

Policy Guide for Prosecutors on Body Worn Cameras

IOWA COUNTY ATTORNEYS ASSOCIATION



Iowa County Attorneys
Association

Des Moines, Iowa

December, 2017

INTRODUCTION

This model policy is created as a guide to prosecutors who are working with law enforcement agencies to implement body worn cameras. The policy includes “Use Notes,” which present and consider viable alternative policies that may exist for a particular issue. Also accompanying the model policy is a checklist outlining the many issues that should be addressed in a body worn camera policy.

This model originated with a model policy originally created by a subcommittee of the California District Attorneys Association Foundation with assistance from members of the Colorado Prosecutor's Best Practices Committee and the Prosecutor's Center for Excellence. The Des Moines Police Department also served as an important resource in evaluating this proposal for implementation in Iowa. Our thanks go out to those entities for their earlier work on this issue.

MODEL POLICY FOR BODY WORN CAMERAS

PURPOSE AND SCOPE

Law enforcement agencies electing to employ Body Worn Cameras (BWC) should use a consistent protocol. The purpose of this protocol is to provide recommendations and guidance. It recognizes that each law enforcement agency is unique. This policy is intended to be used as a foundation for the development of individual departmental policies. All departments are encouraged to have a policy and to review the policy with their local prosecutors.

BWCs will assist and complement officers in the performance of their duties. When BWCs are used to record certain enforcement activities, they can provide a valuable visual and audio record of the incident. It is anticipated that these recordings will:

1. Provide an investigative record for police.
2. Provide evidence regarding an incident to which (an) officer(s) responded.
3. Assist in report writing.
4. Provide a record of encounters with police thereby enhancing community trust.
5. Hold officers accountable for their conduct and protect officers from unfounded allegations of misconduct.
6. Reduce litigation in the criminal justice system.

USE OF BODY WORN CAMERAS

1. Before Going Out on Patrol:

- a. **Care of the Camera:** Care of a BWC is subject to individual departmental policy, but it should be operated and maintained according to the manufacturer's instructions and recommendations.
- b. **Testing Equipment:** At the beginning of each shift, officers should determine that the recording equipment is working satisfactorily. If a problem is found, the officer should arrange for repair or adjustment. The officer should also ensure that the recorder has sufficient memory and battery power to complete the shift. If the system is malfunctioning, the officer should immediately report this to his or her supervisor.
- c. **Inoperable Camera:** If a BWC malfunctions or is inoperable and the officer cannot utilize a BWC during a shift, this should be noted in all written reports.
- d. **Positions of the Camera:** Each officer should ensure that the BWC is properly worn and positioned to record events.

2. Use of the Camera During a Shift:¹

¹ **USE NOTE:** *There is a range of legitimate policies for deciding when an agency should require recording. Most departments will want to begin recording at the beginning of any enforcement oriented encounter. Others may opt for an even broader policy of recording. Some may even want to record all events based upon invariable objective criteria, such as every time an officer leaves the squad car. However, as the police officer's discretion is reduced, the risk of interfering with beneficial police interactions increases. If the camera is always running,*

- a. **Mandatory Recording of an Incident:** Officers should make every reasonable effort to activate the BWC before making contact in the situations listed below. In these situations, recording should be the rule and not the exception. If circumstances prevent an officer from recording, such circumstances should be noted and explained in an accompanying report. If an officer decides to turn off a camera during an incident, the officer should make all reasonable efforts to state the reason on the recording if possible and practical. The following situations should be considered for mandatory recording:
 - i. Any enforcement-oriented or investigative encounter intended to confirm or dispel a suspicion that a person may be involved in criminal activity including detentions, vehicle stops, pedestrian stops, and consensual encounters.
 - ii. Searches conducted pursuant to a probation or parole contract, a post-release or community supervision agreement or order, or a search conducted pursuant to a voluntary consent.
 - iii. Service of search warrants or arrest warrants.
 - iv. Suspect statements -- subject to departmental policies regarding the recording of suspect statements.²
- b. **Other Recommended Recordings.** Officers should make a reasonable effort to record:
 - i. Non-enforcement-oriented contacts and non-investigatory contacts should they become confrontational, assaultive, investigative or enforcement-oriented.
 - ii. Witness interviews -- subject to departmental policy regarding the recording of witness interviews, which should, in turn, be mindful of witness safety.
 - iii. Any event that does not violate a party's reasonable expectation of privacy, if the recording has a reasonable possibility of having value as evidence.
- c. **Recommended Exclusions:** It is recommended that body worn cameras not be used:
 - i. Outside the scope of official business.
 - ii. Subject to exigencies, consent and other factors: in public locker rooms, changing rooms, restrooms, or other places where individuals unrelated to the investigation are present and would have a reasonable expectation of privacy.
 - iii. During conversations with other officers except where the contact is incidental to an authorized recording.
- d. **Terminating the Recording:**³ Once activated, a recording should not be intentionally terminated until the conclusion of the encounter unless tactical, safety,

civilians may feel reluctant to approach the police. Furthermore, candid interactions between officers can be disrupted if they know that every word is recorded. On the other hand, no policy and too much discretion can result in inconsistencies between officers and the failure to record important events.

² **USE NOTE:** *Departments will have a range of policies governing when suspect statements should be recorded. In general, suspect statements should be recorded, but there may be circumstances when that is inadvisable. For example, some suspects will agree to give a statement only if it is not recorded. In other circumstances, public safety will weigh against recording the statement. It is important that the officer comply carefully with the departmental policy so that the absence of a recording can be explained by reference to that policy.*

or practical reasons dictate otherwise. Anytime a recording is terminated early, the reasoning should be documented in writing or on the recording. If no police report is filed for the recorded encounter, the reasons for the early termination of the recording should still be documented contemporaneously in some manner.

3. Consent for Recording.⁴ Officers should not be required to obtain consent or advise those being recorded of the recording, provided the recording is:

- a. In a public place; or
- b. In a location where there may be an expectation of privacy but the officer is lawfully present and engaged in an enforcement-oriented or investigative encounter.

4. Uploading Data:

- a. The BWC data should be uploaded in a timely manner by properly trained and authorized personnel according to departmental policy.
- b. No person should tamper with or alter the BWC data except as authorized by departmental policy.
- c. No stored image or other data may be copied, destroyed, or disseminated for unauthorized reasons.
- d. The data should be stored in a secure manner with all reasonable precautions taken to prevent unauthorized access and tampering.⁵

5. Documenting Recordings⁶

- a. Written reports accompanying an incident should document whether BWC recordings were made regarding that incident and which officers made such recordings.

³ **USE NOTE:** *There are a host of circumstances when an agency could reasonably allow the termination of recordings. Some agencies may wish to limit officer discretion and mandate recording until an encounter has officially terminated. For example, some agencies may wish to mandate recording until a suspect is released or booked. However, such practices could be deemed prohibitively expensive or unreasonably restrictive. If multiple officers are at the same event, such as maintaining a perimeter around an empty home while awaiting a search warrant, it would be reasonable to allow an officer or a supervisor the discretion to determine that recording is unnecessary.*

⁴ **USE NOTE:** *Individual states may have laws that limit recordings without informing or attaining consent from all parties. In addition, many agencies may decide that even though their officers are not required to inform and gain consent prior to recording, it may be a best practice to do so in appropriate conditions.*

⁵ **USE NOTE:** *BWC recordings are real evidence and may often be the most important evidence in a case. Agencies must take the same care to secure the integrity of this evidence as with any other form of evidence in a criminal case. Particular care must be taken if using private vendors to provide off-site storage to ensure that this evidence is as secure as if the agency were storing the evidence itself. One solution might be to immediately transfer BWC recordings that are being used for criminal cases to a local file.*

⁶ **USE NOTE:** *Prosecutors must have the ability to gather all recordings related to a criminal incident or investigation. Special care must be taken when multiple agencies and multiple BWC vendors are involved in the same investigations to ensure that all recordings are accounted for.*

- b. A unique BWC identifier should be noted in the report for any incident where a report is taken and a BWC was activated.
- c. Uploaded BWC data should be tagged in such a manner so that it can be accurately associated with related police reports.
- d. The date, time and location when a BWC recording was made should be accurately associated with recordings to assist in later identification and/or retrieval of the data.

6. Review and Dissemination of Body Worn Camera Data

- a. Recordings may be reviewed in any of the following situations:
 - i. By officers reviewing their own recordings pursuant to departmental policy.⁷
 - ii. By a police supervisor reviewing a specific incident.
 - iii. By a police investigator in the course of an official investigation, such as a criminal investigation, a personnel complaint, or an administrative inquiry.
 - iv. By others with the permission of a police supervisor if they are participating in an official investigation or for other official reasons.
- b. Except for disseminations which serve a legitimate law enforcement purpose and which are critical and necessary to inform the public of the nature and extent of a law enforcement action, law enforcement should refrain from disclosures that pertain to a pending criminal matter, or which have a substantial likelihood of materially prejudicing a current or future adjudicative proceeding or of heightening public condemnation of an accused.⁸
 - i. Any disclosure which relates to a pending or potential criminal charge should be accompanied by a statement explaining that a criminal charge is merely an accusation and the defendant is presumed innocent unless and until proven guilty.
- c. Due to the heightened privacy concerns associated with video recording, before any public or media disclosure of a BWC recording, a recording may be edited or redacted to preserve the privacy of individuals captured in a recording when they have a legal and/or reasonable expectation of privacy in the events recorded.
- d. The department or a computerized BWC system should retain a list of all officers who have internally accessed a specific recording. This guideline does not suggest that a police agency should maintain a list of those accessing a recording outside the department after a BWC recording has been distributed outside of the department (i.e. to the media, the public, the prosecution, the defense, etc).

⁷ **USE NOTE:** *There is divergent opinion as to when officers should be allowed to review recordings when there has been an officer-involved shooting or any use of force resulting in serious injury. Some departments prohibit officers from reviewing such footage until after they have given an initial statement. It is recommended that the department have a transparent policy on the viewing of an officer's recording.*

⁸ **USE NOTE:** *Dissemination of BWC recordings can play a vital role in reassuring the public after a controversial enforcement action, however, great care must be taken to ensure that recordings are not released prematurely or in a manner that could jeopardize the fairness of an ongoing investigation or criminal case. Each agency should have a consistent policy to avoid claims that the agency is only releasing the recordings that they deem helpful.*

- e. BWC recordings related to criminal charges should be treated the same as other forms of direct evidence which must be provided to the prosecution. Such recordings are subject to legal discovery and disclosure requirements. In order to comply with the law, prosecuting agencies must be made aware of all BWC recordings when such recordings pertain to a criminal case. This is necessary to allow prosecuting agencies to comply with legal discovery obligations. Similarly, BWC recording evidence must be stored and transferred securely, subject to chain of custody policies to protect the integrity of such evidence.
- f. Any person authorized to internally review the recording can only copy or disseminate it for official purposes pursuant to department policy.⁹

7. Retention and Purging:¹⁰

- a. Recordings relating to incidents where ***criminal charges*** are filed should be retained for the period set by the departmental policy on evidence retention after consulting with local prosecutors.¹¹
- b. BWC recordings relating to ***potential criminal charges*** that are not filed should be retained for the period set by the departmental policy on data retention after consulting with local prosecutors.
- c. BWC recordings relating to ***complaints against an officer***, whether externally or internally generated should be retained in accordance with applicable law or until the matter has been resolved, whichever is later.

⁹ **USE NOTE:** *In general, all data associated with a criminal or civil case should only be disseminated in a manner consistent with existing policy on the dissemination of evidence. In some cases, an agency may wish to disseminate footage from a BWC to the general public in order to confirm or dispel public concern about a police action. An agency should consider a policy of when, and if, it will release footage in non-criminal cases.*

¹⁰ **USE NOTE:** *Different jurisdictions will have different rules governing retention. However, in general, it is advised to distinguish data from a BWC that is associated with a case and data that is not. Data that is associated with a case should be attached to that case and kept in accordance with how other evidence is retained. Data that is not associated with a case could be kept for a much shorter period of time.*

¹¹ **USE NOTE:** *In general, recordings from a BWC that are associated with a criminal case should be attached to the criminal file and kept according to departmental policy on the retention of evidence. A good guideline would be to keep the evidence for some period of time until the last of these events has occurred:*

1. *The matter is resolved;*
2. *The defendant has been released from custody due to the completion of the sentence and completed any term of post-custody supervision such as probation, parole, mandatory supervision, or post-release community supervision;*
3. *The appeal and post-conviction motions are final; or*
4. *A BWC recording may be destroyed earlier than this, provided that the prosecuting agency, counsel for any criminal defendants, and counsel for the law enforcement agency which made the BWC recording are notified, given time to object, and approve of the destruction of the recording.*

- d. Departmental policies should be developed to address additional retention requirements in the event of a *civil action* against an officer or the department or in the event the department receives a *request to preserve* a BWC recording.
- e. BWC recordings of routine events that are not associated with either a criminal investigation or an Internal Affairs Complaint should be retained for 90 days.¹²
- f. BWC recordings should be systematically purged after the retention period has expired.
- g. These recommendations should not be construed to interfere with departmental discretion in appropriate circumstances to retain recordings for a *longer* period of time than these recommendations or departmental policies might otherwise suggest.

8. Request for Deletion of Accidental Recordings

- a. In the event of an activation of a BWC where the resulting recording contains personal and/or private conversations of an officer unrelated to any ongoing criminal or internal affairs investigation, or otherwise has no valid official purpose, and which has no apparent evidentiary or investigatory value, an officer may request the deletion of the accidentally recorded BWC file by submitting a written request to the system administrator. If the chief of police, sheriff, or his or her designee, determines that a BWC recording contains personal and/or private conversations of an officer unrelated to an ongoing criminal or internal affairs investigation, or otherwise has no valid official purpose, and which has no apparent evidentiary or investigatory value, it may be deleted pursuant to written policy.
- b. In the event of an activation of a BWC where the chief of police, sheriff, or his or her designee, determines that a BWC recording contains personal and/or private conversations or images of any individual unrelated to an ongoing criminal or internal affairs investigation, or otherwise has no valid official purpose, and which has no apparent evidentiary or investigatory value, it may be deleted pursuant to written policy.

¹² **USE NOTE:** *Some jurisdictions may have laws governing the minimum and maximum time a recording made by a government agent must be retained.*

Checklist for Prosecutors to Review Body Worn Camera Policies

The Law Enforcement Agency Policy contains:

- **A “Purposes and Scope” section**
 - Limits BWC to law enforcement purposes
 - Prohibits unauthorized use
- **Training Officers**
 - Policy and use of BWCs
- **Pre-Use Requirements**
 - Check BWC’s operability
 - Document any problems or inoperability
 - Decide who will wear the BWCs and how they will be assigned
 - Placement of cameras
- **Camera Usage Specifications**
 - When is recording mandatory?
 - Upon leaving squad car?
 - Upon any enforcement or investigative encounter?
 - Upon all citizen contacts?
 - When is recording discretionary?
 - Upon all citizen contacts or only adversarial citizen contacts?
 - Upon citizen contacts with agitated or disturbed citizens?
 - Consent recordings
 - Is consent required prior to activation?
 - When is recording prohibited?
 - Locker rooms and changing areas
 - Doctors’ and lawyers’ offices
 - Fellow officers without official cause
 - When unauthorized
 - When to terminate recording
 - Upon completion of arrest?
 - Upon return to station?

- When no reason to expect further incidents of evidentiary value?
 - Upon citizen request?
 - Requirement to document reasons for terminating recording?
- Other areas for usage policies to cover:
 - Discretion for officer to deviate from policies when articulable exigencies exist
 - Documenting deviations required
 - Recording witness statements
 - Recording suspect statements
 - Recording victim statements
 - Special considerations for sexual assault, domestic violence, and juvenile victims
- **Uploading data**
 - How and when data gets uploaded from BWC
 - Prohibit unauthorized editing, copying, and distribution
- **Data Storage**
 - Anticipate data storage demands
 - Provide adequate security for the data
 - Ensure the storage plan allows LE complete access to the data
- **Documenting Recordings**
 - All officers required to document use of BWC at any given incident or scene
 - Provide a mechanism for ensuring that prosecutors receive all recordings of a particular incident or scene
- **Reviewing BWC Recordings**
 - When officers are allowed to review their own recordings
 - When officers are allowed to review others' recordings
 - When supervisors are allowed to review recordings
 - Policy for incidents involving officer-involved shootings or other use-of-force incidents
 - Treat BWC recordings consistently with how other physical evidence is treated
 - Prohibit unauthorized review
- **Dissemination/Discovery for Prosecutors**
 - Recordings from criminal cases must be secured and provided to the prosecution as is any other real evidence

- Allow the agency's prosecutor's offices full access to evidence associated with a criminal case that is submitted for prosecution
- Process for prosecutors to obtain the information
- **Dissemination for Others**
 - Clear rules for disclosure and dissemination to the media and general public
 - Redaction
 - Conforming to state open records laws
 - Prohibit unauthorized disclosure, reproduction, or editing
- **Retention**
 - Clear retention policy consistent with evidence retention policies
 - Specified retention periods for:
 - Criminal cases
 - Civil cases
 - Internal investigations
 - Clear guidelines for destruction of recordings
 - When it is not evidence in criminal, civil, or internal investigation
 - When inadvertent recording that captures private encounter has no evidentiary value