

Body-Worn Camera Policy Framework

For Oregon Law Enforcement Agencies

*Body Worn Camera Policy
Framework Advisory Board*

OREGON ASSOCIATION CHIEFS OF POLICE AND
OREGON STATE SHERIFFS' ASSOCIATION



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1. POLICY FRAMEWORK INTRODUCTION/CAUTIONS

Over the last several years, body worn cameras have become more prevalent in police work. There are many benefits to implementing a body worn camera program, but there are many pitfalls if the implementation process is not well thought out. Every effort has been made by the Oregon Association Chiefs of Police, Oregon State Sheriffs' Association and the Body- Worn Camera Policy Framework Advisory Board to ensure that this policy framework incorporates the most current information on this issue. However, law enforcement administrators should be cautioned that no single policy can meet all the needs of any given law enforcement agency. As a result, this policy framework is designed to provide background, policy guidance, resources and options within law enforcement best practice to assist agencies that vary in size and geographic location. Each law enforcement agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities among other factors.

The intent of this document is to give police agencies in Oregon a body-worn camera policy framework that works within the new body worn camera laws that went into effect on June 25, 2015. As each community and agency has its unique requirements, this document is not meant to be a one size fits all. It is written specifically for Oregon law enforcement agencies.

Finally, this is a living document that will be updated as best practice and technology evolve. This policy framework is intended to provide agencies with a starting point for policy development. It is not the intention of the Advisory Board to provide legal advice and therefore we recommend you consult with your own legal counsel before adopting policy for your jurisdiction.

2. OVERVIEW OF HB 2571, 2015 LEGISLATIVE SESSION

In the 2015 Oregon Legislative Session, there was considerable interest in passing body worn camera legislation. A few bills were introduced that had far reaching implications for law enforcement, including a requirement that every law enforcement officer wear a body worn camera. Initial measures included prescriptive language and components that would have made implementation prohibitive for law enforcement. OACP worked closely with the legislature which resulted in a final product that properly balances the need for policy direction in statute while allowing agencies to have the flexibility to deploy body-worn camera systems in a way that meets community and agency needs. HB 2571 was the bill that ultimately became law. Following are the key elements of HB 2571:

Requires that law enforcement agencies establish a policy for the use of body worn cameras. Section 1 (1), (a).

Background - Some legislators proposed that all law enforcement agencies in Oregon adopt a state-mandated standard body worn camera policy. Since each community is unique and has different needs and expectations of its police officers, a compromise was reached to allow agencies to adopt individual

policies. The policies, however, must be made available for public review to ensure transparency within their communities.

Impact - Agencies are required to have a written policy for body worn cameras prior to deployment if they adopt a body-worn camera program.

Requires that a body worn camera be turned on from the time a police officer has reasonable suspicion or probable cause that a person they are about to contact has committed or is about to commit a crime/violation. The camera must remain on until the contact has concluded. Section 1 (1) (b)(B).

Agencies can have exemptions from this standard if they create, in their policies, exceptions to the recording requirement based on privacy, exigency or safety. Section 1 (1) (c)

Impact - When officers are going to conduct a vehicle, pedestrian, or other contact based on reasonable suspicion or probable cause of an offense, they shall activate their cameras before the contact and deactivate the camera once the stop is complete. This is standard procedure for most departments throughout the state and country. HB 2571 allows exceptions to this rule as long as they are part of written policy that is designed to protect privacy, officer safety or involve exigent circumstances.

Example - An agency may choose not to record in hospitals, schools, or inside homes without consent, provided such exceptions are based on privacy. The legislative standard is the default position and an agency will need to craft exceptions based on its own individual community and policing needs.

Requires that body worn camera video hosted by a third party (cloud-based storage) remain the property of the law enforcement agency and can only be used for legitimate law enforcement purposes. Section 1 (1)(b) (C).

Impact – There is likely no impact, as most third party contracts for cloud-based storage state the video is the property of the law enforcement agency and that the vendor has no access to the individual videos.

Requires all video be retained for a minimum of 180 days. Section 1 (1)(b) (A).

Impact - This will cause a slight increase in agency costs to store the data past the standard minimum 30 day storage requirement (currently used by many agencies). The upside is video usually is favorable to the law enforcement officer.

Requires that an officer “announce” at the beginning of interaction that the conversation is being recorded. Exceptions can be made when the announcement cannot be made without jeopardizing officer safety or the safety of any other person or impairing a criminal investigation.

Background - Some individuals proposed use of language from ORS 165.540 that was put in place for “in car” cameras; while others wanted an “inform” standard. There are types of events where a warning is impractical. The adopted language reflects the challenges law enforcement faces in more dynamic situations (other than a typical traffic encounter).

Impact - Officers do not have to announce if their safety or the safety of others is in jeopardy (e.g., a suicidal person where an announcement may alter the person’s actions; or an officer does not have time to announce because they have to take immediate action). This section also relieves officers of making multiple announcements as more people arrive to a scene, or in the case of a crowded bar. As a best practice, officers should re-announce if they contact someone where they were likely not to hear the first announcement (e.g., contacting someone on a domestic disturbance who was located in a separate room from where the initial announcement was made).

Note: Section 3(1) also provides a safe harbor against suppression of evidence for violations of the announcement rule. Evidence shall not be suppressed if the officer either: (1) Substantially complied with or (2) Attempted in good faith to comply with the announcement rule.

Requires certain criteria for public records disclosure. 1) Must be for an event for which there is public interest. 2) Must be for an approximate time or event. 3) Must be tailored to the relevant video of the event. 4) All faces must be rendered unidentifiable (blurred) prior to release. Section 5 (39) and Section 6 (38).

Impact #1- This puts into law that blanket requests for video are prohibited. Many agencies may ask themselves, “What constitutes a ‘public interest’?” There is no “bright line” to determine this, which is actually helpful for law enforcement agencies. What may be of public interest in one jurisdiction may not be in another, so local agencies may have a little more control.

Example: Deputy Jones responds two times to a livestock blocking the road call and interviews the owner with the body worn camera activated. The livestock owner gives a statement and nothing further happens. This is not likely a public interest situation. Same scenario, though this time on the second call a family of four were injured when the car they were riding in collided with the livestock. This simple call may now have turned into “public interest.” Law enforcement agencies will have to consult with their City/ County Counsel to determine this on a case by case basis.

Impact #2- This puts into law that blanket requests for video are prohibited. Public records requests must be for a specific event with an approximate date and time. Please note, the law does not denote exact date and time, but by narrowing it down it will reduce staff time needed to find the video.

Background -This was inserted to protect law enforcement agencies from having to provide video that is not part of a particular incident and allows for redaction of non-event video and audio (e.g., an officer uses force on a subject and the media request is for the entire shift or for the call that proceeded the use of force). If video of an event that required disclosure is requested, the agency can provide just the video relevant to the use of force, what transpired immediately before the use of force, or in some cases

the entire video of the particular incident. Again, it is recommended that agencies confer with their City/County Counsel to decide what “tailored” to the specific event is.

Impact #3- This limits the scope of video law enforcement agencies must provide.

Background - This was inserted to protect the privacy of community members and police officers. Often, video of non-involved citizens may be captured by body worn cameras. There is already law that allows law enforcement to deny requests for officer/deputy images.

Impact #4 (Blurred Faces/Media Requests) - This will require staff resources to blur faces captured on video and will have a financial impact on law enforcement agencies. In Oregon, however, reasonable staff time costs can be charged to recover the cost to produce/edit the video. Because blurred faces on video are not as appealing to the media, agencies will likely receive fewer video requests.

Impact #5 (Blurred Faces/Court Proceedings) - Nothing in HB 2571 requires agencies to redact or blur faces in video produced for court proceedings. The video should be treated like all other evidence submitted to the District Attorney’s Office. It should be all of the video of the event in an unedited original version.

Nothing in HB 2571 requires agencies to release video from a pending court case or employee misconduct investigation. The same evidence rules that govern other types of evidence also govern body worn camera video evidence.

Prohibits the use of facial recognition technology with body worn camera. Section 1(1) (b) (D)

Impact: You may not integrate facial recognition technology into your body worn camera systems and also prohibits the use of such software to analyze recordings made from body worn camera systems.

3. BODY WORN CAMERA POLICY CONSIDERATIONS

A. Admissible Audio/Video Evidence

Agencies should consider ORS 41.910, which describes when evidence obtained by body worn cameras (audio portion) may not be admitted as evidence. The policy should clearly outline what warning an officer/deputy must give so that audio/video is admissible. Although all DA’s have to follow the rules of evidence; some DA’s may want an agency to announce or notify in a particular way. ORS 41.910 was amended by Section 3(1) of HB 2571 to ensure body camera evidence is not suppressed provided the officer either (1) substantially complied with or (2) attempts in good faith to comply with the announcement rule.

B. Collective Bargaining

Agencies who are subject to collective bargaining should read ATU v. TriMet, ERB Case No. UP-009-13 (October 2, 2014) (decision to use employee surveillance cameras is mandatory for bargaining). Agencies should consult with their labor attorney for guidance.

C. Body Worn Camera Activation and Exemptions

Policies should clearly outline when an officer is required to activate the body worn camera. HB 2571 gives agencies the ability to create exemptions of when the camera should be turned “on” as long as the exemption is for public safety or privacy concerns. Agencies should craft policy so that it is clear when officers and the public should expect that the body worn camera will be turned on and off. These policy decisions will likely take the most time and effort to develop. Some agencies have amended its policies as they gained more knowledge of the policy implications.

Policies should clearly state when or if an officer has the discretion to turn the body worn camera off.

- Can the officer turn it off during a sexual assault interview?
- In a hospital?
- What about a reluctant witness interview?
- Informant?

Make sure exemptions are spelled out when the camera can be turned off and how it is to be documented, such as an on-camera comment, “I’m turning off the camera to protect the privacy of the witness/victim,” or noting it in a written report or both. The policy or training should instruct/guide officers on what to do when a community member states they do not want to be recorded in a public area or in a constitutionally protected area. And, what the officer should do if they are involved with a cold call in a private residence. Video recording inside a person’s home without their consent can pose potential Constitutional issues and raise suppression of evidence concerns. However, certain types of calls inside a home may be worth this risk (Domestic Violence, child abuse etc.). Be sure to work with your District Attorney’s office prior to deployment on these questions.

D. Auditing Video Footage by Supervisors

Policies should indicate under what circumstances a supervisor may review video files.

- Is it only when a complaint is received?
- Can they review video to see if the officer is performing well or for training purposes?

Collective Bargaining Agreements should be reviewed when developing policies in this area.

E. Review of Video Footage by Officers

Policies should clearly spell out under what circumstances video can be viewed by officers.

- Can it be viewed to write a police report?
- Can it be viewed after a use of force incident that may result in an investigation or review?
- How about an officer involved shooting?

Agencies should consult with their District Attorney when drafting this portion of the policy to avoid differences in opinion and to establish expectations in the event of an officer/deputy involved shooting.

F. Video Retention Schedule

Video of a subject stop must be retained for six months to comply with HB 2571. For complaints, agencies may want to maintain video for 30 months as permitted by HB 2571 to cover possible civil litigation. For crimes, agencies will want to keep it significantly longer. Policies should cover when or if video should be moved to another medium and placed into evidence.

G. Public Records Requests

HB 2571 gives agencies and the community protection from random or overly broad public records requests for video, but it is still likely there will be an increase in requests for body worn video.

- Know the resources that are required and have a policy that is consistent with Oregon public records law.
- Acquire software for video redaction and ensure staff is trained on the software to respond to records requests.
- Redaction of video recordings is more labor intensive than redacting police reports.
- Every activation of a body worn camera is a record and depending on an agency's activation policy, there may be three times the number of records.
 - This may increase the number of requests.
 - Not every call for service results in a police report, but every call for service where a body worn camera is activated may result in a record subject to the Oregon Public Records Law.

4. BODY WORN CAMERA EQUIPMENT SELECTION CONSIDERATIONS

Vendor and Equipment Selection - The vendor and type of body worn camera equipment selected will likely play a role in how agencies draft body worn camera policy. Examples of equipment implications on operations and policy include:

- Agencies that host its own video data storage (server).
- Agencies that use a cloud-based service (may impact video storage and viewing).
- Equipment with "auto on" or "remote triggers" are different than a system that requires officer activation.

There are many camera systems available to law enforcement and not every camera system is the right fit for every agency. Following are a few considerations when selecting a body worn camera system:

- **Frame rate** - 30 Frames per Second (FPS) is the recommended industry standard. (Less than 30 FPS will result in choppy video similar to older security cameras.)

- **Pre-event or “buffering”** - is a common and a useful feature on many body worn camera systems. Pre-event recording will help capture what caught the officers/deputies attention and their reaction. The pre-event feature records a video segment 10 to 30 seconds prior to the activation of the record button. It is recommended to set this feature as a video only playback (not audio) to avoid capturing private conversations.
- **Image quality** - 720p is becoming the industry standard. Because the frame size is larger, it is more likely to capture relevant video from an officer in a bladed stance with a chest mounted camera. Many agencies find a lower resolution of 480p to be adequate, however, the lower the resolution, the less crisp the image. Higher resolution video produces higher quality images, however, storage costs are more expensive because the video has more data.
- **File transfer and in-field video “tagging”** - some camera systems have the ability to download data (video files) over WIFI, some require docking stations, and others require an USB connection. This may be a logistical issue at the police station or in a police vehicle. There are many choices when it comes to in-field tagging or marking of video for storage. Some cameras allow officers to view the video in the field and to enter metadata, such as a case number or citation number, while others require officers to return to the station to add the data. Some pair with smart phones, while others have only a small LED field to enter the type of call. This can add considerable work and take officers out of the field depending on the equipment selection.
- **Camera hardware and software selection** - camera quality is just one dimension in selecting a body worn camera vendor. Consideration of the back-end software is equally important as it can require significant resources and effort to an agency’s body worn camera program. Some systems are user-friendly and it’s easy to retrieve video or add case information, while others are very limited in its function and requires training.
 - Sharing video is also a key consideration in the back-end software. Some systems allow users to share a video link, while others require use of another medium, such as a DVD or thumb drive. Consideration should be given regarding the transfer of video to the District Attorney for prosecuting cases and potential redistribution to defense attorneys for discovery. Sharing may need trusted and non-trusted source capabilities built in to be effective.

5. DEVELOPING A BODY WORN CAMERA POLICY

Policy formats vary for each law enforcement agency in Oregon. Some use a commercial service like Lexipol, while others use a custom layout. HB 2571 requires agencies to have a written policy prior to the deployment of body worn cameras. The goal of this framework is to help agencies identify areas that are specific to body worn cameras, therefore, examples of “scope” and “procedure” (included in most policies) are not provided.

A. Preamble

Many members of the community may not be aware that body worn cameras may capture images that an officer never observed. Body worn cameras do not experience fear, “tunnel vision,”

auditory exclusion or other phenomena that can only be experienced by a human. Explaining this at the beginning of a policy may lay the groundwork for future discussions with communities. It may also be helpful for future criminal court cases and lawsuits as it can help educate the public about the limitations of body worn camera video. Most agencies do not include a preamble to its body worn video policy, but it is worth considering with the deployment of this relatively new technology.

Following are examples of preambles that are meant to educate the policy reader at the beginning of the policy:

Preamble Example # 1

The Department recognizes that video images cannot always show the full story nor do video images capture an entire scene, the environmental conditions, surrounding circumstances, and safety concerns that officers constantly assess. The use of body worn cameras does not reduce the requirement to provide thorough written documentation of an incident. Persons reviewing recordings must also be cautious before conclusions are reached about what the recordings show.

Preamble Example # 2

Body worn video provides additional information regarding an investigation or enforcement contact with a member of the public. Body worn video recordings, however, provide a limited perspective of the encounter and must be considered with all other available evidence, such as witness statements, officer interviews, forensic analyses and documentary evidence when evaluating the appropriateness of an officer's actions.

Preamble Example # 3

The department recognizes the importance of transparent policing that protects the community and the police. The department further recognizes that video images cannot always depict the entire scene or incident in the way that it may have been perceived or experienced by any person present. The department recognizes video recordings have at least the following limitations:

- a. Body worn video cameras may capture something that the wearer of the camera did not see; conversely, there may be a viewpoint that the wearer saw that was not captured by the body worn camera.
- b. The focal point of the camera may not be the focal point of the person wearing the camera.
- c. Body worn video cannot capture tactile responses such as a subject that tenses their muscles or body on contact.
- d. Due to environmental circumstances, body worn cameras in some circumstances may see more than a human eye, and yet on other occasions the video may capture less.
- e. Video can be slowed down and viewed frame by frame, but this is rarely how the wearer of body worn cameras would have experienced the situation.

- f. Video cannot capture the physiological or psychological phenomena that a person may experience during a high stress situation. The camera will not suffer from “tunnel vision” or auditory exclusion.
- g. Body worn camera video should be considered additional evidence, but it is only one piece of evidence and is not a substitute for a complete investigation of any incident.

B. Goal or Purpose

False expectations of what a policy is intended to do can cause internal and/or external concerns. Body worn camera policies should clearly explain what the goal of program is, (e.g., “The goal/purpose of the body worn camera program is to provide transparency in police-community contacts, to provide evidence, and to document the actions of officers while performing their duties.”) While some may believe the primary purpose of the body worn cameras is to document police misconduct, studies have shown the mere presence of a camera can lead to more civil interactions between officers and the public, and result in fewer complaints. Likewise, the audio/video evidence from body worn cameras often supports the actions of officers and is proving to be helpful in criminal prosecution cases.

C. Assignment of Cameras

Policies should address who is required to wear body worn cameras and when. This can be very important if a member of an agency is involved in a use of force incident and is not wearing a camera because they are not normally assigned one, such as a detective or command staff member. Another consideration is whether tactical/SWAT team members will be required to wear body worn cameras during call outs. The policy should clearly state “who” will be wearing them.

D. Officer Discretion to Activate Body Worn Cameras

HB 2571 requires that a body worn camera be turned on from the time a police officer has reasonable suspicion or probable cause that a person they are about to contact has committed or is about to commit a crime/violation. The camera must remain on until the contact has concluded.

HB 2571 allows each department to craft its own exceptions to this rule along as it is for officer safety, the safety of the public or to protect the privacy of a community member. There can be numerous exceptions to the rule, but they must be documented in the policy and at some point agencies may have to defend the decision to allow discretion. Typical exceptions include:

1. Community Privacy
 - a. On calls where the crime has already occurred and the suspect is no longer present.
 - b. At the request of a community member if it does not compromise an investigation.
 - c. Inside of private residences or offices where the suspect is not likely present.
 - d. When an officer is on break or during casual conversations with members of the community during the normal course of their day.
 - e. When interviewing witnesses or victims who do not wish to be recorded.

- f. When interviewing crime victims in sensitive/confidential cases, like sexual assault or child abuse.
 - g. In hospital settings, unless responding to a call for service that is in progress inside the hospital or treatment facility.
 - h. In mental health or drug treatment facilities, unless responding to a call for service that is in progress.
 - i. At the conclusion of a critical incident when a member has been assigned crime scene or traffic control responsibilities with no direct involvement in the initial event.
- 2. Community Privacy/Officer Safety
 - When conducting and/or contacting an undercover police officer or an informant.
 - 3. Officer Safety
 - When an officer or member of the public is under immediate threat of harm and activation of the camera would delay immediate action.

E. Verbal Warning Requirement

Policies must include a requirement to notify the public that they are being video/audio recorded. HB 2571 mandates the public be notified they are being recorded at the beginning of the encounter. The law does not specify what the warning must include and it gives an exemption in emergencies where a warning is not feasible.

Officers are required to only give the warning one time at the beginning of the encounter and does not require multiple warnings as new people arrive to the conversation. It is good to include an additional warning if officers move from one location to another as they conduct their investigation. Following is sample language of a verbal warning requirement:

Members will give a verbal notification at the earliest possible time when reasonable at the beginning of any encounter to any person they are communicating with during the course of the call while wearing a body worn camera. The verbal notification should include information to the community member that the conversation is being recorded.

F. Officer Responsibilities

Policies should outline what is expected of the officer when deploying body worn cameras.

- 1. All officers assigned to a uniform assignment that are likely to have community member contact, shall wear a body worn camera system. This will include precincts, school resource officers, traffic and K9. (Exceptions can be made by the commanding officer of a unit/division when working a plain clothes assignment where wearing a body worn camera system would compromise the intended mission of a specific operation). Tactical team members may or may not utilize body worn cameras depending on the tactics used during the police event. Tactical teams will develop a Standard Operating Procedure (SOP) for body worn cameras that cover

specific tactical team activations. Members of a tactical team, not actively deployed as a member of a tactical team will follow this policy during on duty status.

2. Each unit, division and/or precinct assigned body worn cameras will develop SOPs for its specific use if they have exceptions to this policy.
3. Officers will ensure their body worn camera system is properly functioning prior to beginning their shift and that all recorded video from any previous shift is downloaded in the video database.
4. If an officer discovers that their body worn camera system is not functioning correctly, they will immediately contact a supervisor to get a replacement.
5. Officers will turn the camera system power to the “on” position when they begin their shift.
6. Officers will activate the record button to initiate an audio/video recording upon arrival in the area of a call for service where a possible crime is in progress or has just occurred. This includes any self-initiated activity where there is likelihood of enforcement action being taken. This also includes disturbances of an unknown nature, or on calls involving people in a mental health crisis. Officers should be cognizant of patient privacy regulations. This includes discontinuance of body worn camera recordings once the person in mental health crisis is in the custody and care of emergency service provider and is under stable control. Additionally, officers will not activate body worn cameras inside a medical facility when camera recording is likely to violate expectations of privacy.
7. The agency recognizes there are circumstances such as an officer ambush or other immediate threat where the officer may not be able to safely activate the record button. In these limited circumstances, officers should first protect their own life, the life of others, and ask for assistance before considering the activation of the record button.
8. If an officer fails to activate the record button due to danger to themselves or others, they will activate it as soon as it is safe to do so and will notify a supervisor and document the reason they did not activate the record button in the appropriate police report.

G. Supervisor Responsibilities

Policies should state clearly what is expected of supervisors so that the community and officers know what the supervisor is supposed to do to support the body worn camera program.

1. Supervisors will ensure each officer has a working body worn camera prior to taking calls for service.
2. Supervisors will re-issue a body worn camera to officers when they become aware of a body worn camera that is malfunctioning or broken.
3. After a critical incident, such as an officer involved shooting, in custody death or significant use of force that requires the notification of detectives, the supervisor will take possession of the involved officer(s)' body worn camera system at the earliest safe opportunity to do so. The supervisor will only review or download audio/video at the direction of detectives.

4. Supervisors will ensure that officers download their body worn camera video before the end of shift. Supervisors can authorize an officer to “hold over” the download process until the next shift as long as no arrest or use of force occurred during the officer’s shift.

H. Prohibited Use of a Body Worn Camera or Video

Policies should specifically address what is prohibited conduct. Body worn camera video will contain very sensitive information and interviews that should not be made public through non-judicial or agency action outside of a formal request for the recording. A prohibited conduct portion of the policy can help your agency maintain the security of images and audio/video recordings.

1. Officers are prohibited from copying, sharing, or showing any video taken during the course of their duties as an agency member outside of a legitimate law enforcement purpose.
2. Officers will not take “screen shots” or make any reproduction of any video or audio content unless it is for a legitimate law enforcement purpose.
3. Members will not use department-issued body worn cameras to capture video or audio while on duty, except for legitimate law enforcement purposes.
4. Officers should avoid recording at community events, religious ceremonies, schools, or demonstrations unless there is an articulable reason to believe a crime has occurred or is about to occur, or at the discretion of a commanding officer.
5. Officers will not view video that is unrelated to an incident they are assigned, except for training purposes. Members will not edit or delete any video or audio. This does not apply to members who are responding to a specific request from the District Attorney, City Attorney, or for a public records request. These cases will be handled by the Records Division or Public Information Officer and in no event will the original video or audio file be edited or deleted unless ordered to do so by a judge with the authority to order such action in this jurisdiction.
6. Officers shall not record inside of non-custody areas of police facilities, during roll calls, during briefings and/or incident debriefings, or any conversation with a co-worker or supervisor that is outside of the scope of a call for service. This does not preclude an officer from activating their camera if a crime is occurring or about to occur inside a police facility. Members will not record during drug tests, medical exams, or during privileged conversations with attorneys or union representatives.
7. Body worn camera systems will not be deployed to conduct internal investigations unless specifically authorized by the Chief of Police for a criminal investigation. This does not preclude the viewing of already recorded video for an internal affairs investigation.

I. Viewing Body Worn Camera Video

Allowing officers and supervisors to watch body worn camera video prior to writing a police report, including after an officer use of force is often a controversial area in developing body worn camera policy. The Police Departments of Los Angeles, San Diego, Nashville Metro, and New York City all allow officers to view their body worn video prior to writing reports. These agencies also allow an

officer to view their body worn video prior to making a statement in officer involved shooting incidents.

Policies should address if an officer can view their body worn video or the video of another officer before writing a police report or making statements in an officer involved use of force. A clear policy on the subject before an incident occurs may make the investigation move more smoothly.

Policies should also address under what circumstances a supervisor can review body worn video. This can be a sensitive topic. Some agencies allow a supervisor to review any video at any time as a quality control or audit model, while others only allow supervisors to view video under certain circumstances like citizen complaints or to write an after action report. Policy statement examples include:

1. Officers may review any relevant audio/video from the body camera system before writing a report regarding an incident with the exception of a deadly use of force incident or in custody death, where detectives are conducting an investigation. The viewing of audio/video in these cases can only be authorized by the detectives' supervisor and after consultation with the District Attorney's Office.
2. Supervisors will not review audio/video for the purpose of general performance review, for routine preparation of performance reports or evaluations, or to discover policy violations.
3. Supervisors may not randomly review audio/video of any officer.
4. Supervisors may review past audio/video related to a specific incident in the following circumstances:
 - a. Conducting a use of force review to complete an after action report.
 - b. Conducting a specific review of a call for service where a formal or informal complaint has been assigned.
 - c. In response to an allegation of a rule violation whether or not it is formally assigned.
5. Inadvertent discovery of other allegations during this specific review shall require the supervisor to articulate the purpose of expanding the scope of review.

J. Retention Period

A body worn camera policy should have a retention schedule section so it is clear how long video will be stored. HB 2571 requires all video to be stored a minimum of 180 days regardless of evidentiary needs and allows non-evidence related audio/video to be stored for 30 months. Outside of these two retention thresholds, an agency's policy should address how long video is to be stored. Consulting with an agency's District Attorney is the best method to ensure storage/retention requirements to meet future prosecution needs. Below is a sample language for a retention schedule:

1. The retention period will be set by the Chief of Police, Records Manager, and City Attorney in accordance with current laws and court rulings.

2. Calls for service resulting in community member contact will be stored for a minimum of 180 days. This is to ensure that a video record will be maintained in case a community member wishes to file a complaint or make a commendation.
3. Videos that capture any use of force will be stored 30 months.
4. Videos that are part of an internal affairs investigation will be stored 30 months.
5. Videos that are part of a criminal case will be maintained for the maximum statute of limitations for the offense.

K. Public Records Requests

One area of concern for most law enforcement agencies using body worn cameras is the cost of redaction of video for release to the public. HB 2571 requires that all faces shall be rendered unidentifiable, including those of officers prior to public release. Audio/video redaction is labor intensive and can require specialized software and training. HB 2571 intentionally limits the release of body worn camera video to videos that are of a “public interest.” All video for court should be in its unaltered state.

Oregon allows an agency to charge the true cost to produce the public record; this is very different than some other states where the agency must produce the record, no matter the cost. Oregon public records law provides that an agency must provide an upfront estimate of the costs to produce the record (video) if it exceeds \$25 (or the agency cannot collect more than \$25), and allows the agency to collect the entire amount of the estimate before fulfilling the request. The cost can include having an outside vendor perform redacting and/or the blurring of faces necessary to comply with Oregon law prior to public release. Policies should indicate who is in charge of managing a public records request. An agency can require a partial upfront fee before processing a request. All fees must be traceable to an actual expense and they cannot include a “mark-up” on costs. The fee charged must not be more than the true cost to produce the document or record.

Public records requests will be handled by the records division in consultation with the Public Information Officer, the Public Records Manager and the City Attorney. All faces shall be rendered unrecognizable prior to a public records release.

L. Other Policy Language

Agencies may also want to consider adding language on required training, who maintains the equipment, and camera or vendor-specific features, e.g., pre or post-event recording.

6. ACKNOWLEDGMENTS AND RESOURCES

The Body Worn Camera Policy Framework Advisory Board consisted of the following members:

Captain John Scruggs- Portland Police Bureau, Chair
Undersheriff Matt Ellington- Clackamas County Sheriff’s Office
Chief Jeff Fossholm- Silverton Police Department

Lieutenant Eric Klinko- Eugene Police Department
Lieutenant Casey Thomas- Oregon State Police
Chief Ken Reuben- Philomath Police Department
Chief Geoff Spalding- Beaverton Police Department
Chief John Teague- Keizer Police Department
Michelle Harold – Management Analyst – Beaverton Police Department

The Advisory Board conducted research and considered model policies and other information from Oregon HB 2571 (2015), the International Association Chiefs of Police, the Police Executive Research Forum, and the U.S. Department of Justice, the Bureau of Justice Assistance (BJA), and from several law enforcement agencies, including two federally funded pilot programs in Oregon at the Beaverton and Eugene Police Departments.

Several online resources were reviewed, including the BJA Body-Worn Camera Toolkit at <http://www.bja.gov/bwc>.

Model policies or other, written resources were obtained from the following agencies:

In Oregon

Beaverton Police Department – Policy 421
Black Butte Ranch – Policy 450
Eugene Police Department
Multnomah County District Attorney
Portland Police Bureau

Outside of Oregon

Berea Police Department – SOP 3.12 (Ohio)
Fort Worth Police Department – General Order 506.04 (Texas)
Louisville Metro Police Department – SOP 4.31 (Kentucky)
Los Angeles Police Department (California)
Oakland Police Department – General Order I-15 (California)
Perkins Township Police Department – Policy 43 (Ohio)
San Rafael Police Department – Policy 446 (California)
Union City Police Department – Policy 450 (California)
Vallejo Police Department – General Order G-6 (California)
East Bay Regional Park District – Policy 450 (California)
Minneapolis Police Department – SOP only (Minnesota)