

Body-Worn Camera Policies and Procedures: Guidelines for Prosecutors

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Written By

Michael C. Green, J.D.
Robert Haas, M.A.
Frank P. Carrubba, J.D.
Craig D. Uchida, Ph.D.
Delaney Falsken

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Executive Summary

Body-worn cameras (BWC) and their video footage are increasingly important to the criminal justice system, and critical in carrying out prosecutors' responsibilities. Evidence from BWCs can aid in making informed charging decisions, safeguarding constitutional rights, obtaining convictions, and preventing wrongful convictions. It is imperative that offices set clear guidance for the handling and use of this important evidence. Justice demands it and line level prosecutors deserve it. We strongly encourage prosecutors to consider adopting formal guidelines or policy for their offices around BWC issues. The attached document provides a template for creating such a policy. It highlights important issues to be considered, including the following:

Interactions Between Prosecutors and Law Enforcement

- What factors should be considered in a review of law enforcement agencies' BWC policy?
- What are the considerations in creating an MOU between the prosecutor's office and the law enforcement agencies concerning BWCs?
- What are the ground rules between the prosecutor's office and law enforcement agencies regarding notification of existence of BWC footage, transmission of the footage to the prosecutor's office, handling, documenting and safeguarding the BWC evidence, and release of the footage?

Prosecutor's office Policies Regarding the Viewing of BWC Footage by Witnesses?

- Can officers view their own footage? Other officers? Can non-law enforcement witnesses view BWC footage?

- If so when? Before writing a report? Before testifying?
- Are there different rules for officer involved shootings? Use of force? Injured officers?

Internal Practice of Prosecutor's Office Dealing with BWC Evidence

- Do prosecutors have a responsibility to review BWC footage for cases they are handling? When? Before charging? Discovery? Testimony?
- What is the process for and scope of the review? Evidentiary only? Officer misconduct?
- How does the prosecutor's office fulfill its discovery obligations? How are issues around redaction and protective orders dealt with?
- What are Office policies regarding retention, storage and release of BWC footage?
- What type of training does the prosecutor's office mandate around BWC issues?
- How does the prosecutor's office handle issues around the use and preservation of BWC evidence at trials and hearings?

These are some of the important issues highlighted in the attached guidelines. We strongly encourage you to review this carefully with the goal of developing an office policy that reflects your vision for how prosecutors in your office handle this important evidence.

Body-Worn Camera Policies and Procedures: Guidelines for Prosecutors

Purpose and Scope

The purpose and scope of a prosecutor's¹ body-worn camera (BWC) policy is intended to establish a written set of guidelines, outline how those guidelines will be implemented, and who will be affected by the policy.

Policy Statement

A policy statement should identify the actual guiding principles of the agency and how those principles apply to the establishment of the overall guidelines. Regarding BWC evidence the policy statement should state the general principles behind the specific guidelines set forth in the remainder of the document that govern how the prosecutor's office handles BWC evidence and related issues.

Prosecutor's Interaction with Local Law Enforcement Regarding BWCs

In various jurisdictions, the prosecutor's office or prosecutor's associations have developed what it considers model policies (see for example the Iowa County Attorneys Association's Policy Guide for Prosecutors on Body Worn Cameras), or at the very least specific requirements the prosecutor wants to see incorporated into a law enforcement agency's own set

¹ For purposes of this document, the use of the terms of "prosecutor" and "prosecutor's office" are meant to be synonymous with "district attorney" or "state attorney" and their respective offices.

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of policies and procedures. Adoption of such guidelines requires thought as to the prosecutor's role as it relates to the law enforcement agencies' practices around BWC's.

At one end of the spectrum a prosecutor could take the position that it is law enforcement agencies' decision and absent a request the prosecutor should not be involved. At the other end of the spectrum, a prosecutor could take the position that given the impact that law enforcement agencies' policies around BWC's have on the prosecution, the prosecutor will mandate some basic or fundamental guidelines that must be followed by law enforcement agencies. Somewhere in the middle would be a prosecutor who puts out guidelines for law enforcement agencies to consider or who reviews law enforcement agencies' policies upon request of the agency and provides feedback. In the event the prosecutor will review and provide feedback on law enforcement agencies' BWC policies, a checklist like the one included in the Iowa Policy mentioned above is advisable. Some basic considerations might include the following topics:

- Limits on the use of BWC's, for example to law enforcement purposes only;
- Prohibitions of unauthorized use of body worn cameras by law enforcement (i.e., situations or circumstances when officers are prohibited from recording, such as in private homes, schools when children are present, hospital settings, lawyer's offices, courts, etc.);
- Requirements concerning the training of law enforcement officers in the use and guidelines associated with body worn cameras;
- Situations or circumstances when officers are required to activate / deactivate body worn cameras;

- Situations when officers may use discretion in the use of body worn cameras;
- Direction on the use of body worn cameras when it involves the recording of witnesses, victims, or suspects – including special considerations for sexual assault, domestic violence, and juvenile victims;
- The documentation of when officers have used body worn cameras, or when why body worn cameras were not activated when otherwise required;
- The labeling or tagging of footage to associate it with relevant criminal investigations;
- Notification to prosecutor’s office of existence of BWC footage relative to a case being handled by the prosecutor’s office and provisions to make the footage available to the prosecutor; and
- Restrictions on what circumstances and at what time officers can view their own or other officers BWC footage.

A prosecutor’s office should strongly consider executing a memorandum of understanding (MOU) with those law enforcement agencies under its jurisdiction that use BWC’s to clarify issues that affect prosecutors when it comes to BWC evidence. Some issues prosecutors should consider when drafting an MOU might include the following:

- Notification of the existence of BWC recordings and access to the recordings;
- Terms of BWC access for prosecutor from the BWC vendor and allocating responsibility for any associated costs;
- Ownership of any BWC footage stored by a vendor (agreements should make clear that any such footage is owned by the law enforcement agencies and not the vendor) and should cover ownership of footage given to the prosecutor;
- Standards for documenting and tagging recordings to link them to a particular case;
- Department liaisons to assist with identification of recordings, delivery and storage;
- Department liaisons to coordinate exchange of information with the prosecutor regarding any officer conduct or misconduct issues identified by

the prosecutor in BWC footage and the process and timing of the exchange of such information;

- Coordination of Freedom of Information / Public Records Requests;
- Retention policies;
- Protocols for releasing video to the public; and
- Allocation of redaction and transcription duties.

In the context of dissemination/discovery for prosecutors, the prosecutor should in some manner make clear to law enforcement agencies using BWCs the guidelines and requirements that need to be followed for a prosecutor’s office to go forward on a case relative to the notification of the existence, transmission, safeguarding, and pre-mature release of body worn camera evidence as it pertains to criminal cases, to include the following:

- Recordings from criminal cases must be secured and provided to the prosecution as is any other real evidence;
- Allowing the agency’s prosecutors full access to evidence associated with a criminal case that is submitted for prosecution;
- Process for prosecutors to obtain the information;
- Clear rules for disclosure and dissemination to the media and general public, to include: (1) redaction; and (2) conforming to state open records laws;
- Prohibiting unauthorized disclosure, reproduction, or editing of body worn camera evidence;
- Clear retention policy consistent with evidence retention policies, providing specified retention periods for: (1) criminal cases, (2) civil cases, and (3) internal investigations; and
- Clear guidelines for destruction of recordings, to include: (1) when it is not evidence in criminal, civil, or internal investigation; (2) when inadvertent recording that captures private encounter have no evidentiary value; and (3) the time and manner of notification to prosecutor of a law enforcement agency’s intent to destroy recordings.
- Process for law enforcement agencies to request redaction of BWC footage by the prosecutor prior to a release to the defense or public (for example footage that deals with sensitive police tactics).

Viewing of Recordings by Police and Witnesses

There are divergent opinions as to whether and when officers should be allowed to view their own or other officers' BWC footage prior to writing reports, testifying or performing other case related functions. Prosecutors should review the issues for and against such review and consider providing guidance to the police on the following issues:

What is the position of the prosecutor when it comes to allowing officers to have access to their own recordings before writing their incident reports?

What is the position of the prosecutor when it comes to allowing officers to have access to the recordings of other officers before writing their incident reports?

What is the position of the prosecutor when it comes to allowing officers to have access to their recordings prior to interviews and/or the writing of incident reports in officer-involved use of force cases?

How would review of BWC footage impact the ability of the witness to provide truthful and accurate testimony in a proceeding or report, and how would it impact a factfinder's view of the witness's testimony or report?

- There is also divergent opinion as to whether officers should be allowed to review recordings when there has been an officer-involved shooting or use of force resulting in serious injury.

What is the position of the prosecutor when it comes to allowing witnesses to review body-worn camera footage prior to recounting their observations of an incident before a Grand Jury, a hearing or trial or in preparation for any of the above?

- Allowing a witness to review case-related recordings has certain benefits and disadvantages. Case related recordings can include not only BWC footage, but surveillance videos and recordings made by private citizens.
- A benefit of showing a recording to a witness is that it may allow the witness to better explain the events that transpired, to help identify other witnesses, and to refresh the witness' memory.
- On the other hand, because a recording may not have been taken from the witness's vantage point or may have been taken at a time when the witness was not present, review of recordings could taint or embellish the witness's memory.



Internal Prosecution Policies Regarding BWCs

Review of BWC Evidence²

Prosecutor's Responsibilities for Processing BWC Evidence

Is there a requirement for the assigned prosecutor to review the entirety of the BWC footage? If so, is it required that all available BWC footage from every officer be reviewed? If not, how is the viewing prioritized? By case type? Witness type? Other?

When does the BWC footage need to be reviewed? Before discovery? Before charging events like a Grand Jury? Before a witness testifies? Before trial? Are cases or witnesses prioritized in terms of timing of the review?

Is the review of BWC footage limited to certain personnel within the prosecutor's office? Is it limited to the ADA assigned to the case? Immediate supervisor? How is access documented and reviewed?

Is part of the review of BWC footage limited to a review of the pertinent facts of the case and circumstances of the event, or should the review also take into consideration the professionalism and appropriateness of the actions of all officers involved?

- If the reviewing attorney is reviewing the BWC footage for the professionalism and appropriateness of the officers involved, what should this include (e.g., use of excessive force, criminal behavior such as planting or misappropriating evidence; discriminatory, insensitive, or inappropriate language or behavior, i.e., racially, or sexually charged language, to include any actions by an officer which escalates a situation or baits an individual into reacting?)
- If such unprofessional or inappropriate actions on the part of the officers involved are observed on the BWC footage, how should that information be reported, and to whom? This should include how the information is reported to supervisors within the prosecutor's office, including what, if any,

review process exists to confirm whether conduct observed on the footage should be reported to law enforcement agencies' administration, and how it is to be reported to them. (See section above regarding covering this process in an MOU with the police agency.)

- What, if any, documentation should be made of the review of BWC footage for this purpose? What, if any, documentation should be made of any incidents where it has been determined that officers involved in the case acted unprofessionally or inappropriately? And what documentation should be made by the prosecutor regarding the actions taken as a result of the viewing of such evidence – for example notification to the police department, to the defense, or to the court.

Are prosecutors required to document their viewing of BWC evidence? If so, what has to be documented and how is that information documented? What is the process for preserving those records documenting the review?

Is there any supervisory oversight when it comes to verifying that prosecutors have completed the review process, if required?

Are there circumstances when a prosecutor is required to notify his/her supervisor of any situations involving BWC evidence, e.g., the officers involved in the case are under investigation by their department's internal affairs unit?

BWC Disclosure³

What are the controlling rules for BWC footage as it pertains evidentiary safeguards and preservation of the chain of custody?

What guidelines have been established by legislative requirements and judicial rulings for BWC footage evidence as it pertains to discovery and privilege?

What are the requirements for the release of BWC footage evidence to the defense, and are there time limitations as to its release?

Does the prosecutor's office have a policy that addresses whether notice of BWC recordings should be given to defense counsel at the arraignment or preliminary hearing?

2 Taylor, Shannon, Henrico County Commonwealth Attorney's Office (VA). New Office Policies – Handling of Body Worn Camera Evidence – Internal Memorandum. June 23, 2020. (See link).

3 San Diego District Attorney's Office. Policy for Body Worn Camera Evidence (BWC). (See link).

Does the prosecutor's office maintain an audit trail for the release of BWC evidence to the defense attorney?

Will BWC footage evidence be redacted prior to the release of said evidence to the defense attorney?

- If so, who is responsible for review and redaction of BWC footage?
- What are the criteria to be used when determining whether any portion of the BWC footage is to be redacted?
- What is the supervisory review process, if any, regarding redaction decisions?
- Are there any legal avenues under applicable state law, such as a protective order, which protect or set limits on the dissemination of BWC information (i.e., what would be considered protected content – e.g., posing a danger to victims or witnesses)⁴ to the defendant or other members of the community?
- Whose obligation is it to pursue such remedies? When? What training is available/mandated for prosecutors on this issue? What supervisory review is in place regarding the practice of seeking such orders?

What is the prosecutor's office policy regarding the handling of BWC evidence when it pertains to protective orders? Does the policy take into consideration the following:

- **Delayed Discovery:** To protect the safety of witnesses, under what circumstances can or should the prosecutor seek to delay disclosing the name of witnesses or to redact identifying information, such as contact information and social security numbers?
- **Limiting Disclosure:** Under what circumstances can and should the prosecutor seek an order limiting disclosure of the video to the defense attorney and the defendant to protect others from knowing the identity of witnesses or other sensitive information?
- **Prohibiting Public Release:** Can and under what circumstances should the prosecutor seek and order prohibiting defense attorneys, police, and defendants from giving the video to the media or using the recording in any proceeding other than the pertinent case?
- **Prohibiting Copying:** Can and under what circumstances should the prosecutor seek and order prohibiting the video from being copied to any computer program or Internet website, except for computer programs maintained and used specifically for the subject criminal action?
- **No Physical Copy to the Defendant:** Can and under what circumstances should the prosecutor seek and order prohibiting defense counsel from giving copies of the recordings to the defendant? In such cases does the defendant have the right to see the recording?
- **Return of the Recording:** Can and under what circumstances should the prosecutor seek and order requiring that all copies of the video be returned within at least two weeks after final termination of the case by plea, settlement, judgment, dismissal, appeal, or otherwise?

Does the prosecutor's office have a policy which describes an alternative to a protective order?

In what format will BWC footage be released to the defense counsel (i.e., copied media, access to a digital portal (e.g., Evidence.com), in-person review, etc.).

⁴ Examples of protected information might include highly dangerous and violent defendants, threat and relocation situations, CI information, information relating to ongoing investigations, and other information that should not be in the possession of defense counsel without redaction

Redaction Responsibility

Does the prosecutor have any legal or ethical obligation to prevent disclosure of privileged information contained within BWC footage evidence, such as non-discoverable victim(s) or witness(es) information?

Who in the prosecutor's office is responsible for the actual redacting of BWC footage and what is the process and timelines for redaction?

Are there any secondary reviews (e.g., sign-off) of BWC footage that has been redacted prior to its release?

Discovery Process

In cases where the defendant represents themselves or is without legal counsel, how will the defendant be granted access to BWC evidence?

For in-custody defendants who are representing themselves, who will take and preserve custody of BWC evidence?

Will the defendant who is self-representing, be granted copies of BWC evidence, or will other arrangements be made to have the defendant view the evidence in-person? If so, what are the timelines and procedures to be followed for such viewings?

Access and Use of BWC Evidence

Are there any restrictions for how BWC evidence may be used by prosecutors having access to BWC evidence (e.g., BWC evidence may only be used for official purposes)?

As mentioned above under the heading of Review of BWC Evidence, are there limits on who in the prosecutor's office can review BWC footage? Is it limited to attorneys? Only the attorney(s) handling the case in question? Are support staff allowed access? How is such access limited or regulated? Only at the direction of the assigned attorney? How is access limited – is it built into the storage system? How is access monitored and what is the process for dealing with unauthorized access?

If there are restrictions for how BWC evidence may be used (e.g., not to be copied, made accessible or provide to third parties, except as specifically authorized in the course of carrying out official District Attorney Business, etc.)?

Police Body Camera Policies: Retention and Release⁵

What are the legislative and judicial requirements for the retention period of body-worn camera footage involved in criminal cases?

Is the prosecutor's office required to maintain custody over BWC footage for the duration of a criminal case? If there is a conviction what are the preservation requirements? Does it vary depending on whether the conviction, is by plea or trial verdict? Does it vary depending on the type of case? What is required if the case is concluded without a conviction (acquittal or dismissal)?

What is the process for storing and preserving BWC footage which are required to be preserved in connection with the issues in the above guideline? Who is responsible for the storage and preservation of the footage?

What responsibility does the prosecutor's office have in terms of preserving and safeguarding BWC evidence in criminal cases?

How does the prosecutor's office ensure that the chain of custody is preserved and maintained?

What is the prosecutor's office policy regarding the release of BWC footage to the public? Before trial? After trial? For footage introduced at trial? For footage not introduced at trial?

What involvement and/or authority does the prosecutor's office have with respect to law enforcement agencies and the pre-releasing of BWC footage involved in criminal cases? Is there a process law enforcement agencies must follow in seeking permission to release BWC footage prior to its introduction into a criminal case? If there is an MOU with the law enforcement agencies regarding BWC evidence, is this topic covered? Should, at a minimum, the MOU require the law enforcement agencies to consult with the prosecutor prior to any release?

Are there specific categories of criminal cases where law enforcement agencies are exempt/prohibited from public disclosure of BWC footage? Does the prosecutor have any role in enforcing these provisions?

⁵ Brennan Center for Justice. Police Body Camera Policies: Retention and Release, Last Updated July 19, 2019. (See link).

Storage of BWC Evidence

When the prosecutor's office obtains BWC evidence, what are the procedures to be followed in capturing and uploading the video footage?

For BWC evidence being maintained by the prosecutor's office is the digital data backed-up? How?

Release of Recordings to the Public

What are the relevant considerations when deciding whether BWC footage should be released to the public?

Many agencies have adopted policies prohibiting BWC recordings of encounters related to investigations or criminal offenses from being shared with third parties other than authorized agency personnel, unless such disclosures are:

1. Required by the court;
2. Pursuant to the rules of discovery in prosecutions;
3. The law enforcement agency and prosecutor's office collectively determine that the need for access outweighs the law enforcement interest in maintaining confidentiality; or
4. In response to a Freedom of Information request.

Freedom of Information Requests

In terms of Freedom of Information requests, the laws vary from state to state, and some provide greater access to the public than others. Since both law enforcement agencies and prosecutors can be served with a Freedom of Information request, prosecutors and law enforcement agencies should coordinate their public records disclosure policies, particularly in pending investigations or cases. A primary concern related to such public disclosures is whether a BWC recording's release could adversely impact the investigation or put a witness in danger. If recordings are required by law to be released, there should be provisions in the policy with regard to redaction in this context.

What is the process the law enforcement agencies and the prosecutor's office follow to ensure coordination with regard to FOI requests? Who is responsible for the process in the prosecutor's office?

What is the prosecutor's position when it comes to allowing members of the public to view BWC recordings in the prosecutor's office?

Police Disclosure Over a Prosecutor's Objection

High-profile incidents, such as police shootings or use-of-force incidents, present particular challenges for prosecutors regarding public disclosure of BWC recordings. Given that police departments generally own and control the BWC recordings, police departments may choose to release footage to the public in an effort to diffuse public unrest, despite a prosecutor's request to the contrary. Prosecutors should consider discussing this issue with police departments during the development of a BWC program, and develop protocols related to the public disclosure of BWC recordings of high-profile incidents. See the above section regarding MOU between the prosecutor and the police department.

Ethical Constraints

Ethical rules such as Ethical Rule 3.8 (Special Responsibilities of a Prosecutor) of the ABA Model Rules of Professional Conduct may prohibit prosecutors from releasing recordings while a criminal proceeding is ongoing. Local rules may also prohibit disclosure.



Training and Feedback

Training of Legal and Support

Once office policies for BWCs are established and implemented, prosecutors should train the legal and support staff on the policies and the technical aspects of BWCs. Who in the prosecutor's office is responsible for the training?

Prosecutor-Law Enforcement Feedback Loop

When viewing BWC recordings, the prosecutor may identify training opportunities for the law enforcement agencies regarding legal issues or inappropriate behavior by officers. Prosecutors should consider implementing a procedure for providing feedback to the law enforcement agencies regarding conduct observed on the BWC recordings. What is the process within the prosecutor's office for identifying footage that falls into this category? What is the review process within the prosecutor's office regarding these decisions? What is the process for conveying this information to the law enforcement agencies? Who is responsible for each of these steps?

Introducing BWC Recordings as Evidence

Use of BWC Recordings as Evidence

As with other evidence, before video can be admitted into evidence and disclosed to the jury, it must be authenticated. Typically, a BWC video is authenticated by a witness to the event, who will testify that the BWC recording fairly and accurately represents what the witness observed. In most cases, BWC recordings will be introduced like any other video recording, and the witness will likely be the officer who wore the BWC. If that officer is not available, someone else who was at the scene may be able to testify that the recording is a true and accurate representation of what occurred at that date and time. The prosecutor's policy should address this issue.

Chain of Custody

If the authenticity of a BWC video is challenged, or a party alleges the recording has been altered, prosecutors should be prepared to establish the BWC video's chain of custody from the start of the recording to its presentation in the courtroom. Specifically, prosecutors should consider:

- Police Procedures: How does the BWC video get uploaded at the end of the shift? Can the video be edited at any point? Is there an audit trail of who has viewed or altered the recording? If the recording is stored in the cloud, does the system encrypt the recording when it is uploaded? Does the system create a security hash value on the recording that can be used to demonstrate that the original recording has not been altered?
- Prosecutor Procedures: How is the recording maintained once it is received by the prosecutor? Who can the prosecutor contact to establish the chain of custody? Is an expert available to explain the BWC camera program and describe how video is recorded and stored?

Publication to the Jury and Introduction into Evidence

Prosecutors must be able to present BWC recordings to the Grand Jury and in courtrooms. Most jurisdictions provide that "the party offering the video evidence is responsible for appearing at the hearing or trial with [the evidence] and arranging for it to be played." The policy should address how prosecutors are expected to present BWC footage in court. For example, what equipment is available and could be used to show the video footage? Is there a process for reserving such equipment? Who is responsible? Under what circumstances, if any, should the footage be transcribed (see below)?

Introducing a DVD

Typically, even when a BWC recording is stored in a cloud system, the BWC recording will be introduced into evidence using a CD/DVD. If the evidence is on the cloud, a prosecutor must download the recording from the cloud and save it to a disk, prior to entering it into evidence. This process should be well-documented to ensure the integrity of the original BWC recording and proper chain of custody. This should include specifying who is responsible for creating the CD/DVD, what process is followed to get this done and how it is documented.

Advising the Jury of Limitations of BWC Recordings

Although a relatively reliable source of evidence, BWC recordings do have some limitations in terms of evidentiary value. For example, if the BWC device is situated on the officer's chest, but the officer is looking

in a different direction, the BWC will not necessarily capture what the officer saw. Perspective or lighting may also be distorted by camera specifications. A BWC may capture something that the officer did not notice because the officer had focused on something else. As a result, as and when appropriate, prosecutors should be trained so they are prepared to explain to jurors and the public that BWCs may not provide a comprehensive synopsis of all events that occurred at a particular time.

Transcription of BWC Recordings:

Does applicable state law require transcription of BWC evidence to be used at Grand Jury, a hearing or trial? If not will transcription make the evidence more compelling or understandable? Who is responsible for transcription? What is the process?





Resources

Iowa County Attorney’s Association Policy Guide for Prosecutors on Body-Worn Cameras

Link to full text article:

This policy is meant for use as a guide for the development of body-worn camera (BWC) policies for individual departments. It outlines important topics to be covered in a comprehensive BWC policy, such as proper activation and deactivation, upload and storage of BWC data, and review, redaction, and retention of BWC footage. At the conclusion of the document, there is a “checklist” for prosecutors to review before drafting body-worn camera policies.

Taylor, Shannon, Henrico County Commonwealth Attorney’s Office (VA). New Office Policies – Handling of Body-Worn Camera Evidence – Internal Memorandum. June 23, 2022

Link to full text article:

This document is a memorandum to “all attorneys” sent by Shannon L. Taylor, Commonwealth’s Attorney in Virginia regarding the new office policies as of June 23, 2022. The memo states that attorneys must review all body-worn camera (BWC) footage of all involved officers in preparation for their case. Attorneys are to review BWC footage and take all factors into account, including circumstances of the event, professionalism of the officer(s), incidents of use of force, misconduct, etc. Upon review of BWC footage, if an attorney views an officer acting in an inappropriate manner, the attorney is to report the footage to their supervisor immediately and provide further information relating to the viewed BWC footage including: the name of the case, the ICR number, the pending charges, the number of officers with BWCs, which officer’s conduct is believed to be inappropriate, and why the attorney believes such actions were unprofessional.

Furthermore, when reviewing BWC footage, all attorneys must document the officer’s name and indicate the length of footage viewed. This information is to be placed in the case file by the attorney handling the case and reviewed by their supervisor upon the close of the matter. Additionally, attorneys are required to notify their supervisor if they are aware that the Internal Affairs (IA) from any law enforcement agency is involved in the case they are handling in court. Attorneys must make this notification preceding contact with IA or upon being contacted by IA. Lastly, all supervisors are required to notify the Commonwealth’s Attorney if any matter is brought to their attention under the policy.

San Diego District Attorney's Office. Policy for Body-Worn Camera (BWC) Evidence.

Link to full text article:

The policy is organized and outlined according to six main sections: BWC disclosure, redaction responsibility, discovery process, pro per, Brady in BWC, and the official uses of BWC Evidence.

1. BWC Disclosure

- a. Body-worn camera (BWC) evidence will be released without redaction if the assigned defense attorney has signed the BWC protective order. If the defendant or others pose a threat to victims and witnesses in the case that personal information were released in the unredacted footage, then the BWC evidence should be reviewed and redacted.

2. Redaction Responsibility

- a. Prosecutors have an obligation to prevent disclosure of certain information in BWC footage, such as non-discoverable victim or witness information, or other privileged information.

3. Discovery Process

- a. In most cases, either Evidence.com or Commander will be used as the sharing platforms to provide defense counsel with access to BWC evidence. The period of sharing will last 90 days unless the case is expected to take longer or there was a request by the defense for longer access.

4. Pro Per

- a. Pro Per defendants will not have permanent custody of BWC evidence. For an in-custody Pro Per, the jail will hold the discs and allow the inmate to watch them, and for those who are not in custody, they will view footage at the office under the supervision of the DAI.

5. Brady in BWC

- a. In cases where there are concerns raised about potential Brady information contained within BWC evidence, the case prosecutor should review the BWC as soon as possible.
- b. If upon inspection, there is found to be actual Brady information, the prosecutor should discuss with his/her supervisor to determine if dismissal, or immediate disclosure of BWC, is appropriate.

6. BWC Evidence for Official Uses Only

- a. BWC evidence should be used only for official purposes and not be copied or provided to third parties except as authorized.

Brennan Center for Justice. Police Body Camera Policies: Retention and Release July 19, 2019

Link to full text article

This document outlines how body camera policies should center on select issues regarding retention and release of footage including: 1) how long non-evidentiary footage is stored and kept, 2) how to address public requests of BWC footage in keeping with state laws, and 3) how to permissibly share BWC data and footage among law enforcement agencies.

This article features a chart that outlines varying cities and organizations throughout the nation and how each addresses the aforementioned considerations within BWC policy. For example, in Arlington, Texas, non-evidentiary video is kept for 90 days, the public can see or request BWC footage in accordance with Chapter 552 of the Texas Government Code, and BWC data shall be accessible for criminal investigation or prosecution through an outlined evidentiary sharing procedure, and after approval from the Internal Affairs section of the police department if footage is needed for internal investigations.

In total, the chart outlines these three BWC policy components for a total of 33 cities and three organizations, including such organizations as the ACLU Model Statute, the International Association of Chiefs of Police, and the Police Executive Research Forum.



About the Authors

Michael C. Green, J.D. led the New York State Division of Criminal Justice Services (DCJS) from 2012 to 2021 as Commissioner. At DCJS he created and implemented GIVE (Gun Involved Violence Elimination), expanded the SNUG street outreach network, enlarged the state's network of Crime Analysis and Real-Time Crime Centers, and implemented Raise the Age legislation, all of which promoted the use of evidence-based work. Prior to joining DCJS, Green served for 25 years in the Monroe County District Attorney's Office, including eight years as the elected District Attorney. He currently serves as an adjunct professor in the Criminal Justice Department at Rochester Institute of Technology (RIT).

Frank P. Carrubba, J.D. is the Division Manager of the San Jose Police Department's Crime Data Intelligence Center (CDIC). Previously, Frank served as a Chief of the Criminal Division at the San Francisco District Attorney's Office. He joined SFDA in 2014 at the request of then District Attorney George Gascón to establish the Crime Strategies Unit which was recognized as a national model for innovative, data-driven prosecution. Prior to his appointment in San Francisco, Frank enjoyed a 25-year career as a prosecutor with the Santa Clara County District Attorney's Office where he supervised Narcotics, General Felonies, and served in the Sexual Assault and Gang Units.

Robert Haas, M.A. is a retired Police Commissioner with extensive experience in policing reform measures, operational assessments, and community engagement. Following his retirement after serving 40 years in policing, Robert spent the next five years in the consulting arena, which included two years as a Vice President, Law Enforcement Consulting with Hillard Heintze.

For nine years, Robert served as the Police Commissioner for Cambridge, MA. Prior to his commissioner's post, he was appointed by then-Governor Mitt Romney to serve as a member of the cabinet as Massachusetts' Secretary of Public Safety. Robert holds an M.A. in criminal justice administration from Rutgers University, as well as a B.S. from William Paterson College of New Jersey.

Craig D. Uchida, Ph.D. is the President and Founder of Justice & Security Strategies, Inc. (JSS). He is a criminologist with interests in law enforcement, the criminal justice system, and community-based efforts to reduce violent crime. He is the author of numerous journal articles, government publications, and monographs. His most recent publications examine body-worn camera footage and how it is used for critical incidents by police and how footage is used as data by researchers. Craig received his doctorate in criminal justice from the University at Albany and holds two Master's degrees, one in criminal justice and one in American history.

Delaney Falsken is a Research Assistant with Justice & Security Strategies, Inc. She works with JSS research teams to plan and implement evaluations, conducts literature reviews, analyzes data, and assists with administrative tasks. She holds a Bachelor's degree from UCLA in Psychology.