent solution until if/when Bus Rapid Transit becomes a viable option. Additional details are wanted about this.                                                                                                                                                                                                                                                                                                                                                                                                                                    |                           |
| 4                                                                                                                                                                             | X |  |  |  |  |  |  | TM4.3 | Add the following on-street bicycle accommodations to exisitng streets: MD 410- on road bike lanes, the entire length of the Transit District.                           | 3              | 87      | Favor: 7, Against: 2                                                                                                                                                                                                            | Support as written.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                           |
| 5                                                                                                                                                                             | X |  |  |  |  |  |  | TM4.4 | Install missing crosswalks and traffic signals at MD 410 and Editor's Park Drive, and rephase traffic signals for 24-hour control of the intersection.                   | 3              | 87      | Favor: 9, Against: 0                                                                                                                                                                                                            | Support as written.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                           |
| 1                                                                                                                                                                             | X |  |  |  |  |  |  | TM4.5 | Explore the feasibility of, and implement, if warranted, a new three-way intersection with full crosswalks and traffic signals at MD 410 and America Boulevard.          | 3              | 87      | Favor: 9, Against: 0                                                                                                                                                                                                            | Support as written.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                           |
| 2                                                                                                                                                                             | X |  |  |  |  |  |  | TM4.6 | Consider adding full traffic signals at new streets that intersect MD 410 to provide additional vehicular, bicycle, and pedestrian crossing while slowing travel speeds. | 3              | 87      | Favor: 5, Against: 3, Abstain: 1                                                                                                                                                                                                | Support, noting that a new street, Democracy Boulevard, was approved under the Safeway development to primarily serve for delivery access.                                                                                                                                                                                                                                                                                                                                                                                                                                              |                           |

| Transportation Demand Management<br>East West Highway<br>Townhouse Standards<br>Historic Placemaking<br>Density<br>Street Standards<br>Tree Canopy<br>Direct City Involvement |  |   |   |  |  |  |  |  | Recommendation Number |  | Recommendation                                                                                                                                                                                                                                                                                                                                                |  | Chapter | Page | Planning Committee Comments                                                                                                                                                                                               |  | City Staff Recommendation                                                                                                                                                                 |  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---|---|--|--|--|--|--|-----------------------|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 3                                                                                                                                                                             |  | X |   |  |  |  |  |  | TM7.1                 |  | Provide safe bicycle and pedestrian accommodation to the Lewisdale community along MD 410 west of Toledo Terrace, including improved accommodation on the bridge over the Northwest Branch of the Anacostia River and connections to the Heurich Park and Northwest Branch Trails from both sides of MD 410.                                                  |  | 3       | 89   | Motion to amend: Favor: 8, Against: 0, Abstain: 1<br>*Motion to amend noting that access on the southern side of Northwestern High School is just as, if not more, important due to the path leading to/from Metro.       |  | Support as written.                                                                                                                                                                       |  |
| 4                                                                                                                                                                             |  | X |   |  |  |  |  |  | TM9                   |  | Maximize utility and usage of the pedestrian bridge over MD 410.                                                                                                                                                                                                                                                                                              |  | 3       | 92   | Favor: 6, Against: 2, Abstain: 1<br>*Encourage aesthetic improvements to make the bridge an attractive icon in the area.                                                                                                  |  | The language is here is vague. We would like to see more specific improvements that should be made in the recommendations.                                                                |  |
| 5                                                                                                                                                                             |  | X |   |  |  |  |  |  | TM9.5                 |  | Require above-grade direct connections to the pedestrian bridge deck for new buildings on MD 410 that face the ends of the bridge.                                                                                                                                                                                                                            |  | 3       | 92   | Favor: 1, Against: 8<br>*Change "require" to "encourage"                                                                                                                                                                  |  | Do not support. The pedestrain bridge does not support at grade activity.                                                                                                                 |  |
| 6                                                                                                                                                                             |  | X |   |  |  |  |  |  | TM12.3                |  | Continue to explore premium transit service, including Bus Rapid Transit, along MD 410.                                                                                                                                                                                                                                                                       |  | 3       | 93   | Favor: 1, Against: 7, Abstain: 1<br>*It is unclear what exactly "premium transit service" means and entails.<br>*The BRT would go in place of the bike lane, which ruins the whole concept of having a bike friendly area |  | Do not fully support. Rather than Bus Rapid Transit, should look at the possibility of a fully amenitized cycle track as both a short term and potentially long term option along MD 410. |  |
| 7                                                                                                                                                                             |  | X |   |  |  |  |  |  | TM12.4                |  | Implement transit bus priority treatments at major intersections along MD 410 through the use of appropriate design features such as right turn pockets, advance stop bars to create bus queue jump facilities, traffic signal priority, and other intelligent transportation system (ITS) infrastructure to improve bus travel times and schedule adherence. |  | 3       | 93   | Favor: 8, Against: 1                                                                                                                                                                                                      |  | Support as written; enhances existing facilities and treats the Transit District as a regional transporation hub.                                                                         |  |
| 8                                                                                                                                                                             |  | X |   |  |  |  |  |  | HD1.2                 |  | Permit the highest densities closer to the Metro station and the intersection of Belcrest Road and MD 410.                                                                                                                                                                                                                                                    |  | 3       | 105  | Favor: 7, Against: 1, Abstain: 1                                                                                                                                                                                          |  | Support as written.                                                                                                                                                                       |  |
| 1                                                                                                                                                                             |  |   | X |  |  |  |  |  | HN1.1                 |  | Permit a mix of housing types (such as medium- to high-rise apartments and condominiums, two over twos, and townhouses), unit sizes, and rental and homeownership options attractive to a wide range of households and incomes.                                                                                                                               |  | 3       | 101  | Favor: 9, Against: 0                                                                                                                                                                                                      |  | Support as written.                                                                                                                                                                       |  |

Attachment: TDDP Comments (PC and City) (1290 : Preliminary Prince George's Plaza TDDP: Recommendations)

|   | Transportation Demand Management | East West Highway | Townhouse Standards | Historic Placemaking | Density | Street Standards | Tree Canopy | Direct City Involvement | Recommendation Number | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                   | Chapter | Page | Planning Committee Comments      | City Staff Recommendation                                                                                                                   |
|---|----------------------------------|-------------------|---------------------|----------------------|---------|------------------|-------------|-------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|------|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| 2 |                                  | X                 |                     |                      |         |                  |             |                         | TH1                   | The Transit District Standards replace all regulations in Part 5 of the Zoning Ordinance concerning townhouses, single-family attached, and multifamily housing within the Transit District, except maximum density. Where the Transit District Standards are silent on an element otherwise regulated by Part 5 of the Zoning Ordinance, that element is not regulated within the Transit District. See page 270 of the TDDP for the standards. | 5       | 195  | Favor: 8, Against: 0, Abstain: 1 | Support. Currently Part 5 of the zoning code lays out the following standards:                                                              |
| 3 |                                  |                   |                     |                      |         |                  | X           |                         | HD4.9                 | Through collaboration among property owners, the City of Hyattsville, the Department of Parks and Recreation and other stakeholders, identify optimal locations for additional public and publically accessible open spaces, including, but not limited to, parks, plazas, promenades, fountains, seating areas, performance venues, greens and commons. These public open spaces should have adequate seating.                                  | 3       | 107  | Favor: 9, Against: 0             | Support as written.                                                                                                                         |
| 4 |                                  |                   |                     |                      |         |                  | X           |                         | HC3                   | Through a partnership with the City of Hyattsville, the Town of University Park, the Prince George's County Department of Parks and Recreation and the Prince George's County Health Department and other entities, provide an array of opportunities for physical and social activity for employees and residents of all age groups.                                                                                                            | 3       | 110  | Favor: 9, Against: 0             | Support as written; as it currently stands the City of Hyattsville is a HEAL (Healthy Eating, Active Living) City.                          |
| 5 |                                  |                   |                     |                      |         |                  | X           |                         | HC3.1                 | Pursue joint use agreements to share office amenities or private-designated open space areas and outdoor facilities with the public.                                                                                                                                                                                                                                                                                                             | 3       | 110  | Favor: 9, Against: 0             | Support with the idea that private development amenity space can be used by nonprofits or government entities to use for specific purposes. |
| 6 |                                  |                   |                     |                      |         |                  | X           |                         | HC4.1                 | Consider the designation of the municipalities of Hyattsville and University Park as a wellness opportunity district in which incentives and policies would be provided to support and encourage health and wellness in the area. <i>Midterm. City is a lead.</i>                                                                                                                                                                                | 3       | 110  | Favor: 9, Against: 0             | Support as written; as it currently stands the City of Hyattsville is a HEAL (Healthy Eating, Active Living) City.                          |
| 7 |                                  |                   |                     |                      |         |                  | X           |                         | PF4.2                 | Work with the City of Hyattsville, Prince George's County Police Department and the Metro Transit Police Department to identify opportunities and incentives for Crime Prevention through Environmental Design (CPTED) retrofit, especially along Belcrest Center Drive and the Mall at Prince Georges.                                                                                                                                          | 3       | 113  | Favor: 9, Against: 0             | Support, but note that this would likely require City personnel to be trained in CPTED.                                                     |



[illegible]

**Attachment: TDDP Comments (PC and City) (1290 : Preliminary Prince George's Plaza TDDP: Recommendations)**

|   | Transportation Demand Management | East West Highway | Townhouse Standards | Historic Placemaking | Density | Street Standards | Tree Canopy | Direct City Involvement                                  | Recommendation Number | Recommendation                                                                                                                                                                                                                                                                                     | Chapter | Page | Planning Committee Comments      | City Staff Recommendation                                                                                                                                                                                                     |
|---|----------------------------------|-------------------|---------------------|----------------------|---------|------------------|-------------|----------------------------------------------------------|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|------|----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5 |                                  |                   |                     |                      |         |                  | X           | TM6.1, TM7.2, TM7.5                                      |                       | Increase bicycle and pedestrain connections to neighborhoods south of the Transit District. <i>Ongoing</i> . <u>City is a lead</u> .                                                                                                                                                               | 4       | 135  | Favor: 9, Against: 0             | Support as written.                                                                                                                                                                                                           |
| 1 |                                  |                   |                     |                      |         |                  | X           | LU5.2, EP3.2, HD4.7                                      |                       | Retain current retail and commercial tenant whiles simultaneously marketing the Transit District to new retailers, offices and other commercial enterprises. <i>Ongoing</i> . <u>City is an involved party</u> .                                                                                   | 4       | 129  | Favor: 3, Against: 3, Abstain: 3 | Support, the City should play an active role in fostering relationships with tenants and business owners. The city does not recommend subsidizing the leasing of properties.                                                  |
| 2 |                                  |                   |                     |                      |         |                  | X           | LU2.3, LU4.1, HD1.2, HD1.6, HC1.1                        |                       | Evaluate and implement incentives to encourage mixed-use redevelopment of underutilized commercial spaces, with a preference for employment uses over residential uses within the Downtown Core. <i>Ongoing</i> . <u>City is an involved party</u> .                                               | 4       | 129  | Favor: 9, Against: 0             | Support; there is an existing revitalization tax credit program which may be used to subsidize development costs.                                                                                                             |
| 3 |                                  |                   |                     |                      |         |                  | X           | EP4.3                                                    |                       | Identify incentives to encourage developers to offer a mix of housing types and unit sizes, including two and three-bedroom units. <i>Short-term</i> . <u>City is an involved party</u> .                                                                                                          | 4       | 130  | Favor: 9, Against: 0             | Support; there is an existing revitalization tax credit program which may be used to subsidize development costs.                                                                                                             |
| 4 |                                  |                   |                     |                      |         |                  | X           | TM1.12                                                   |                       | Determine ownership and maintenance responsibilities for existing and future streets and sidewalks. <i>Short-term</i> . <u>City is an involved party</u> .                                                                                                                                         | 4       | 131  | Favor: 9, Against: 0             | Support as written.                                                                                                                                                                                                           |
| 5 |                                  |                   |                     |                      |         |                  | X           | TM1.1, TM1.2, TM1.4, TM1.6, TM1.7, TM1.11, TM1.14, HD1.3 |                       | Evaluate and update the Prince George’s County Specifications and Standards for Roadways and Bridges to permit construction of urban streets and sidewalks, preferably in concert with the rewriting of the Zoning and Subdivision Ordinances. <i>Ongoing</i> . <u>City is an involved party</u> . | 4       | 131  | Favor: 9, Against: 0             | Support as written.                                                                                                                                                                                                           |
| 6 |                                  |                   |                     |                      |         |                  | X           | TM1.14                                                   |                       | Consider the use of bike boxes at all signalize intersection with bike lanes, cycle tracks or any type of bicycle facility as part of the road design, allowing bicyclists to proceed on green ahead of motorized vehicles. <i>Mid-term</i> . <u>City is an involved party</u> .                   | 4       | 132  | Favor: 9, Against: 0             | Support as written. A bike box is a designated area ahead of the traffic line at an intersection that allows cyclists to get ahead of traffic during a red light. Bike boxes increases the visibility and safety of cyclists. |
| 7 |                                  |                   |                     |                      |         |                  | X           | TM7.5, HC2.3                                             |                       | Construct a hard surface multiuse trail on, or parallel to, the WMATA Green Line. <i>Long-term</i> . <u>City is an involved party</u> .                                                                                                                                                            | 4       | 134  | Favor: 9, Against: 0             | Support as written, as well as support trails at multifamily properties that provide access to Metro.                                                                                                                         |

|   | Transportation Demand Management | East West Highway | Townhouse Standards | Historic Placemaking | Density | Street Standards | Tree Canopy | Direct City Involvement | Recommendation Number | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Chapter | Page | Planning Committee Comments | City Staff Recommendation                                                                                            |
|---|----------------------------------|-------------------|---------------------|----------------------|---------|------------------|-------------|-------------------------|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|------|-----------------------------|----------------------------------------------------------------------------------------------------------------------|
| 1 |                                  |                   |                     |                      |         |                  | X           |                         | TM15.1                | Retrofit existing and outfit new bus/shuttle stops within the Transit District with amenities to include, but not be limited to: widened sidewalks, bus stop pads, and relocated landscaping to make boarding or alighting from a bus easier and safer, bus shelters with seating for at least four patrons, bicycle racks or lockers, well-maintained signage indicating routes and services serving the stop or destinations in close proximity, next-bus technology with real-time bus arrival information plus up-to-date timetable and schedule information, an up-to-date map of the Transit District patterned on WMATA's Bus Stop Neighborhood Maps, pedestrian scale lighting, shade trees, well-maintained trash and recycling receptacles. <i>Mid-term</i> . <u>City is an involved party.</u> | 4       | 136  | Favor: 9, Against: 0        | Support as written.                                                                                                  |
| 2 |                                  |                   |                     |                      |         |                  | X           |                         | TM16.6                | Insert the WMATA Metro station pylon at the following locations: 1) East West Highway at the Pedestrian Bridge, 2) Belcrest Road at the Metro Entrance, 3) Oliver Street at the Metro entrance. <i>Short Term</i> . <u>City is an involved party.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 4       | 137  | Favor: 9, Against: 0        | Support as written.                                                                                                  |
| 3 |                                  |                   |                     |                      |         |                  | X           |                         | HC6.2                 | Identify incentives and partnerships to increase opportunities for the production and sale of healthy food, such as urban farms and farmers' markets. <i>Ongoing</i> . <u>City is an involved party.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 4       | 141  | Favor: 9, Against: 0        | Support as written; as it currently stands the City of Hyattsville is a HEAL (Healthy Eating, Active Living) City.   |
| 4 |                                  |                   |                     |                      |         |                  | X           |                         | PR3.4                 | Enhance signage and landscaping along the existing pedestrain path to Heurich Park from MD 410. <u>City is an involved party.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 4       | 143  | Favor: 9, Against: 0        | Support as written.                                                                                                  |
| 5 |                                  |                   | X                   |                      |         |                  |             |                         | HD5.2                 | Avoid construction that negatively impacts the following architectural vistas: the view of the Mosaic from southbound Belcrest Road, and the view of the Hitching Post Hill from the "Clay Property."                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 3       | 107  |                             | Support as written; the recommendations in the plan appropriately address concerns pertaining to Hitching Post Hill. |
| 6 |                                  |                   | X                   |                      |         |                  |             |                         | HD10                  | Minimize and mitigate potential impacts to the undeveloped land surrounding Hitching Post Hill (Historic Site 68-001).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 3       | 109  |                             | Support as written; the recommendations in the plan appropriately address concerns pertaining to Hitching Post Hill. |
| 7 |                                  |                   | X                   |                      |         |                  |             |                         | HD10.1                | Incorporate a wide landscaped buffer or park along the edge of the northernmost property in the Transit District- commonly referred to as the Clay Property- across the street from Hitching Post Hill.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 3       | 109  |                             | Support as written; the recommendations in the plan appropriately address concerns pertaining to Hitching Post Hill. |

| Transportation Demand Management |                     |                      |         |                  |             |                         |                       |            | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Chapter | Page | Planning Committee Comments | City Staff Recommendation                                                                                                                                                                             |
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| East West Highway                | Townhouse Standards | Historic Placemaking | Density | Street Standards | Tree Canopy | Direct City Involvement | Recommendation Number |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |         |      |                             |                                                                                                                                                                                                       |
| 1                                |                     |                      |         | X                |             |                         |                       | Defintion  | Downtown Core: features a medium- to high-density mix of uses including retail, residential, office, open space, and civic uses. The Downtown Core is intended to be a vibrant downtown destination for Prince George's County and the surrounding Washington, DC metropolitan area and a distinctive and attractive place to live, learn, work, visit and shop.                                                                                                                                                                                                                                                                                                                                                                                                                                 | 5       | 204  |                             | Support as written.                                                                                                                                                                                   |
| 2                                |                     |                      |         | X                |             |                         |                       | Definition | Neighborhood Edge: consists of a range of residential, recreational, and open space uses. The Neighborhood Edge is intended to establish an appropriate, walkable transition between the higher-intensity development in the Downtown Core and the low-density single-family detached residential neighborhoods adjacent to the Transit District.                                                                                                                                                                                                                                                                                                                                                                                                                                                | 5       | 204  |                             | Support as written.                                                                                                                                                                                   |
| 3                                |                     |                      |         | X                |             |                         |                       |            | Density maximums are as follows: R-80- 4.58 dwelling units per acre; R-20- 16.33 dwelling units per acre, R-18- 20 dwelling units per acre; R-10- 48 dwelling units per acre; M-U-I (Residential/commercial)- established by detailed site plan; M-U-I (multifamily residential only)- 48 dwelling units per acre; M-X-T (base)- 0.4 floor area ratio; M-X-T (optional method of development)- 8.0 floor area ratio.                                                                                                                                                                                                                                                                                                                                                                             | 5       | 241  |                             | Support as written.                                                                                                                                                                                   |
| 4                                |                     |                      |         | X                |             |                         |                       |            | One way in which this TDDP can incentivize the construction of public faciitiies is through the provision of height and density bonsues. These bonuses effectively permit the contruction of larger buildings in exchange for the provision of land, buildings, or building space for public facilities. There are four major capital improvements recommended by this TDDP that qualify, due to their expense and scope, as "major amenities." They are: 1. A regional stormwater management facility operated by the Department of Public Works and Transportation. 2. An elementary school operated by Prince George's County Public Schools. 3. A second, western entrance to the Metro station operated by WMATA. 4. A regional multi-generational recreation facility operated by M-NCPPC. | 5       | 247  |                             | Significant road improvements should also qualify for a density bonus, such as the replacement of the existing pedestrian lighting network and dedicated bicycle cycle track placed on Belcrest Road. |



| Transportation Demand Management<br>East West Highway<br>Townhouse Standards<br>Historic Placemaking<br>Density<br>Street Standards<br>Tree Canopy<br>Direct City Involvement<br>Recommendation Number |  |  |  |  |   |   |   |  |  | Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  | Chapter | Page | Planning Committee Comments |  | City Staff Recommendation                                                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|--|--|---|---|---|--|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------|------|-----------------------------|--|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1                                                                                                                                                                                                      |  |  |  |  | X |   |   |  |  | The Planning Board may grant a bonus of up to 20 percent, up to the maximum permitted density for the underlying zone, for the provision of other publicly-accessible amenities. This bonus encourages the construction of amenities that enrich the public realm; add destinations for workers, residents and visitors; and enhance property values and tax revenues. Bonuses may be granted for the following: 1. conveyance of parkland recommended by the TDDP on properties not subject to Section 24-124 due to exemption from a Preliminary Plan of Subdivision. 2. Conveyance of parkland above and beyond that required by this TDDP. 3. Construction of plazas, promenades, parks and other public open space beyond that required by the TDDP, especially public spaces designed for performances, events, vending or recreation. 4. Other dedicated spaces open to the public such as museums, art galleries, cultural arts centers, community rooms, recreation areas. 5. Day care for children or senior adults and persons with disabilities. 6. Public art. 7. Provision of moderately-priced dwelling units; units for rent or sale at 80 percent of area median income. |  | 5       | 247  |                             |  | Significant road improvements should also qualify for a density bonus, such as the replacement of the existing pedestrian lighting network and dedicated bicycle cycle track placed on Belcrest Road.                |
| 2                                                                                                                                                                                                      |  |  |  |  |   | X |   |  |  | The City of Hyattsville will, upon application by the owner of a street or proposed street, accept dedication or conveyance of streets and rights-of-way (including frontage zones and sidewalks), subject to all of the following conditions: the street is located within the City of Hyattsville; the street is designed to the City of Hyattsville's Street Design Standards; sufficient right-of-way exists to accommodate the frontage zones required by this TDDP; approval of the Hyattsville City Council.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  | 5       | 211  |                             |  | Support as written; we support the recommendation that and appreciate that the City of Hyattsville will be granted authority over the acceptance of secondary streets constructed to publicly established standards. |
| 3                                                                                                                                                                                                      |  |  |  |  |   |   | X |  |  | This TDDP anticipates that all new streets and sidewalks will either be owned and maintained by private property owners, owned by private property owners but maintained by a third-party, or owned and maintained by the City of Hyattsville. The TDDP does not anticipate a role for the Department of Public Works and Transportation in the maintenance of new streets. Between street curbs, new streets within the City of Hyattsville shall be constructed to the city's street design standards. New streets outside of the City of Hyattsville shall be constructed to the Transit District Standards for street design.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  | 5       | 194  |                             |  | Support as written; we support the recommendation that and appreciate that the City of Hyattsville will be granted authority over the acceptance of secondary streets constructed to publicly established standards. |

|   | Transportation Demand Management | East West Highway | Townhouse Standards | Historic Placemaking | Density | Street Standards | Tree Canopy | Direct City Involvement | Recommendation Number | Recommendation                                                                                                                                                                                                                                                                                               | Chapter | Page | Planning Committee Comments | City Staff Recommendation                                                                                                                                                                                                                                                                                                                                                                    |
|---|----------------------------------|-------------------|---------------------|----------------------|---------|------------------|-------------|-------------------------|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|------|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 |                                  |                   |                     |                      |         | X                |             |                         |                       | Street trees shall be located within the Tree and Furnishing Zone; additional trees may be provided within the Retail or Residential Zones, as appropriate.                                                                                                                                                  | 5       | 223  |                             | In the interest of the environemnt, we recommend that only Native or Native Select species be used in the design.                                                                                                                                                                                                                                                                            |
| 2 |                                  |                   |                     |                      |         | X                |             |                         |                       | Shade trees two and one-half to three-inch caliper in size, shall be planted along each street with spaces of not greater than forty feed on center, excluding driveway openings. Spacing allowances may be made, where necessary, to accommodate curbcuts, fire hydrants and other infrastructure elements. | 5       | 233  |                             | Should replace "with spacing of no greater than forty feet" to "with spacing of no less than twenty five feet on center and no greater than forty feet."                                                                                                                                                                                                                                     |
| 3 |                                  |                   |                     |                      |         | X                |             |                         |                       | Tree boxes or pits may include additional landscaping. In addition to the tree, the tree box or pit may include flowering plants and shrubs. However, no plants with thorns or other sharp protrusions should be used, and these plants should be maintained below a height of 42 inches.                    | 5       | 234  |                             | Consideration should be given to not only those plants with thorns or sharp protusions, but also to potentially messy fruit bearing plants. Additionally, we recommend that American National Standards Institute (ANSI) A300 guidelines be followed for all planted materials. Any plant materials not installed per ANSI standards will be subject to replacement and proper installation. |



Hyattsville City Council  
4310 Gallatin Street, 3<sup>rd</sup> floor  
Hyattsville, MD 20781

Meeting: 10/5/2015 8:00 PM  
Department: City Administration  
Prepared by: Tracey Nicholson  
Sponsors: At the Request of the City Administrator  
DOC ID: (ID # 1275)

8.2

**Discussion Items: Employee Health Care Insurance Premium Rates for 2016**

**SUBJECT: Employee Health Care Insurance Premium Rates for 2016**

**SECTION: Discussion Items**

**BACKGROUND:**

The State of Maryland released their 2016 Health Care Plans and Rates this week. The City Administrator, Director of Human Resources, and Treasurer will review the rate plans and benefits packages, and will make a recommendation to the Mayor and Council on the 2016 contribution levels.

**NEXT STEPS:**

This item is tentatively on the Action agenda for the Council Meeting of October 19, 2015

**ANTICIPATED STAFF RESOURCES REQUIRED TO IMPLEMENT:**

**STRATEGIC GOALS**

**Goal:** Goal 4 – Foster Excellence in all City Operations

  
Tracey Nicholson, City Administrator 10/1/2015

## Main City Calendar for October 6 – October 25, 2015

### 1. Walk to School Day

**October 7, 7:15 AM - 7:45 AM**

The Mayor, Council and other community leaders will be walking with children on seven routes to three elementary schools. For route information, call Jake Rollow at 301-985-5031.

### 2. Environmental Committee Meeting

**October 7, 7:30 PM - 8:30 PM @ City Municipal Building - 2nd Floor Prangley Room**

### 3. Senior Trip to Amish Country Market & Wegman's

**October 8, 9:00 AM - 3:00 PM**

Ride the Call-A-Bus to the Amish Market and Wegmans. For more information call Beryl Johnson at 301-985-5058.

### 4. Fall Community Yard Sale Weekend

**October 9, 8:00 AM - October 11, 5:00 PM @ City-wide**

### 5. Electronics Recycling Day

**October 10, 7:00 AM - 1:00 PM @ 4633 Arundel Place**

### 6. Planning Committee

**October 13, 7:30 PM - 9:30 PM @ 4310 Gallatin Street**

### 7. Senior Dining and Lecture Series in Laurel

**October 14, 3:00 PM - 5:00 PM**

For more information, call Beryl Johnson at 301-985-5058.

### 8. Sunset Movie Series at Heurich Park - Cinderella (2015)

**October 16, 7:00 PM - 9:00 PM @ Heurich Park**

### 9. City Council Meeting

**October 19, 8:00 PM - 10:00 PM @ Third Floor, Council Chambers**

### 10. Code Compliance Advisory Meeting

**October 21, 7:00 PM - 8:30 PM @ City Municipal Building, 1st Floor Multipurpose Room**

### 11. Education Advisory Committee

**October 22, 6:30 PM - 8:00 PM @ 4310 Gallatin Street**

### 12. Spooky Fest

**October 24, 1:00 PM - 3:00 PM @ TBD**