

# Journal of Technology Law & Policy

Volume XVI – Fall 2015

ISSN 2164-800X (online)

DOI 10.5195/tlp.2015.179

<http://tlp.law.pitt.edu>

## Police Body Cameras: Mending Fences and How Pittsburgh Is a Leading Example

Danielle Evans



This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.



This site is published by the University Library System of the University of Pittsburgh as part of its D-Scribe Digital Publishing Program and is cosponsored by the University of Pittsburgh Press.

## Police Body Cameras: Mending Fences and How Pittsburgh Is a Leading Example

Danielle Evans\*

After the police brutality deaths of Michael Brown, Eric Garner, and Freddie Gray, amongst others, many call for increased accountability through police officer body-worn cameras (“body cameras” or “cameras”).<sup>1</sup> Body cameras are small cameras, weighing approximately 108 grams, affixed to a police officer’s shirt pocket, hat, collar, shoulder, or even a pair of specially-designed Oakley sunglasses.<sup>2</sup> These water-resistant and full color cameras have a twelve-hour battery life<sup>3</sup> and are used to capture interactions between police and civilians. Additionally, the captured video may be used after an interaction to provide clarity on what exactly occurred during such an interaction.

The following Note discusses the potential benefits of body camera use, the concerns that body cameras raise, relevant current and pending legislation in Pennsylvania, and whether police body cameras can be used to address race relations in connection with police officer brutality. Part I addresses many of the perceived benefits of using body cameras as evidenced through five studies and several preliminary cases. These benefits include a reduction in civilian complaints against police officers, a reduction in police officer use-of-force, improved officer and civilian behavior, and expedited resolution of complaints and cases. Part II addresses the concerns associated with police body camera use, including: privacy issues in general, in Pennsylvania, and for officers; right-to-know laws; cost; a potentially negative atmosphere, circumstantial correlations; and functional criticism. This Note argues that body cameras provide many benefits, but also present legal issues that need to be worked out prior to cameras being implemented, and concludes that

---

\* J.D. Candidate, 2016, University of Pittsburgh School of Law; Lead Articles Editor, *University of Pittsburgh Journal of Technology Law and Policy*.

<sup>1</sup> Barbara Ortutay, *After Ferguson, Calls Mount for Police to Wear Body Cams*, ASSOC. PRESS: THE BIG STORY (Aug. 22, 2014), <http://bigstory.ap.org/article/ferguson-fallout-call-police-body-cams>.

<sup>2</sup> Tony Farrar, *Self-Awareness to Being Watched and Socially-Desirable Behavior: A Field Experiment on the Effect of Body-Worn Cameras on Police Use-of-Force*, POLICE FOUNDATION, at 6 (Mar. 2013), <http://www.policefoundation.org/content/body-worn-camera>.

<sup>3</sup> *Id.*

cameras are only a small part of the solution to racism in connection with police brutality.

## I. PERCEIVED BENEFITS

---

Several studies on body cameras and preliminary case law illustrate the many perceived benefits of body cameras.<sup>4</sup> These studies and cases demonstrate that body cameras provide: clearer, more objective evidence; a reduction in complaints; lower use of police force; expedited resolution of complaints and cases; and increased positive behavior in both police officers and civilians.<sup>5</sup>

### A. *Body Cameras Lower the Use of Force: The Rialto Study*

Body cameras can potentially reduce the amount of force an officer uses when engaging with a civilian in tense situations. A study conducted in Rialto, CA (“the Rialto study”) found that the use of body cameras resulted in a 60% decline in use-of-force incidents from the previous year<sup>6</sup> and half as many use-of-force incidents compared to the group without body cameras.<sup>7</sup>

A study conducted in Rialto, CA (“the Rialto study”) compared police-civilian interactions with an experimental group, who used body cameras, and a control group, who did not use body cameras, and revealed three major findings when force was used.<sup>8</sup> First, during the experimental shifts in which use-of-force was required, police weapons were not used often and, in all videotaped incidents in which officers

---

<sup>4</sup> Michael D. White, *Police Officer Body-Worn Cameras Assessing the Evidence*, OJP DIAGNOSTIC CENTER, 5 (Aug. 4, 2014, 1:53 PM), <https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf> (The studies include the Plymouth, England Head Camera Project; the Renrewshire/Abderdeen Studies in Scotland; the Rialto, California Police Department study; the Mesa, Arizona Police Department study; and the Phoenix, Arizona Police Department study.).

<sup>5</sup> *Id.* at 5–6.

<sup>6</sup> Christopher Mims, *What Happens When Police Officers Wear Body Cameras*, WALL ST. J., Aug. 18, 2014, <http://online.wsj.com/articles/what-happens-when-police-officers-wear-body-cameras-1408320244>.

<sup>7</sup> Farrar, *supra* note 2, at 6–8 (Four main outcomes were observed in the Rialto, CA study to measure a police officer’s use-of-force. The first was a standardized police tracking system that measured all recorded use-of-force incidents in both the experimental conditions in which the officers wore the cameras and the control conditions in which the officers did not wear cameras. Second, police tracked formal complaints against officers for use-of-force. Third, the total number of contacts between the public and police were measured. Fourth, the contents of the videotapes were analyzed with a primary focus on the incidents in which force was used.).

<sup>8</sup> *Id.*

used force, the subject was clearly seen to be physically abusive or resisting arrest.<sup>9</sup> Second, both the experimental group and the control group, used Taser guns, but the Taser guns were used to a greater degree in the experimental group.<sup>10</sup> Further, incident logs from the experimental group suggested that Tasers were used in the appropriate circumstances, such as where officers were assaulted or reasonably threatened.<sup>11</sup> Third, all use-of-force incidents in the experimental group were incidents where a civilian initiated the physical contact as compared to the control group, where officers initiated physical contact in four out of seventeen cases.<sup>12</sup> Therefore, the Rialto study suggests that when officers are being filmed and are aware that they will be held accountable for their actions, they are more inclined to resist using force until absolutely necessary.

***B. Body Cameras Prevent Officer Complaints and Expedite Case Resolution***

Body cameras may also prevent cases from being filed or be used to exonerate officers when a claim is filed. Recording evidence in real time produces more accuracy than other evidentiary methods and allows records to be made and kept more quickly, which may result in a more rapid resolution of cases.<sup>13</sup> Video recordings also create a finely-detailed record for investigation.<sup>14</sup> This may be particularly useful where there are gaps in memory or facts are uncertain. Having a finely-detailed record of the event has been shown to resolve criminal cases more quickly through guilty pleas.<sup>15</sup> For example, the Rialto study found that there was an 88% reduction in complaints against officers.<sup>16</sup> Another study in Mesa, Arizona

---

<sup>9</sup> *Id.* (this is contrasted with the use of force in control shifts, without body cameras, where on five occasions, out of seventeen incidents, officers resorted to use of force without being physically threatened).

<sup>10</sup> *Id.* at 9 (The experimental group used Taser guns in five out of eight incidents compared to the control group that used Taser guns in seven out of seventeen incidents.).

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

<sup>12</sup> *Id.*

<sup>13</sup> David A. Harris, *Picture This: Body-Worn Video Devices (Head Cams) as Tools for Ensuring Fourth Amendment Compliance by Police*, 43 TEX. TECH. L. REV. 357, 361 (2010) (Recording events was particularly helpful in the prosecution of domestic violence cases.).

<sup>14</sup> *Id.* at 361–62.

<sup>15</sup> White, *supra* note 4, at 24 (in the Renfrewshire study, cases were 70–80% less likely to go to trial if the case involved a body camera and in the Aberdeen study none of the body-camera cases went to trial).

<sup>16</sup> Mims, *supra* note 6; Farrar, *supra* note 2, at 8 (in the twelve months prior to the study, there were twenty-eight complaints filed compared to three complaints filed during the study).

found a 60% decline in complaints among officers who used the cameras, which was 65% fewer complaints than non-camera officers.<sup>17</sup>

Preliminary cases reiterate these studies' findings and show that video footage from body cameras functions as critical evidence in hearings by providing greater clarity of encounters between the police and civilians. In *United States v. Nunn*, video from an officer's body camera revealed that the officer lawfully detained Nunn's vehicle based on the officer's reasonable suspicion that Nunn was engaged in criminal activity, leading the court to deny Nunn's motion to suppress evidence of Nunn's gun.<sup>18</sup> In *United States v. Bryant*, video footage from an officer's body camera revealed that the officer had the necessary reasonable suspicion to search Bryant's bag.<sup>19</sup> Additionally, in *United States v. Fonseca*, the Tenth Circuit upheld a denial of a motion to suppress statements Bryant made prior to his arrest and were recorded on an officer's body camera.<sup>20</sup> Notably, the Tenth Circuit found that the video recording was particularly persuasive in affirming the trial court's decision that there was no unnecessary delay in the investigation.<sup>21</sup> Further, video footage is used to determine the sufficiency of *Miranda* warnings and whether such warnings are necessary.<sup>22</sup>

Several studies also illustrate body cameras can expedite case resolution and prevent complaints from even being filed. A study in Phoenix, AZ found three instances when citizens either made complaints against officers who were later exonerated by video footage or where cases were not even filed.<sup>23</sup> In the first case, a physical altercation occurred between an officer and a citizen, who later made a

---

<sup>17</sup> White, *supra* note 4, at 21 (during the first eight months of the study, officers who used the cameras were the subjects of eight complaints compared to the twenty-three complaints against officers who did not use the cameras and in the year prior to the study, officers were the subjects of thirty complaints).

<sup>18</sup> *Nunn*, No. 14-cr-00636-TEH, 2015 WL 3764181, at \* 6, 9 (N.D. Cal. June 16, 2015).

<sup>19</sup> *Bryant*, No. 1:15-cr-99-1, 2015 WL 2248177 at \*5 (M.D.N.C. May 13, 2015) (video footage showed that Defendant acted nervous and avoiding eye contact, conduct that may be taken into account when determining reasonable suspicion).

<sup>20</sup> *United States v. Fonseca*, 744 F.3d 674, 678 (10th Cir. 2014).

<sup>21</sup> *Id.* at 682.

<sup>22</sup> *See State v. Campbell*, No. 26497, 2015 WL 4993574, ¶ 5, 13 (Ohio Ct. App. Aug. 21, 2015) (An officer introduced audio and video his body camera captured to show that defendant was not in custody for purposes of *Miranda* warnings.); *United States v. Ontiveros-Mancillas*, No. 2:14-CR-00619-DN, 2015 WL 3770608, at \*3-4 (D. Utah June 17, 2015) (Video footage shows that Spanish-speaking defendant understood the *Miranda* warnings as well as the officer's questions and that defendant knowingly and intelligently waived his *Miranda* rights.).

<sup>23</sup> Steve Lovell, *Body-Worn Video Evidence*, EVIDENCE TECHNOLOGY MAGAZINE, at 27 (Mar.–Apr. 2014), [http://www.evidencemagazine.com/index.php?option=com\\_content&task=view&id=1585](http://www.evidencemagazine.com/index.php?option=com_content&task=view&id=1585).

---

## POLICE BODY CAMERAS

police brutality claim.<sup>24</sup> Video footage later revealed that the officer behaved appropriately.<sup>25</sup> In the second case, an officer responded to a call from a man who got out of his car and assaulted another civilian.<sup>26</sup> The suspect later died while in custody, yet the footage showed that the officer did not use excessive force, but followed the correct police procedure.<sup>27</sup> In the third case, an officer responded to a burglary call and the suspect fled to another residence, hid in an attic, and started a fire.<sup>28</sup> Video footage from six cameras showed that the fire accelerated quickly and the officers did everything they could to keep the suspect alive, despite the fact that the suspect died.<sup>29</sup> While incidents like the ones listed can often lead to misconduct claims, these examples illustrate how body cameras both prevented cases from being filed and exonerated an officer after claims were made.<sup>30</sup>

A study in Plymouth, England also found an expedited resolution of citizen complaints and cases.<sup>31</sup> After reviewing video footage, many complainants reconsidered their complaint, which reduced investigation time for unwarranted complaints.<sup>32</sup> When cameras were used, “there was a 22.4% reduction in officer time devoted to paperwork and file preparation and an increase of 92% in officer time spent on patrol, which amounts to an extra fifty minutes per nine-hour shift.”<sup>33</sup> By reducing complaints and saving time on complaints filed, body cameras allow for greater efficiency and provide officers more time to protect and serve their communities.

Expedited claim and case resolution reduces the time spent on litigating claims, which decreases the costs of litigation.<sup>34</sup> While body cameras are expensive, the

---

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Lovell, *supra* note 23, at 27.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> White, *supra* note 4, at 24.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Eugene P. Ramirez, *A Report on Body Worn Cameras*, PUBLIC AGENCY RISK SHARING AUTHORITY OF CALIFORNIA, at 9 (Apr. 2, 2014, 5:17 PM), [http://www.parsac.org/parsac-www/pdf/Bulletins/14-005\\_Report\\_BODY\\_WORN\\_CAMERAS.pdf](http://www.parsac.org/parsac-www/pdf/Bulletins/14-005_Report_BODY_WORN_CAMERAS.pdf) (Examples of litigation costs per complaint across the country include \$872 per case in Pittsburgh; \$6,278 per complaint in Minneapolis, Minnesota; and \$8,571 per complain in Berkeley, California.).

Rialto study projected that the police department saved \$4 in litigation costs for every \$1 spent on the cameras.<sup>35</sup>

**C. Improved Behavior on Both Sides: Officer and Civilian Behavior with Body Cameras**

**1. Officers' Behavior: Deterrence and Accountability**

By exposing “what happens when the level of certainty of apprehension for professional misconduct was set at one hundred percent,” the Rialto study made it possible to combine self-awareness theory with deterrence theory.<sup>36</sup> Self-awareness theory asserts that people consciously pay attention to their actions and judge their own actions according to a set of values.<sup>37</sup> Deterrence theory proclaims that a “swift, certain, and severe” punishment of wrongdoers prevents others from committing that wrongdoing.<sup>38</sup> The decline in use-of-force suggests that when officers are aware they are being filmed, and such film will impose responsibility for their actions, they are more likely to exhibit desirable behaviors, particularly where they are expected to follow a set of rules, such as *Miranda* warnings.<sup>39</sup> Therefore, by making officers more aware that their behavior is being observed, body cameras deter officers from engaging in inappropriate behavior.<sup>40</sup>

In the event of officer misconduct, body cameras can be used to hold officers accountable for their inappropriate actions. In Phoenix, AZ, a claim was made against the officer for unprofessional conduct.<sup>41</sup> After investigators examined his camera footage from the previous three months, they found several incidents of misconduct that resulted in the officer's termination.<sup>42</sup> Additionally, in *Grady v.*

---

<sup>35</sup> Ramirez, *supra* note 34, at 10.

<sup>36</sup> Farrar, *supra* note 2, at 9–10.

<sup>37</sup> Natalie Boyd, *Introspection and Self-Awareness Theory in Psychology: Definition & Examples*, STUDY.COM, <http://study.com/academy/lesson/introspection-and-self-awareness-theory-in-psychology-definition-examples.html> (last visited Oct. 30, 2015).

<sup>38</sup> Natalie Boyd, *Deterrence Theory of Punishment: Definition & Effect on Law Obedience*, STUDY.COM, <http://study.com/academy/lesson/deterrence-theory-of-punishment-definition-effect-on-law-obedience.html> (last visited Oct. 30, 2015).

<sup>39</sup> Farrar, *supra* note 2, at 9–10.

<sup>40</sup> *Id.*

<sup>41</sup> Mia Garcia, *Officer's Body Camera Reveals "Unprofessional Conduct,"* FOX 10 PHOENIX (July 9, 2013, 8:33 PM), <http://www.fox10phoenix.com/story/22798945/2013/07/09/officers-body-camera-reveals-unprofessional-conduct>.

<sup>42</sup> *Id.*

*State*, video footage was used to contradict an officer's testimony.<sup>43</sup> The officer testified that when he first approached a vehicle that he pulled over, he noticed a "green leafy substance" sticking out of a suitcase in the backseat of the vehicle.<sup>44</sup> However, the body camera video showed that the officer in question did not appear to notice marijuana until he took a suitcase out of defendant's vehicle.<sup>45</sup> Therefore, body cameras create a platform to monitor job performance and ultimately hold officers accountable for inappropriate behavior.

## 2. *Civilians*

In addition to more desirable officer behavior, studies also found that body cameras improved citizen behavior.<sup>46</sup> A study in Aberdeen, Scotland found that out of sixty-two assaults on police officers, only one was against an officer wearing a camera.<sup>47</sup> While the Rialto study suggests that body cameras can be used to deter officer misconduct, the decrease in use-of-force incidents may also be explained by an improvement in civilian behavior when they are aware that they are being filmed.<sup>48</sup> Essentially, when people know they are being recorded, they are more likely to exhibit appropriate behavior, thus combining self-awareness theory and deterrence theory. For instance, in Laurel, MD, body cameras were used to defuse a confrontation outside of a bar.<sup>49</sup> As soon as civilians noticed the officers approaching them had cameras, civilians calmed down left.<sup>50</sup> Had the cameras not been present, such a confrontation may not have been avoided.

## II. AREAS OF CONCERN: PRIVACY, RIGHT-TO-KNOW, COSTS, HOSTILE ATMOSPHERE, CIRCUMSTANTIAL CONCLUSIONS AND FUNCTIONALITY

---

While police body cameras have many potential benefits, there are also several concerns. Such concerns involve privacy issues, right-to-know laws, costs, a

---

<sup>43</sup> *Grady*, No. 2014-KA-00787-COA, 2015 WL 5202754, 4 (Miss. Ct. App. Sept. 8, 2015) (defense did not challenge the validity of the search, despite the video footage).

<sup>44</sup> *Id.* at 3.

<sup>45</sup> *Id.* at 4.

<sup>46</sup> White, *supra* note 4, at 22.

<sup>47</sup> *Id.*

<sup>48</sup> Farrar, *supra* note 2, at 10.

<sup>49</sup> Rachel Weiner, *Police Body Cameras Spur Privacy Debate*, THE WASH. POST, Nov. 10, 2013, [http://www.washingtonpost.com/local/crime/police-body-cameras-spur-privacy-debate/2013/11/10/7e9ee504-2549-11e3-b75d-5b7f66349852\\_story.html](http://www.washingtonpost.com/local/crime/police-body-cameras-spur-privacy-debate/2013/11/10/7e9ee504-2549-11e3-b75d-5b7f66349852_story.html).

<sup>50</sup> *Id.*



possibility of a negative atmosphere, circumstantial conclusions, and several functional concerns.

#### *A. Body Cameras Present Privacy Concerns*

##### *1. Generally: The Fourth Amendment and Single-Party Consent Jurisdictions*

While body cameras primarily allow the public to monitor the government, body cameras pose a potential privacy invasion, particularly when officers enter private homes and when officers encounter bystanders, suspects, and victims in stressful and extreme situations.<sup>51</sup> There is concern that the emotional trauma victims often experience will be exacerbated and that witnesses and confidential informants will be less willing to provide information to the police if they know they are being recorded and others may see the video.<sup>52</sup> Another privacy concern is with videos being released for no particular purpose other than to embarrass individuals, such as videos on websites like Youtube.com with celebrity DUI stops or other similar situations.<sup>53</sup> Therefore, it is necessary that deployment of body cameras be accompanied by good privacy policies so that the benefits are not outweighed by invasions of privacy.<sup>54</sup>

In regard to privacy protections, *Katz v. United States* held that “the Fourth Amendment protects people, not places” but is not extended to “what a person knowingly exposes to the public, even in his own home or office.”<sup>55</sup> However, “what a person seeks to preserve as private, even in an area accessible to the public may be constitutionally protected.”<sup>56</sup> Overall, the right to privacy is protected in situations where society would find that there is reasonable expectation of privacy.<sup>57</sup>

---

<sup>51</sup> Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, a Win For All*, AMERICAN CIVIL LIBERTIES UNION (last updated Mar. 2015), <https://www.aclu.org/technology-and-liberty/police-body-mounted-cameras-right-policies-place-win-all> (An original article was published in October 2013.).

<sup>52</sup> White, *supra* note 4, at 27.

<sup>53</sup> Stanley, *supra* note 51.

<sup>54</sup> *Id.*

<sup>55</sup> *Katz*, 389 U.S. 347, 351 (1967).

<sup>56</sup> *Id.* (The right to privacy was protected where defendant made a phone call in a glass telephone booth accessible to the public.).

<sup>57</sup> *Oliver v. United States*, 466 U.S. 170, 177–80 (1984) (holding that there is no legitimate expectation of privacy in open fields); *United States v. Jones*, 132 S. Ct. 945, 947 (2012) (reaffirming that Justice Harlan’s concurrence in *Katz v. United States*, which states that “a violation occurs when government officers violate a person’s ‘reasonable expectation of privacy,’” is the appropriate analysis).

---

## POLICE BODY CAMERAS

The American Civil Liberties Union (“ACLU”) gives three recommendations prior to recording with body cameras.<sup>58</sup> One, that recording be limited to uniformed officers and marked vehicles so civilians know what to expect, with an exception for Special Weapons and Tactics (“SWAT”) raids and similar planned uses of force that involve non-uniformed officers.<sup>59</sup> Second, that officers be required, whenever practicable, to notify people that they are being recorded.<sup>60</sup> Third, that cameras not be used to gather information based on First Amendment protected speech, associations, or religion.<sup>61</sup> By utilizing these recommendations departments can maximize the potential benefits body cameras have while also protecting individual privacy rights.

The extent to which body cameras threaten privacy depends on whether one is in a single-party consent jurisdiction or a two-party consent jurisdiction.<sup>62</sup> In a single-party consent jurisdiction, only one party must give consent compared with a two-party consent jurisdiction, where all parties must give consent.<sup>63</sup>

A majority of states are single-party consent jurisdictions and permit conversations to be recorded without the other party’s consent.<sup>64</sup> This would allow an officer to record an individual or individuals without giving them notice or receiving their consent. Given that there is no need to have consent to record an individual(s) in a single-party consent jurisdiction, it is necessary to focus more strongly on assuring that proper policies, such as when cameras should record and whether civilians should be notified, are in place in order to receive the maximum benefit that body cameras potentially hold.

Critics to the Rialto study question whether the body cameras made a difference in the reduction of complaints and officer use-of-force or whether officers’ verbal

---

<sup>58</sup> Stanley, *supra* note 51.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Guidelines to Help Formulate Model Policy for an Evolving Technology: Body Worn Cameras*, POLICE EXECUTIVE RESEARCH FORUM (2013), [http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Technology/presentation%20-%20guidelines%20to%20help%20formulate%20model%20policy%20for%20body-worn%20cameras%202013.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/presentation%20-%20guidelines%20to%20help%20formulate%20model%20policy%20for%20body-worn%20cameras%202013.pdf).

<sup>63</sup> *Id.*

<sup>64</sup> *Can We Tape? A Journalist’s Guide to Taping Phone Calls and In-person Conversations in the 50 States and D.C.*, THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, at 2 (Fall 2008), <http://www.rcfp.org/rcfp/orders/docs/CANWETAPE.pdf> [hereinafter *Can We Tape?*].

warnings about being recorded made a difference.<sup>65</sup> If warnings about being recorded do make a difference in the effectiveness of body cameras, then single-party consent jurisdictions should take note and provide people with notice of being recorded wherever possible.

## 2. *Pennsylvania: Current Law and Pending Bills*

Pennsylvania joins eleven other states as a two-party consent state.<sup>66</sup> The Pennsylvania statute provides, “it is a felony of the third degree to intentionally intercept, endeavor to intercept, or get any other person to intercept any wire, electronic, or oral communication without the consent of all the parties.”<sup>67</sup>

Previously, Pennsylvania prohibited the use of body cameras due to a violation of the state’s wiretapping statute, which only permitted the use of dashboard cameras.<sup>68</sup> Pennsylvania amended its crime code to allow law enforcement officers to intercept and record oral communications between individuals with two limitations.<sup>69</sup> First, the communication may not occur inside the residence of any of the individuals.<sup>70</sup> This policy comports with the ACLU’s concern over recording in a private home, where expectations of privacy are the highest.<sup>71</sup> The second restriction contains four conditions: the law enforcement officer must be clearly identified as a law enforcement officer, be in close proximity to the individuals’ oral communications, use an approved device, and inform the individuals as soon as is practicable that the communication is being recorded.<sup>72</sup> By informing individuals that they are being recorded, officers may draw on the theory that when parties are aware that they are being recorded they are more likely to exhibit desirable behavior.

Critics claim that Pennsylvania’s amendment has insufficient limitations on the use of body cameras. There are no statewide regulations to mandate when the

---

<sup>65</sup> Martin Kaste, *Police Departments Issuing Body Cameras Discover Drawbacks*, NPR (Jan. 22, 2015), <http://www.npr.org/blogs/alltechconsidered/2015/01/22/379095338/how-police-body-camera-videos-are-perceived-can-be-complicated>.

<sup>66</sup> *Can We Tape?*, *supra* note 64; 18 Pa. C.S. § 5704 (2014).

<sup>67</sup> 18 Pa. C.S. § 5703(1) (2014).

<sup>68</sup> Christian Morrow, *Police Body Camera Policy Nears Approval*, THE PITTSBURGH COURIER (Sept. 4, 2014), <http://newpittsburghcourieronline.com/2014/09/04/police-body-camera-policy-nears-approval/>.

<sup>69</sup> 18 Pa. C.S. § 5704(16) (2014).

<sup>70</sup> *Id.*

<sup>71</sup> Stanley, *supra* note 51 (The ACLU recommends that where officers are allowed to record inside homes, they be especially sure to provide clear notice of the camera or that they ask residents if they want to have the camera turned off, both with exceptions for emergencies or a raid.).

<sup>72</sup> 18 Pa. C.S. § 5704(16) (2014).

---

## POLICE BODY CAMERAS

cameras should record, who has access to the videos, or how long the videos should be retained for. Instead, the amendment puts the majority of the power in police departments, where policies are “written in the dark.”<sup>73</sup> Without strong policies regulating body cameras, departments may lose the trust of the public.<sup>74</sup> It is necessary for the public to know that cameras are not only being used when it helps officers, but also that cameras are being used in every reasonable circumstance.<sup>75</sup> Further, it is necessary to ensure that officers cannot tamper with the videos once they are recorded. Additionally, a lack of clear policy guidelines may also lead to an increase in litigation until those guidelines are established.<sup>76</sup>

Since the amendment passed, police departments in Pittsburgh, Philadelphia, Allentown, and other cities and agencies across the state have purchased body cameras or plan to purchase them.<sup>77</sup> Pittsburgh Police Department Chief, Cameron McLay, decided against outfitting the entire force until there were carefully-drafted policies in place that address the legal and privacy issues, therefore, when cameras are widely used, they are used well and effectively.<sup>78</sup> A pilot program allowed officers on motorcycles and bicycles to test body cameras.<sup>79</sup> While initial feedback was positive,<sup>80</sup> expansion of the program halted until privacy concerns are resolved.<sup>81</sup> Other departments should follow Pittsburgh’s example because until better policies are established, there is a risk that cameras will not be used effectively. As stated above, when recording is left to the officers’ discretion, not as many incidents are recorded and that reduces the effectiveness of body cameras. Further, drafting policies will ensure that civilians’ privacy interests are maintained.

---

<sup>73</sup> Valerie Pritchett, *Police Body Cameras Heading to Pennsylvania*, ABC 27 (Feb. 10, 2014, 8:08 PM), <http://www.abc27.com/story/24686416/police-body-cameras-heading-to-pennsylvania>.

<sup>74</sup> Tami Abdollah, *Officers’ Body Cameras Raise Privacy Concerns*, ASSOC. PRESS: THE BIG STORY (Mar. 15, 2014, 10:53 PM), <http://bigstory.ap.org/article/officers-body-cameras-raise-privacy-concerns>.

<sup>75</sup> *Id.*

<sup>76</sup> Interview with David Harris, Professor, University of Pittsburgh School of Law (Oct. 2, 2014).

<sup>77</sup> Tony Raap, *Pittsburgh Police Expanding Use of Body Cams*, OFFICER (Oct. 7, 2015), <http://www.officer.com/news/12122761/pittsburgh-police-expanding-use-of-body-cameras>.

<sup>78</sup> Robert Zullo, *Pittsburgh Tarets Money for Police Body Cameras*, PITTSBURGH POST-GAZETTE (Dec. 8, 2014, 11:55 PM), <http://www.post-gazette.com/local/city/2014/12/08/Pittsburgh-will-buy-body-cameras-for-all-police-officers-next-year/stories/201412080173>.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> Raap, *supra* note 77.

Currently in the Pennsylvania legislature, two bills were referred to the judiciary committee for review that attempt to address body camera privacy concerns, one in the House and one in the Senate.<sup>82</sup> The House bill seeks to address concerns over when a camera should be set to record by requiring an officer to wear a body camera and record “events that occur while the officer is on duty.”<sup>83</sup> This bill would eliminate officer discretion by recording every encounter with civilians and respond to police officer privacy concerns, discussed *infra*. The House bill also addresses costs, also discussed *infra*.

Senate Bill 483 addresses using body cameras in residences.<sup>84</sup> Current Pennsylvania law prohibits body cameras in homes unless permission is obtained, which creates a problem where a chase begins outside and moves into a suspect’s home or where a camera is accidentally left on.<sup>85</sup> However, the Senate bill awaiting approval addresses such concerns.<sup>86</sup> The Senate bill would enable an officer to record communication when an officer:

(A) enters a residence or other structure based on a reasonable belief that a criminal offense is being committed in the residence or other structure;

(B) enters a residence or other structure under exigent circumstances in the pursuit of an offender based on a reasonable belief that a criminal offense is being committed; or

(C) notifies the occupants of a residence or other structure of the existence and operation of an audio-visual device and the occupants consent to the use of the audio-visual device upon entry by the law enforcement officer into the residence or other structure.<sup>87</sup>

While the Senate bill provides for several exceptions, it does not answer what would happen if an officer accidentally leaves a camera on when entering a residence. This would invoke concerns over civilian privacy, reliability of evidence, and police officer culpability. Though the Supreme Court of Pennsylvania recently re-iterated the importance of maintaining privacy in citizens’ homes in

---

<sup>82</sup> H.B. 420, Session of 2015 (Pa. 2015); SB 483, Session of 2015 (Pa. 2015).

<sup>83</sup> H.B. 420, Session of 2015 (Pa. 2015).

<sup>84</sup> SB 483, Session of 2015 (Pa. 2015).

<sup>85</sup> Raap, *supra* note 77.

<sup>86</sup> SB 483, Session of 2015 (Pa. 2015).

<sup>87</sup> SB 483, Session of 2015 (Pa. 2015).

*Commonwealth v. Dunnavant*,<sup>88</sup> this may not be sufficient to suppress footage. For example, a plain sight exception may be applicable if an officer was lawfully in a residence. In such a case, a party trying to bring video footage in as evidence may argue that the footage did not capture anything that the officer did not already see. While it would be ideal theoretically to suppress all footage in a private residence that was obtained without permission, it may prove to be difficult given certain evidentiary exceptions. Lawmakers should carefully consider this when drafting legislation.

### 3. *Officer Privacy: Protecting Privacy and Accidental Recording*

The officer privacy issue is similar to the concern officers expressed when dashboard cameras were first introduced in the mid-1990s.<sup>89</sup> Concern mostly centers on supervisors potentially “fishing” to find poor behavior and target officers to reprimand them.<sup>90</sup> When dashboard cameras were first introduced, officers reacted with suspicion until they discovered that footage exonerated them.<sup>91</sup> A 2002 survey found that dashboard cameras exonerated police officers in nearly 93% of misconduct investigations.<sup>92</sup> Body cameras have the potential to produce similar results. While there are concerns for officer privacy, studies show that officers are generally receptive to body cameras once they experience their benefits.<sup>93</sup> Additionally, the study in Mesa, AZ found that officers’ views significantly improved after wearing body cameras for three months.<sup>94</sup>

Another way to protect officers’ privacy is by recording only when officers interact with civilians, as recommended by the ACLU.<sup>95</sup> Eliminating non-stop, continuous recording would capture encounters with civilians, but would not record

---

<sup>88</sup> *Dunnavant*, 107 A.3d 29, 30-31 (Pa. 2014) (stating that “an individual must feel secure in his ability to hold a private conversation within the four walls of his home” and holding that secretly made video recordings by a confidential informant were suppressible).

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Abdollah, *supra* note 74.

<sup>92</sup> *The Impact of Video Evidence on Modern Policing*, COPS: U.S. DEPT. OF JUSTICE, [http://www.cops.usdoj.gov/Publications/video\\_evidence.pdf](http://www.cops.usdoj.gov/Publications/video_evidence.pdf) (last visited on Oct. 21, 2014).

<sup>93</sup> *Id.* at 21 (In Mesa, AZ officers had an overall positive view with 77% believing that the cameras would encourage officers to behave more professionally and “eighty percent of officers believe that the cameras will improve evidence quality and seventy-six percent believe that video evidence will facilitate prosecution of domestic violence cases.”).

<sup>94</sup> *Id.* (one potential reason for an increased positive view is that the police leadership engaged with the officers from the beginning of the project by explaining the goals and objectives of the project).

<sup>95</sup> Stanley, *supra* note 51.

officers interacting with each other or other officer actions that do not involve civilians. The proposed House Bill 420 requires an officer to record all events that occur while on duty, which could be construed to include officers interacting with each other and may then interfere with officer privacy.<sup>96</sup> Therefore, before House Bill 420 is passed, it should be narrowed to include only events with civilians, not all events.

Another concern amongst police officers is what happens when a camera is accidentally left on. In Pennsylvania, it is unlawful for an officer to record footage in private residences where permission has not been obtained.<sup>97</sup> This causes concern that an officer may be prosecuted for violating wiretap laws where an officer accidentally leaves his body camera on.<sup>98</sup> The law is currently silent on what would happen in such a situation. However, if an officer can show that any unlawful recording inside a residence was accidental, then the officer should not be prosecuted for violating the wiretapping law. In Allegheny County, District Attorney Stephen Zappala Jr. stated that he would not “prosecute officers who accidentally forget to turn off cameras while responding to calls.”<sup>99</sup> It would be unjust to punish an officer for an honest mistake where recording caused no injury.

### ***B. Right-to-Know: Preventing a High Volume of Frivolous Requests***

Pennsylvania’s Right-to-Know Law guarantees the “right to access and obtain copies of public records held by government agencies.”<sup>100</sup> “Unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for inspection and duplication in accordance with this act.”<sup>101</sup> While there are exceptions for records relating to or resulting in criminal investigations,<sup>102</sup> it is unclear as to what extent this will apply to body camera recordings and what may be requested and what requests may be denied.

In addition to what recordings may be granted access and what may be denied, there is a potential problem with a high volume of requests and how that will be

---

<sup>96</sup> H.B. 420, Session of 2015 (Pa. 2015).

<sup>97</sup> 18 Pa. C.S. § 5704(16) (2014).

<sup>98</sup> Lexi Belcufine, *Pittsburgh Police Body Camera Use Limited Until Law Changes, Bureau Says*, PITTSBURGH POST-GAZETTE (Oct. 6, 2015, 12:00 AM), <http://www.post-gazette.com/local/city/2015/10/06/Police-body-camera-use-limited-until-law-changes-bureau-says/stories/201510060074>.

<sup>99</sup> *Id.*

<sup>100</sup> *Open Records (Right to Know Law)*, PENNSYLVANIA NEWS MEDIA ASSOCIATION, <http://panewsmedia.org/legal/openrecords> (last visited Dec. 4, 2014).

<sup>101</sup> 65 P.S. § 67.701(a).

<sup>102</sup> 65 P.S. § 67.708(16).

handled. Seattle, WA experienced such a high volume of requests that it has interfered with their body camera program to the extent that the police are considering discontinuing the use of cameras.<sup>103</sup> This conflict “illustrates ‘the inevitable conflict between government transparency and privacy concerns.’”<sup>104</sup>

Transparency is crucial in order for body cameras to truly be effective. However, there may be incidents where it is necessary to deny a right-to-know request, like in cases where victims need to be protected.<sup>105</sup> One solution is that public disclosure should be allowed the subjects’ consent and appropriate redaction by blurring or blacking out portions of the video or distorting the audio.<sup>106</sup> This would provide the public with transparency of a situation while also protecting the parties involved.

To prevent a high volume of frivolous right-to-know requests, the use of such recordings should only be permissible for internal and external investigations of misconduct and where police have reasonable suspicion that a recording contains evidence of a crime.<sup>107</sup> Additionally, parties recorded by body cameras, as well as criminal defense attorneys and third parties if the subject consents, should have access to, and the right to make copies of, the videos.<sup>108</sup> Another suggestion to requests for videos is to require specification of the day and time of the event to reduce general requests and prevent a “fishing expedition.”<sup>109</sup>

### ***C. Cost: Equipment and Video Storage is a Price Worth Paying***

Other criticisms involve the cost of body cameras and the fact that many cities may not be able to afford either the upfront cost or the cost to maintain the cameras’ storage database.<sup>110</sup> Body cameras cost between \$800 and \$1,000 per camera, not including storage fees.<sup>111</sup> In addition to the high cost of purchasing and maintaining storage data, criticism may also come from states and municipalities that cut funding

---

<sup>103</sup> Rachel Martin, *Police Body-cams May Increase Transparency, but Raise Questions Too*, THE MERCURY NEWS (Feb. 15, 2015, 1:04 PM), <http://www.pottsmmerc.com/general-news/20150215/police-body-cams-may-increase-transparency-but-raise-questions-too>.

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

<sup>106</sup> Stanley, *supra* note 51 (recommendation provided by the ACLU).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> Martin, *supra* note 103.

<sup>110</sup> Kaste, *supra* note 65.

<sup>111</sup> White, *supra* note 4, at 32.



with certain programs and departments in order to reallocate the funds to purchase body cameras.<sup>112</sup>

To help cope with the high cost of purchasing body cameras and paying for storage, President Obama “proposed a three-year, \$263 million plan that includes a ‘Body Worn Camera Partnership Program,’ which would provide a fifty percent match to states and localities that purchase the cameras.”<sup>113</sup> Pittsburgh is just one city among many to utilize this program in its plan to outfit every officer with a body camera.<sup>114</sup> By participating in this program, Pittsburgh lowered the cost of equipping every police officer with a body camera from \$1.3 million to \$650,000.<sup>115</sup> Recently, the Department of Justice gave Pittsburgh a \$250,000 grant to purchase body cameras.<sup>116</sup> Out of the \$650,000 Pittsburgh has allocated to body cameras, the city must match the \$250,000 grant.<sup>117</sup> This would allow the remainder of the budget to be used to either support camera purchases in the future or help pay for data storage.<sup>118</sup>

The 50% match would give states and localities the ability to equip more officers than they could otherwise afford. If a state or locality does not have the funding to equip every officer, they can choose, at their discretion, to only equip certain officers, whether it is based off of Pittsburgh’s first model that only equipped fifty cyclist and motorist officers<sup>119</sup> or whether it is based off of a model that will equip officers in higher crime rate areas. This would enable states and jurisdictions to still reap some of the benefits of body cameras without straining financial resources.

In Pennsylvania, the proposed House Bill 420, sponsored by Representative Kirkland, D-Delaware, attempts to address cost issues by providing the costs for training, maintenance, and operation of body cameras for state and local police. The “Pennsylvania State Police shall be paid from the cash or proceeds of forfeited property in the custody of the Attorney General” and local police costs shall be paid

---

<sup>112</sup> Zullo, *supra* note 78 (Pittsburgh cut funding “from line items for recreation and senior citizens center rehabilitation, splash zones, facility improvements, traffic signal hardware and the city’s wall, step and fence program.”).

<sup>113</sup> Zullo, *supra* note 78.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> Belculfine, *supra* note 98.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> Morrow, *supra* note 68.

from the “cash or proceeds of forfeited property in the custody of the district attorney of the county in which the law enforcement agency is located.”<sup>120</sup> While it is difficult to know if this would adequately pay for the cost of body cameras, addressing costs on a statewide level would help police departments in smaller cities or rural areas purchase body cameras, as cities like Pittsburgh, Philadelphia, and other bigger cities are doing.

Additionally, a close examination of city budgets could find the funding for body cameras. For instance, in prior years Pittsburgh budgeted for nine hundred police officers but only hired eight hundred and fifty officers.<sup>121</sup> While it will not account for the entire costs for purchasing and storing data, finding areas in budgets where money allocated is not being utilized and re-directing it to other needs may help alleviate some of the financial burden body cameras incur.

Another way to restrict body camera costs would be to reduce the time video footage is stored. Data storage constitutes the majority of the cost for body cameras.<sup>122</sup> Currently, there are no regulations or proposed legislation in Pennsylvania regarding the length of time footage is stored for. However, the Pittsburgh Police Department has a policy draft that includes a provision that if a citation is issued, “the video will be kept for ninety days or until the conclusion of all proceedings related to the citation.”<sup>123</sup> While a statewide regulation would provide for more stability and clarity, in the absence of statewide regulations police departments should take care to draft policies regarding data storage. Reducing the amount of data being stored could help lower the overall cost of using body cameras. Regulations will also prevent recordings from being deleted if the recording involves incidents where claims may be made, resulting in increased clarity and effectiveness of body camera use.

#### ***D. Negative Atmosphere: How Body Cameras Can Mend Broken Relations Between Police and Civilians***

Another criticism is that the use of body cameras may create a negative atmosphere because “if there’s a bad ending, you’re gonna be called a murderer.”<sup>124</sup> There may be differences in how a police would respond to a situation and how a

---

<sup>120</sup> H.B. 420, Session of 2015 (Pa. 2015).

<sup>121</sup> Jon Delano, *City Budget Approve With Concessions On Nighttime Parking*, CBS PITTSBURGH (Dec. 15, 2014, 2:44 PM), <http://pittsburgh.cbslocal.com/2014/12/15/city-budget-approved-with-concessions-on-nighttime-parking/>.

<sup>122</sup> Kaste, *supra* note 65.

<sup>123</sup> Morrow, *supra* note 68.

<sup>124</sup> Kaste, *supra* note 65.

civilian would respond and this may cause public disapproval of police officers where an officer feels as though an appropriate response was taken.<sup>125</sup> For example, in September of 2014 an incident in South Carolina was recorded with a dashboard cam where a state trooper shot a man at a gas station as he reached for his identification while the officer thought he was reaching for a gun.<sup>126</sup> The public may see this situation as an excessive use of force to an unprovoked shooting while an officer may see a dangerous situation the quick movement was necessary.<sup>127</sup>

In *Graham v. Connor*, the Supreme Court of the United States held that the standard in evaluating whether police officer use of force was justified or not is whether another officer would have found it reasonable to act the same way in the same situation.<sup>128</sup> “The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”<sup>129</sup> The test is an objective standard and it must consider the facts and circumstances without regard to “underlying intent or motivation.”<sup>130</sup>

The reasonableness test used in *Graham* explicitly allows a situation to be judged by the reasonableness of an officer in a similar situation, not the view of the public in such a situation or the hindsight view of an officer. Therefore, even if a situation does go awry because of something like the South Carolina incident, an officer in a similar situation would judge the incident. In response to the video of the South Carolina incident another officer commented that he “felt his stomach tense up” because he has seen that before and the “quick movement” has resulted in civilians pulling out a weapon.<sup>131</sup> In such an instance, the video allowed another officer to state how he would have felt and responded in a similar situation. Instead of being criticized for it, the video can allow the officer to be cleared because of the reasonable officer standard.

---

<sup>125</sup> *Id.*

<sup>126</sup> Jason Hanna, Martin Savidge & John Murgatroy, *Video shows trooper shooting unarmed man, South Carolina police say*, CNN (Sept. 26, 2014), <http://www.cnn.com/2014/09/25/justice/south-carolina-trooper-shooting/>.

<sup>127</sup> Kaste, *supra* note 65.

<sup>128</sup> *Graham*, 490 U.S. 386, 396 (1989).

<sup>129</sup> *Id.* at 396–97.

<sup>130</sup> *Id.*

<sup>131</sup> Kaste, *supra* note 65.

Further, body cameras can be used to help respond to public criticism by serving as a “check and balance on police power.”<sup>132</sup> Not only can body cameras be used to keep officers accountable for misconduct, but also, recordings can provide an opportunity for an officer or police chief to explain what happened and why an incident with use of force was or was not justified. Allowing for this type of communication can also help ease some of the tension between officers and the public by providing more transparency, particularly following the fallout over the deaths of Michael Brown, Eric Garner, Freddie Gray, and others.

Even without the use of body cameras, there is still a danger that an officer may be called a “murderer.” However, the ability to review footage can allow an officer or police chief the opportunity to explain the situation from the officer’s point of view. Without this ability to explain an incident, it leaves the public in a position to determine their own conclusions based on the limited facts they have, which may result in public opinion being kept in a negative, critical mindset. By allowing an opportunity to explain a situation gone awry, holding officers accountable for misconduct, and clearing innocent officers, a more positive atmosphere can be created, one that shows that there are good police officers.

In addition to the examples above that illustrate how body cameras have vindicated officers, recently in Cleveland, OH an officer was cleared for shooting a man because<sup>133</sup> footage from the camera revealed the decedent was shot while stabbing his girlfriend, and refused to get off her, despite officers’ orders. Further, the decedent shouted at officers, “Kill me! Kill me!”<sup>134</sup> It was only after the officer realized that the decedent would not stop and that he was going to kill the woman that the officer shot him.<sup>135</sup> The prosecutor on the case stated that the body camera was “crucial to the investigation.”<sup>136</sup> The body camera helped show that not only did the officer act according to the proper procedure, but that in doing so he saved a woman’s life. This incident is just one of many examples of an officer being

---

<sup>132</sup> Ortutay, *supra* note 1; *see also* Stanley, *supra* note 51 (The ACLU recommends that recordings should only be used in “internal and external investigations of misconduct” rather than being used as a way to survey and track the public.).

<sup>133</sup> John Caniglia, *Prosecutor Clears South Euclid Police Officer in Shooting of Man Who Stabbed Woman*, CLEVELAND.COM (Jan. 16, 2015, 6:58 PM), [http://www.cleveland.com/court-justice/index.ssf/2015/01/prosecutor\\_clear\\_south\\_euclid.html](http://www.cleveland.com/court-justice/index.ssf/2015/01/prosecutor_clear_south_euclid.html).

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

exonerated by footage, which has been more likely to occur than for an officer to be found guilty of misconduct.<sup>137</sup>

By showing that the incident in Cleveland, and others like it, was not another death due to police officer excessive use of force, but a justified use of force, body cameras reveal that not every officer engages in misconduct and that there are exceptional police officers that protect and serve the public. Using body cameras to show that there are competent officers has the potential to benefit the public perception of police departments and start re-building that trust civilians once had in police officers.<sup>138</sup>

However, it is important to note here that video footage can only be analyzed according to current police policies, and whether that officer's conduct is appropriate in light of those policies.<sup>139</sup> Though many are calling for increased use of body cameras in light of recent police brutality, body cameras can only be one small step in this solution.<sup>140</sup> A wider reform solution should take into account other methods, such as community policing; reviewing and amending police policies; and increasing officer training.

#### ***E. Circumstantial Conclusions: The Importance of Notification of Recording***

Some skepticism to the success of the Rialto study involves circumstantial situations. For instance, the Rialto study does not question whether it was the cameras or the officers' verbal warnings about being recorded that made a difference in a particular body camera situation.<sup>141</sup> However, this is where Pennsylvania lays an appropriate foundation regarding the use of body cameras, and where other states may look to Pennsylvania law as an example. The requirement that a law enforcement official must be clearly identified as a law enforcement officer, be in close proximity to the individuals' oral communications, use an approved device, and inform the individuals as soon as is practicable that the communication is being

---

<sup>137</sup> Lisa Roose-Church, *Police: Cameras A Useful Tool, But It Won't Fix Race Relations*, THE LIVINGSTON DAILY (Dec. 17, 2014, 2:05 AM), <http://www.livingstondaily.com/story/news/local/community/livingston-county/2014/12/16/police-cameras-useful-tool-fix-race-relations/20506751/>.

<sup>138</sup> Liz Navratil, *Body Cameras for Pittsburgh Police Pit Liability Against Civil Rights*, PITTSBURGH POST-GAZETTE (Dec. 15, 2014, 12:15 AM), <http://www.post-gazette.com/local/city/2014/12/15/Body-cameras-one-tool-for-Pittsburgh-police-not-end-all-be-all/stories/201412150018>.

<sup>139</sup> Cindy George, *Body Cameras Only Part of Solution*, THE HOUSTON CHRONICLE (Dec. 13, 2014; 1:30 AM), <http://www.houstonchronicle.com/news/houston-texas/houston/article/Police-body-cameras-only-part-of-solution-5954098.php>.

<sup>140</sup> *Id.*

<sup>141</sup> Kaste, *supra* note 65.

recorded<sup>142</sup> responds to this criticism by allowing the individual to know when she/he is being recorded. As previously stated, when an individual is aware that she/he is being recorded, that individual is more like to exhibit desirable behavior.<sup>143</sup> Therefore, Pennsylvania's approach eliminates the question about whether the difference in behavior is because of the body cameras or the officer's verbal warning about being recorded by both recording interactions and informing people that they are being recorded.

#### ***F. Functional Criticisms on When to Record and Access to Footage***

One of the major structural concerns over the use of body cameras is when the cameras should be set to record and who has control over the recordings.<sup>144</sup> The ideal requirement would be to have body cameras recording at all times to prevent police officers from being able to switch the cameras off in a potentially compromising situation.<sup>145</sup> However, this could impinge on the privacy of officers when they are casually conversing with other officers.<sup>146</sup> While unobjectionable, unflagged recordings can be deleted within a short period without being reviewed, such an assurance is unlikely to be enough.<sup>147</sup> Supervisors could potentially misuse continuous recording against whistleblowers or union activists.<sup>148</sup> Therefore, it may be impractical to require continuous recording.

Given the impracticality of continuous recording, ACLU provides two recommendations.<sup>149</sup> First, that an automated trigger be developed that would allow for minimization of unnecessary recording while capturing any fraught encounters that could be based on the detection of raised voices or certain types of movement.<sup>150</sup> Second, that states or police departments issue policies that mandate that police record "when responding to a call for service or at the initiation of any other law

---

<sup>142</sup> 18 Pa. C.S. § 5704(16) (2014).

<sup>143</sup> White, *supra* note 4, at 22.

<sup>144</sup> *Id.* at 31.

<sup>145</sup> Stanley, *supra* note 51.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> Stanley, *supra* note 51.

enforcement or investigative encounter between a police officer and a member of the public.”<sup>151</sup>

The proposed Pennsylvania House Bill 420 would make it mandatory to record events while an officer is on duty.<sup>152</sup> Given that continuous recording is not practical, requiring officers to record every event on duty would be the most effective method because it would reduce officer discretion. Until such a law can be created, it is up to police departments to regulate camera use. The “Pittsburgh police policy suggests that officers turn on their body cameras during traffic and investigative stops but does not make it mandatory.”<sup>153</sup> The purpose behind this is to give officers a large amount of discretion in case an officer needs to respond immediately to a violent situation or if a witness wants to speak anonymously.<sup>154</sup> While such concerns are valid, one study showed a significantly greater number of incidents were recorded when officers were required to record every contact with the public than when recording was left up to the officer’s discretion.<sup>155</sup> This suggests that the use of technology will decline if recording is left to the discretion of officers.<sup>156</sup>

However, the Pittsburgh Police Department is testing “a system that would automatically turn on the body cameras when officers activate their lights and sirens.”<sup>157</sup> While the ideal requirement would to have every interaction recorded, an automatic trigger-detection system would limit the amount of discretion an officer would have and will likely result in more incidents being recorded.

Another concern involves whether officers can tamper with video footage. This concern is particularly important if an officer has access to his own video files and may potentially delete or tamper video footage that incriminates him. The Pittsburgh Police Department has developed a system that would prevent officer tampering. The system Pittsburgh plans to use would automatically upload video footage to a

---

<sup>151</sup> *Id.* (The ACLU originally recommended in October 2013 that all instances with the public be recorded, but refined the suggestion in the updated 2015 version of the article to address concerns regarding witnesses and victims.).

<sup>152</sup> H.B. 420, Session of 2015 (Pa. 2015).

<sup>153</sup> Navratil, *supra* note 138.

<sup>154</sup> *Id.*

<sup>155</sup> White, *supra* note 4, at 31 (The experimental group requiring officers to record every contact with the public resulted in 2,327 video files per month while the control group, which left it to officers’ discretion, resulted in 1,353 video files per month.).

<sup>156</sup> *Id.* at 32.

<sup>157</sup> Navratil, *supra* note 138.

---

## POLICE BODY CAMERAS

password-protected system when officers put the cameras on the docking chargers.<sup>158</sup> An officer can only view his or her own videos, not the videos of other officers, and supervisors can only review videos for subordinate officers.<sup>159</sup> In order to delete a video, even if only recorded accidentally, an officer must give both supervisors and the police chief a memo regarding why the video should be deleted.<sup>160</sup> Additionally, the only person who has the authority to delete videos is Lieutenant Trapp, who oversees the body camera program.<sup>161</sup> By creating this policy, the Pittsburgh Police Department is being proactive in preventing a problem from happening before it had the opportunity to cause damage, thus creating a system other departments should consider adopting.

An additional concern that should be addressed is what happens when an officer is required to record interactions with civilians and fails to. The ACLU provides three recommendations:

1. Direct disciplinary action against the individual officer[;]
2. The adoption of rebuttable evidentiary presumptions in favor of criminal defendants who claim exculpatory evidence was not captured or was destroyed[;] and
3. The adoption of rebuttable evidentiary presumptions on behalf of civil plaintiffs suing the government, police department and/or officers for damages based on police misconduct. The presumptions should be rebuttable by other, contrary evidence or by proof of exigent circumstances that made compliance impossible.<sup>162</sup>

As states and departments continue to develop body camera policies, they should take the ACLU's recommendations into consideration. By ensuring that officers who fail to follow recording policies will be reprimanded, officers are more likely to comply with using cameras when they are required to use them.

### III. CONCLUSION

---

As people continue to rally for police to use body cameras and as more departments begin to develop guidelines, there may be a day when there is a "Mike Brown Law" mandating that every police department use body cameras. Currently,

---

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> Stanley, *supra* note 51.



25% of police agencies in the United States are using body cameras and 80% of agencies are evaluating their use.<sup>163</sup>

Police body cameras have the potential to create more accountability for police wrongdoings, reduce civilian complaints, reduce police officer use-of-force incidents, exonerate innocent police officers, and expedite resolution of complaints and cases. Body cameras may also help people feel safer.<sup>164</sup> These benefits protect both civilians and officers and, if used properly, have the potential to be a win for everyone.

However, while body cameras provide many potential benefits, there are equally important concerns, particularly regarding privacy and right-to-know laws, which need to be considered prior to implementing body camera use. Clear policies and guidelines need to be established, especially regarding when the cameras should be turned on and who has access to the video footage. Without these policies, the full benefit of the cameras will not likely be experienced and may actually lead to more problems and increased litigation.

While civilians, police departments, and state governments around the country rush to implement body cameras to prevent future tragedies such as the ones with Michael Brown, Eric Garner, and Freddie Gray, departments should follow Pittsburgh's lead by taking time to develop clear guidelines and policies prior to issuing cameras that will both benefit civilians and police officers while minimizing potential concerns. Additionally, states should draft statewide laws to provide for clear, uniform policies. Bills currently being drafted should be given priority due to the need to use body cameras in order to prevent more police brutality deaths from occurring.

Though body cameras have the potential to serve as a needed check on police power, police body cameras may only be a small part of the solution and will not alone remediate deep-seated social problems, like racism.<sup>165</sup> These problems often involve complicated implicit biases that cannot be solved quickly or resolved by using body cameras.<sup>166</sup> While body cameras are an important step, they may only

---

<sup>163</sup> *Id.*

<sup>164</sup> White, *supra* note 4, at 20 (the study in Plymouth, England found 81% of victims stated that they felt safer because of the cameras).

<sup>165</sup> Roose-Church, *supra* note 137.

<sup>166</sup> Lecia Brooks, *Putting Implicit Racial Bias to the Test*, THE HUFFINGTON POST (Oct. 14, 2014, 9:12 AM), [http://www.huffingtonpost.com/lecia-brooks/implicit-racial-bias\\_b\\_5966872.html](http://www.huffingtonpost.com/lecia-brooks/implicit-racial-bias_b_5966872.html); *see also* Marcus Woo, *How Science Is Helping America Tackle Police Racism*, WIRED (Jan. 21, 2015, 6:45 AM), <http://www.wired.com/2015/01/implicit-bias-police-racism-science/> (examining a program utilized with the Las Vegas Police Department to determine if there was any correlation between "racial attitudes of an

---

## POLICE BODY CAMERAS

have a minor effect on racial relations with police officer use-of-force, as there is no technical fix to the problem.<sup>167</sup> Considering this, it is important to also explore other alternatives, like community policing, policy reform, and increased officer training, to help reduce the racial disparity that is seen throughout policing and the way the criminal law functions.

---

individual officers and how they did their jobs. The program found that accusing officers of overt racism can cause officers to be resistant to policy changes and diversity training.)

<sup>167</sup> David D. Cole, Professor in Law and Public Policy at Georgetown University Law Center, Address at the University of Pittsburgh School of Law: After Ferguson, the Challenge of Obtaining Equal Protection of the Criminal Law (Feb. 19, 2015).

*J o u r n a l o f T e c h n o l o g y L a w & P o l i c y*

---

Volume XVI – Fall 2015 • ISSN 2164-800X (online)  
DOI 10.5195/tlp.2015.179 • <http://tlp.law.pitt.edu>