Minneapolis
City of Lakes

Body Camera Implementation Research and Study

Police Conduct Oversight Commission

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Introduction

Minneapolis Police Chief Janeé Harteau, on behalf of the Police Department and Mayor Hodges, requested that the Police Conduct Oversight Commission conduct policy research on law enforcement use of body cameras at the Commission's monthly meeting on June 8th, 2015. She asked specifically that the Commission gage community opinion as to whether Minneapolis police officers should use body cameras, and, if so, how they should be used. In response to the request, Commissioner Singleton moved to conduct best practices research on body camera use and conduct three community listening sessions for community input. The motion passed unanimously at the same meeting and, as such, the Body Camera Research and Study began.

Methodology

This study fulfills the three goals established by motion:

1. To survey current national practices and recommendations to assist in the MPD body camera program implementation, oversight, and maintenance;
2. To gather and organize feedback from the Minneapolis community on the MPD body camera program and policies; and
3. To update the standard operating procedures and propose a revised MPD body camera policy using research and feedback from the community.

Best Practices

To address the first goal, staff analyzed information gathered from many sources including the Police Executive Research Forum (PERF), the National Association of Civilian Oversight of Law Enforcement (NACOLE), the American Civil Liberties Union (ACLU), the Bureau of Justice Assistance, Americans for Effective Law Enforcement (AELE), and police departments throughout the country including Seattle, Los Angeles, Washington D.C., New Orleans, Burnsville and Duluth. Topics researched included activation, deactivation, restrictions, notification, viewing, public access and retention, accountability, and policy creation.

Community Input

The Commission conducted three listening session at three different locations throughout the city of Minneapolis. The first took place on June 27th at the University of Minnesota's Urban Research and Outreach Center (UROC) in north Minneapolis, the second took place on July 11th at the Sabathani Community Center in South Minneapolis, and the third took place on July 25th at the Minneapolis Adult Education Center. The first two sessions included a film containing body camera footage and questions of body camera policy, and at all three sessions community member attendees offered their thoughts and opinions on body camera implementation in the Minneapolis Police Department.

In an additional effort to collect community input, the Commission and staff asked community members to fill out a single question survey asking "should the Minneapolis Police Department use body cameras?" at each of the listening sessions and at four other outreach events, the Twin Cities Pride Festival, the 25th anniversary celebration of the American Disabilities Act and two National Night Out events. In total, 530 were surveyed, with 478 in support of body camera implementation, 45 opposed and 7 undecided. In total, 90% of those polled support body cameras.

Community members were also encouraged to submit written comments on body camera implementation either written on the door poll sheets, at the sessions or via email to the Commission's email address. In total, 39 people submitted written comments.

Media covered the listening session with stories announcing the sessions and following up on their content. Many of those articles allowed for comments, which were collected and recorded.

Redlined Standard Operating Procedure

The Commission identified the creation of a redlined Standard Operating Procedure as the vehicle for making the requested recommendations on body camera policy. Therefore, this report includes a copy of the Standard Operating Procedure created by the MPD and used for the pilot body camera program that ran from March 2014 to May 2015, with revisions and additions recommended by the PCOC. Each of these recommended changes and additions to the policy is made based on a synthesized combination of community input and national best practices research.

Policy Considerations

Due to the overwhelming support demonstrated by the community for the implementation of body cameras via the door poll, and demonstrated by national best practices research, the Commission recommends the implementation of body cameras and moves on to the discussion of particular pieces of body camera policy. This does not indicate that all community members were in support of body camera implementation; comments from those that did not support implementation can be found in Appendix 2, Community Comment 24-41. Throughout the discussion of policy, the Commission attempts to address and alleviate some of the concerns asserted in these comments.

Activation

Best Practices

The current SOP states: "[o]fficers should manually activate the PVR to Record Mode when reasonably safe and practical in the following situations" and lists fifteen situations, all of which are law enforcement activities, including traffic stops, suspicious person stops, physical

confrontations and crimes in process.[1] The last in the list of possible situations states: "[a]ny time an officer feels it is appropriate to preserve audio or visual evidence consistent with the purposes stated in this policy."[2] This policy focuses on activation for law enforcement activities and leaves discretion with individual officers to determine if any other situation is appropriate for preservation via body camera footage. The policy is not unlike those of other departments that also focus on law enforcement activities, list a variety of those possible activities and allow for officer discretion for the rest.[3]

While the current SOP may be consistent with some other agencies' policies focus, many organizations recommend requiring activation for all law enforcement activities and all calls for service, regardless of whether that call was law enforcement related. For example, the ACLU recommends that an officer be required to "activate his or her camera when responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a police officer and a member of the public."[4] This would ensure that more interactions between police and the public are captured on video.

Taking the activation policy one step further, other best practices literature calls for activation of body cameras for every community contact.[5] Those that take this position argue that it greatly limits officer discretion and even further increases the number of recorded incidents.[6] Even with this recommendation, it is still stressed that privacy concerns must also be protected

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[1] MPD Body Camera SOP. (Appendix 1).

[2] MPD Body Camera SOP.

[3] Duluth Police Department Policy Manual 418.51: Mobile Video Recorder Policy (Appendix 4) requires activation of body cameras for listed law enforcement activities; Burnsville Police Department Policy Manual 800.5.1: Mobile Video Recorders, Activation of the MVR (Appendix 3) calls for activation for "[a]ll field contacts involving actual or potential criminal conduct."

[4] Stanley, Jay. "Police Body-Mounted Cameras: With Right Policies in Place, a Win For All." 4. *American Civil Liberties Union*. 1 Mar. 2015. Web. 3 Aug. 2015. <https://www.aclu.org/sites/default/files/assets/police_body-mounted_cameras-v2.pdf.> (Appendix 10).

[5] Center for Democracy and Technology. Letter to Members of the Task Force on 21st Century Policing: 28 Jan. 2015. Web. 27 July 2015. <https://d1ovv0c9tw0h0c.cloudfront.net/files/2015/02/CDT-Body-Camera-Letter_Blog-Format.pdf> calls for broad activation policy filming all interactions with the public with strong exceptions for privacy needs such as bathrooms, lockers rooms and dressing rooms. (Appendix 11)

[6] Center for Democracy and Technology, citing a report on Mesa, AZ report discussed in White, Michael D. 2014. Police Officer Body-Worn Cameras: Assessing the Evidence. 8-9. Washington, DC: Office of Community Oriented Policing Services. (Appendix 12).

by putting strict limits on recording in places such as bathrooms, locker rooms and dressing rooms[7] and by discussing community member consent to be recorded.

Community members have called for an even broader activation policy (see below), asking that body cameras be activated at all times when an officer is working, with the exception of meal and restroom breaks. While this could be a positive for insuring that any and all potential incidents would be captured on video, it may not be feasible. First, constant activation would produce so much video data that data storage could be too costly.[8] Second, continuous recording could act as a form of mass surveillance of civilians in their normal lives.[9] It could also limit officers' ability to interact less formally when spending time together with other officers and getting to know each other, creating a stressful and potentially oppressive work environment.[10] Lastly, continuous recording is unrealistic, even if based only on the fact that some incidents will be unsafe or impossible to record[11], officers need discretion to deactivate in certain situations such as taking statements from crime victims, and the devices will inevitably malfunction at some point.[12] Best practices literature notes the importance of making those limitations clear, in order to manage expectations of the courts, oversight bodies and the public.[13]

An alternative to this assertion that could prove more feasible is the use of continuous recording for officers who have a history of misconduct.[14] Daytona Beach Chief of Police

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[7] Center for Democracy and Technology, citing an already existing policy in Salt Lake City. See, Utah Police Regulations III-535 Moblie Video Recorders (Appendix 8).

[8] Noting a need to balance officer discretion in recording with the communities need to know that officers will not abuse that discretion. Atlanta Citizen Review Board. 2014. 15-16. Study On Body-Worn Cameras (BWCs) & Discussion of Concerns and Recommendations on BWCs for Atlanta Police Officers. (Appendix 13).

[9] Stanley, "Police Body-Mounted Cameras: With Right Policies in Place, a Win For All", 3.

[10] Stanley "Police Body-Mounted Cameras: With Right Policies in Place, a Win For All", 3.

[11] Fraternal Order Of Police, Body-Worn Camera ("BWC") Recommended Best Practices: 3. Fraternal Order of Police. Web. 3 Aug. 2015. <http://www.fop.net/programs/education/webinar/BestPracticesBWC.pdf>. (Appendix 16). Notes that there could be times with officers require immediate action to prevent injury, destruction of evidence or escape. These situations should be relatively rare, but when they take place, an officer should activate a body camera at the earliest possible opportunity and delayed activation should then be documented and explained by the officer.

[12] Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned. 28. Washington, DC: Office of Community Oriented Policing Services. (Appendix 14).

[13] Miller, 28.

[14] Atlanta Citizen Review Board, citing The Beat Podcasts Series, Community of Oriented Policing Services, U.S. Department of Justice, Interview of Daytona Beach, FL, Chief of Police

asserts that the use of continuous recording could be a form of discipline following misconduct incidents and would allow supervisory staff to review the conduct of that officer for the full duration of time they are on duty.[15]

One more nuanced issued covered in some of the best practice literature is activation and filming surrounding first amendment activities [16] which could include protests and demonstrations, political rallies, and religious events. There is concern that filming represents a form of surveillance of these protected activities.[17] While it may be impossible to avoid recording such activities if law enforcement actions are also taking place, a policy could require that cameras not be activated solely in response to an event being an activity protected by the First Amendment and certainly prohibit use of body cameras for surveillance.[18][19]

An additional best practice recommendation within the field of activation, made by the Fraternal Order of Police, is that the policy explicitly state that body cameras "may not be used for the purpose of intimidating an individual or to discourage an individual from observing police activity, making appropriate inquiries of an officer, or making a complaint."[20] Best practice literature also emphasizes the importance of allowing and ensuring the right of civilians to record police interactions, even when body cameras are activated, as this is their right and can provide additional views of a situation and potential additional evidence.[21]

In the same vain, activation of a body camera should not replace activation of a dash camera. The SOP states: "[o]fficers who are equipped with a PVR and are operating a squad car that is

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Mike Chitwood, (January 2014) <http://www.cops.usdoj.gov/html/podcasts/the_beat/01-2014/TheBeat-012014_Chitwood.txt>, 05:43. (Appendix 15).

[15] The Beat Podcasts Series.

[16] The District of Columbia Police Order, Body-Worn Camera Program V(t) calls for activation during First Amendment activities but specifies that the events should not be recorded for "the purpose of identifying and recording presences if individual participants who are not engaged in unlawful conduct." V(A)(6)(b). (Appendix 12)

[17] The ACLU recommends that "body cameras shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion." American Civil Liberties Union. "A Model Act for Regulating the Use of Wearable Body Cameras by Law Enforcement." 2, Section 1 (g), Web. 23 July 2015. <http://www.aele.org./ACLUBWCAct.pdf>.

[18]In addition, organizations including the ACLU states that footage must not be subject to facial recognition software. Stanley, "Police Body-Mounted Cameras", 7.

[19] The District of Columbia Police Order, 9-10, while allowing activation at First Amendment Assemblies requires that officers "shall not record First Amendment Assemblies for the purpose of identifying and recording the presence of individual participants who are not engaged in unlawful conduct."

[20] Fraternal Order Of Police, 3.

[21] Stahly-Butts, Marbre, and Anand Subramanian. "Policy 10: Body Cameras." *Building Momentum From The Ground Up: A Toolkit for Promoting Justice in Policing* (2014): 32. Policy Link, Center for Popular Democracy, June 2015. Web. 22 July 2015. <http://www.policylink.org/sites/default/files/JusticeInPolicing-9.pdf>. (Appendix 18)

equipped with Mobile Video Recording (MVR) equipment shall activate the MVR as required by policy, procedures/ guidelines, and should activate the PVR as soon as practical and without comprising officer safety."[22] Agencies such as the Burnsville Police Department no longer use dash cameras because of their implementation of body cameras[23], but best practice literature recommends against this for multiple reasons. First, a dash camera and a body camera provide very different angles of a situation, both potentially capturing parts of an incident scene that the other may not.[24] Second, dash cameras can activate automatically, something body cameras have not yet been configured to do. In Minneapolis, dash cameras are automatically activated when a squad car's emergency lights or vehicle collision sensor are activated.[25] This means that even in a volatile situation where an officer is unable to manually activate a body camera, or simply fails to activate it, a video record may still be made if either of these automatic triggers takes place. Lastly, a policy that promotes the collection of more evidence, instead of less, is in alignment with one of the purposes listed in the current SOP, to "capture digital audio-video evidence for criminal, civil, and traffic-related court cases."[26]

Community Input

Community comments in regard to activation focused on having body cameras activated as much as possible. To this end, suggestions included activating cameras at all times excluding breaks and rests stops[27], or at all times excluding restroom breaks.[28] One community member stated that officers should not have discretion as to when to activate a camera.[29] Another noted that all interactions should be filmed because any interaction can escalate.[30] Emphasis was made on activation for low level arrests and citations, with community members citing

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[22] Minneapolis Police Department SOP (Appendix 1)

[23] Lowe, Caroline. "Burnsville Police First To Use Body Cameras." *CBS Minnesota*. 02 Mar. 2011. Web. 13 Aug. 2015. <http://minnesota.cbslocal.com/2011/03/02/burnsville-police-first-to-use-body-cameras/>. (Appendix 19)

[24] The need for filming different angles of an incident is clear in the fact that department policies require all officers responding to a scene to activate their body cameras even if the primary responder has already activated theirs. District of Columbia Police Order, (V)(3) requires that "primary, secondary, and assisting members" activate their cameras in a situation where activation is required. It is also consistent with the noted limitation of body camera use, that a camera does not necessarily follow your eyes, and that one camera may not be enough. "10 Limitations on Body Cameras." *Force Science Institute, Ltd.* 1.4, Web. 25 June 2015. <http://www.forcescience.org/bodycams.pdf>.

[25] Minneapolis Police Department Policy Manual 4-218: Mobile and Video Recording Policy (III). (Appendix 20)

[26] Minneapolis Police Department Body Camera SOP

[27] Appendix 2, Community Comment 42

[28] Appendix 2, Community Comment 61

[29] Appendix 2, Community Comment 47

[30] Appendix 2, Community Comment 66

loitering, disorderly conduct, and misdemeanor citations.[31] Comments also called for activation for all calls for service[32], all law enforcement activities[33] and all community contacts.[34]

In addition to noting when a camera must be activated, community members expressed the need for officers to explain why a camera was not activated when required[35] and consequences for failing to activate a camera per policy.[36]

Lastly, community members discussed potential issues with body cameras and First Amendment Activities and general issues of surveillance. One noted that cameras should not be activated for general surveillance gathering[37] and another remarked that filming First Amendment activities is a form of surveillance.[38]

PCOC Recommendation

Taking both best practice research and community comments into account, the Commission recommends that body cameras be activated for all consensual community contacts, all calls for service and all law enforcement activities. Consensual encounters in this context shall mean any non-law enforcement and non-call for service related interaction with a member of the public, where an officer will be required to gain consent from the member of the public to film the interaction. The encounter becomes consensual when that consent is granted. For the purpose of this policy, a camera should be activated for the interaction, and if consent is not obtained, deactivated in response. This recommendation is made with the protection of civilian privacy in mind and is supported by additional community comment and best practice literature discussed in the *Deactivation* and *Notification* sections of this report. The PCOC also recommends that all officer discretion be removed from the activation section of the policy, since the three activation categories stated above adequately include any situation that should be recorded.

The PCOC also recommends that body cameras shall not be used for the purpose of general surveillance and that cameras not be used to identify and record those participating in First Amendment protected activities, who are not engaging in unlawful conduct.

If an officer fails to appropriately activate a body camera, he or she should be required to explain that lack of activation in the mobile GPS system VisiNet or in a written report, if one is required for the incident. Additionally, if a civilian complaint of misconduct is filed against an

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[31] Appendix 2, Community Comment 50, 51
[32] Appendix 2, Community Comment 43
[33] Appendix 2, Community Comment 44
[34] Appendix 2, Community Comment 45
[35] Appendix 2, Community Comment 46
[36] Appendix 2, Community Comment 46
[37] Appendix 2, Community Comment 62
[38] Appendix 2, Community Comment 58

officer regarding an incident where an officer inappropriately failed to activate a camera, there shall be an evidentiary presumption against the officer, a topic that will be discussed in the *Deactivation* section.

Lastly, body cameras should supplement, not replace, dash cameras and officers should be expected to follow the body camera policy whether or not they are also equipped with a dash camera.

Deactivation

Best Practices

The SOP currently allows for deactivation of a camera in ten situations including while protecting accident scenes, while assisting motorists, to protect the identity of an undercover officer, to protect the identity of a confidential informant, and when an officer reasonably believes that stopping the recording will not result in the loss of critical evidence.[39] One could imply from the last listed situation, when an officer believes there is no more critical evidence to film, that a camera can be deactivated at the conclusion of a law enforcement activity, though this is not explicitly stated. Other agencies explicitly define the conclusion of an incident, providing for better consistency from individual officers.[40]

Best practices literature supports more explicit language regarding the conclusion of an incident and offers multiple standards for when such deactivation is appropriate. One defines incident conclusion as the point when an officer actively leaves the scene with no individuals in his or her custody.[41] If an officer has an individual in his or her custody, it is suggested that the camera remain on until the custody of that individual has been transferred.[42] Another potential standard goes even further, requiring cameras to remain on for a certain amount of time even after leaving a scene or transferring custody, to further insure nothing else of value will occur and need to be recorded.[43]

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[39] See full list, Minneapolis Police Department Body Camera SOP (Appendix 1)

[40] The Duluth Police Department Policy Manual: Mobile Video Recorder Policy (Appendix 4) defines conclusion of an incident as "when all arrests have been made, arrestees have been transported and witnesses and victims have been interviewed."; New Orleans Department Policy Manual 447.5: Body Worn Camera (Appendix 7) defines conclusion of an incident as "when an officer has terminated contact with an individual cleared the scene of a reported incident, or has completed transport of a civilian or arrestee."

[41] Miller, 41

[42] Fraternal Order Of Police, 4; Duluth Police Department Manual 418.5.2.

[43] Body Worn Video Steering Group. "The Body Worn Video Steering Group Guide to Implementing a Large Scale Body Worn Video Programme." (V.1): 19. *Bureau of Justice Assistance*. Sept. 2013. Web. 15 July 2015. <https://www.bja.gov/bwc/pdfs/BWVSG-Guide-for-large-scale-BWV-programme-Draft-Sep-2013.pdf>. (Appendix 21)

Prior to the conclusion of an incident, the MPD SOP allows for deactivation when the incident has stabilized and officers need to discuss amongst themselves in private. Other agencies have similar allowances.[44] Even so, this is not necessarily supported by best practices literature.[45] Allowing officers to deactivate a camera at any time during an incident opens up potential space for officer discretion and abuse of said discretion. It may also prevent the filming of critical pieces of incidents when an officer fails to reactivate the camera in time, or at all.

Intertwined in the issue of deactivation is the question of whether an officer should be able to deactivate a camera upon request of a citizen. The current SOP states:

> "If a request is made for a PVR to be turned off by a party being contacted, the officer should take into account the overall circumstances and what is most beneficial to all involved, before deciding to honor the request. For example, an officer may choose to turn off the PVR if its operation is inhibiting a victim or witness from giving a statement. It is up to the officer to make the determination as to what is best for the investigation or contact."[46]

This description leaves much discretion to the officer. Different agencies interact with this type of deactivation differently; for instance Daytona Beach requires victim consent before filming a victim's statement.[47] Advocacy organizations strongly advocate for the ability of civilians to request not to be filmed in certain situations, for instance when they are victims of a crime or when officers enter a private home.[48] This aligns with the idea that the cameras exist at least in part to protect civilians, and therefore those civilians should have a say in their use. This issue of consent and requesting deactivation will be discussed in further detail in the *Viewing* section of this report.

No matter the situation that calls for deactivation before the conclusion of an incident, best practice literature advises that an officer must explain why that deactivation happened.[49] The SOP requires officers to narrate the reason on camera, prior to camera deactivation and note

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[44] The Burnsville police department allows for ceasing recording to "exchange information with other officers" but requires that the reason for cessation is noted verbally on camera, or in the report. Burnsville Police Department Policy Manual 800.5.2: Mobile Video Recorders (Appendix 3). Duluth also allows this type of cessation of recording and noting of said cessation. Duluth Police Department Policy Manual 418.5.2.

[45] Miller, 19

[46] Minneapolis Police Department Body Camera SOP

[47] Miller, 19

[48] International Association of Chiefs of Police. "Body-Worn Camera Model Policy." 1. Apr. 2014. Web. 27 July 2015. <http://www.aele.org/iacp-bwc-mp.pdf> (Appendix 22) "In locations where individuals have a reasonable expectation of privacy, such as a residence, they may decline to be recorded unless the recording is being made in pursuant to an arrest or search of the residence or the individuals."

[49] International Association of Chiefs of Police, "Model Policy" 1.

the reason for deactivation in their report.[50] Both of these modes of explanation for deactivation are supported by best practices literature.[51]

Related to deactivation of a camera but also activation, some advocacy groups have suggested that if footage is not available for an incident that, according to the policy, should have been recorded, there should be an evidentiary presumption in favor of the civilian, in criminal, civil or administrative proceedings.[52],[53] This presumption could then be rebutted by contrary evidence or by proof of exigent circumstances that made policy compliance impossible.[54] Applying this standard to the administrative proceedings in Minneapolis following a complaint of officer misconduct, an evidentiary presumption against the officer would be noted in the initial assessment and assignment of the case by the Joint Supervisors.[55] If the case continued into investigation and was presented to the Review Panel[56], the presumption would only apply when the Panel determines a case is equally divided in evidence and the presumption works as a tie-breaker, therefore holding that officer misconduct took place. This consequence is suggested as a way to promote policy compliance, but also work to establish community trust. Advocacy groups and community members themselves (see below) express distrust that officers will use cameras at times when it does not benefit them.[57] An evidentiary presumption against officers in such situations would go a long way to prevent the possibility of officer abuse of discretion and could therefor build trust.

Community Input

Community input on deactivation mirrored activation, in that it focused on cameras being activated more often than not, and on reducing officer discretion in when a camera should be

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[50] Minneapolis Police Department Body Camera SOP
[51] International Association of Chiefs of Police, "Model Policy"
[52] Stahly-Butts
[53] In response to failure to film an incident, the ACLU calls for rebuttable evidentiary presumptions in favor of both “criminal defendants who claim exculpatory evidence was not captured or was destroyed” and “civil plaintiffs suing the government, police department and/or officers for damages based on police misconduct” and provides that the presumptions can be rebutted by contrary evidence or by proof of exigent circumstances that made policy compliance impossible. Stanley, Police Body-Worn Cameras”, 4-5.
[54] Language from Stanley, “Police Mounted Cameras”, 4-5 (Appendix 11)
[55] Per Minneapolis City Ordinance § 172.30 (b) the Joint Supervisors are composed of supervisory staff from the Office of Police Conduct Review civilian unit and the internal affairs unit. The Joint Supervisors review all complaints and determine what cases should proceed to investigation, minor corrective action or be dismissed. Minneapolis City Ordinance § 172.40, (1). (Appendix 41).
[56] The Review Panel is charged with making recommendations regarding the merit of complaints to the chief of police. A panel is comprised of two civilians and two sworn officers.
[57] Collins, Brandi, and Color of Change. "Minneapolis Body Camera Letter." Letter to PCOC Commissioners. 24 July 2015. (Appendix 23). Discusses this evidentiary presumption idea as a tool of accountability, one that could promote justice.

deactivated. Community members asserted that cameras should never be deactivated[58], or that they should only be deactivated when broken.[59] Others noted that cameras should only be deactivated at the conclusion of an incident[60], which could be defined as leaving the scene of an incident, without a suspect in custody.[61] In any situation, an officer must explain why a camera was deactivated.[62]

Community members also offered input on consent to be filmed and deactivation upon request of a civilian. Community comments noted the need to obtain consent for filming in private homes in non-emergency situations[63], and when interacting with crime victims or witnesses.[64] Another commented that cameras should always be deactivated upon request of a civilian, unless that person was either under duress or intoxicated.[65] Lastly, it was asserted that consent to be filmed should be informed consent.[66]

PCOC Recommendation

Based on best practices and community comments on deactivation, the Commission recommends that body cameras be deactivated at the conclusion of an incident and that conclusion be defined as leaving the scene of an incident, or following the completion of a transport of a civilian. The Commission recommends that consent be required to film in homes and when interviewing crime victims and witnesses, when these activities are not a part of law-enforcement activities.

While the SOP already requires officers to explain why a camera was deactivated, the SOP also allows for a supervisor to order deactivation. Accordingly, the Commission recommends that the supervisor too be required to explain the reason for deactivation on camera and in any written report.

Lastly, the Commission recommends that there be an evidentiary presumption against an officer in administrative misconduct proceedings for failure to activate a camera and deactivation of a camera inconsistent with the policy. A presumption can be rebutted by contrary evidence or by proof of exigent circumstances that made policy compliance impossible. The Commission acknowledges that due to body cameras being a new tool for officers such failure to activate or inappropriate deactivation will inevitably happen while officers grow accustomed to their use. As such, the Commission recommends a six-month

[58] Appendix 2, Community Comment 67
[59] Appendix 2, Community Comment 70
[60] Appendix 2, Community Comment 73
[61] Appendix 2, Community Comment 74
[62] Appendix 2, Community Comment 77
[63] Appendix 2, Community Comment 71
[64] Appendix 2, Community Comment 75
[65] Appendix 2, Community Comment 78
[66] Appendix 2, Community Comment 79

grace period following the program rollout before the evidentiary presumption against officers should be applied.

Restrictions

Best Practices

The SOP restricts body camera use in any event that is not in accordance with the activation portion of the policy. Therefore, restrictions in the final policy will very much depend on activation requirements. The SOP, however, places two other specific restrictions on use: (1) "[o]fficers shall not use a PVR for off-duty employment without prior approval of the Chief or her designee" and (2) "[o]fficers shall not use a PVR for SWAT related operations." Neither of these restrictions are commonly noted in other department policies[67] and both restrictions are highly contested by advocacy organizations and community members.

As to off-duty employment, a representative of the Minneapolis Police Department noted in a recent presentation that this policy will be changed to allow for body camera use in off-duty employment if an officer is wearing his or her uniform and acting as a law enforcement officer of the city.[68] This is consistent with best practices literature which suggests body camera use for approved off-duty employment.[69] The importance of this body camera usage surrounds the idea that officers on off-duty assignments are often still in uniform, armed, and retain the power to arrest.[70][71]

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[67] SWAT restrictions are not noted in the policies including the Duluth Police Department Policy Manual, the Burnsville Police Department Policy Manual, the Los Angeles Police Chief Special Order: Body Worn Video Procedures Established (Appendix 6), New Orleans Police Department Policy Manual : Body Worn Camera (Appendix 7) or the District of Columbia General Police Order.

[68] See Glampe, Deputy Chief. "MPD Body Camera Update Report." Public Safety, Civil Rights and Emergency Management Committee Meeting. City Hall, Minneapolis. 15 July 2015. Presentation. (Appendix 24).

[69] Recommendation made by the Labor Relations Information System, Aitchison, Will. "Model Body-Camera Policy." *Labor Relations Information System*. (V)(F), 12 Sept. 2014. Web. 13 Aug. 2015. <https://www.lris.com/2014/09/12/model-body-camera-policy/>. (Appendix 25).

[70] Comments made by Civil Rights Attorney Siddhartha H. Rathod in an interview with Colorado Public Radio. De Yoanna, Michael. " Body Cams Help A Civil Rights Attorney's Cases." *Colorado Public Radio*. N.p., 13 July 2015. Web. 13 Aug. 2015. <https://www.cpr.org/news/story/how-police-body-cams-help-civil-rights-attorneys-cases>. (Appendix 26).

[71] Denver's Police Department instructed officers not to use body cameras during off-duty assignments during its pilot body camera program. Due to this instruction, 35 use of force incidents were not recorded and the Office of Independent Monitor recommended the policy be changed. Kovaleski, Jennifer, Sandra Berry, Alan Gathright, Phil Tenser, and Jaclyn Allen. "Denver Police Department Body Cameras Were off for Many Uses of Force during Test Run,

As to SWAT operations, an audit report on the Minneapolis Police Department Body Camera Program noted that SWAT operations were only excluded in the current SOP due to it being a short-term preliminary implementation policy and therefore the exclusion was made merely out of convenience in time, training and other potential logistics.[72] As such, this restriction may already be slotted for removal. Deleting this restriction for the use of body cameras by SWAT teams would positively align with best practices which point out that SWAT operations are potentially some of the most important police functions to film with body cameras as they have the highest levels of violence in interacting with community members.[73]

A restriction not specified in the current SOP but suggested by the ACLU, limits the use of body cameras in schools. The ACLU suggests that use in schools be restricted unless there is an immediate threat to life or health.[74] Even so, there are agencies that are currently trying to implement body cameras in schools, not on police officers but on teachers and staff.[75]

Community Input

Community members' comments aligned well with best practices research. Community members called for body camera use by off-duty officers when in uniform and retaining the power to arrest[76] and others called for camera use by SWAT teams.[77] Another comment stated

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Report States." *7NEWS*. N.p., 10 Mar. 2015. Web. 13 Aug. 2015. <http://www.thedenverchannel.com/news/local-news/denver-police-department-body-cameras-were-off-for-many-uses-of-force-during-test-run-report-states>. (Appendix 27).

[72] Tetsell, Will, and City Auditor Internal Audit Department. "Police Body Camera Consultation Memorandum." n. pag. City of Minneapolis, 23 July 2015. Web. 27 July 2015. <http://www.minneapolismn.gov/www/groups/public/@clerk/documents/webcontent/wcms1p-144361.pdf>.(Appendix 28).

[73] The ACLU supports SWAT team use of body cameras, though they otherwise suggest that the cameras be used for uniformed officers and marked vehicles only, as it better alters civilians to what to expect. Stanley, "Police Body-Mounted Cameras", 5.

[74] American Civil Liberties Union. "A Model Act for Regulating the Use of Wearable Body Cameras by Law Enforcement." 2. Web. 23 July 2015. <http://www.aele.org./ACLUBWCAct.pdf>. (Appendix 17).

[75] Roscorla, Tanya. "Body Cameras in Schools Spark Privacy, Policy Discussions." *Government Technology*. 22 July 2015. Web. 01 Aug. 2015. <http://www.govtech.com/education/Body-Cameras-in-Schools-Spark-Privacy-Policy-Discussions.html>. (Appendix 29)

[76] Appendix 2, Community Comment 81, 82

[77] Appendix 2, Community Comment 80

that cameras should not be used in elementary or secondary schools[78] and another asserted that cameras should not be used for personal use.[79]

PCOC Recommendation

Due to the consistency between both best practices research and community comments, the Commission recommends the restriction on PVR use by SWAT teams and off-duty employment be eliminated. In reference to SWAT teams, cameras are especially important due to prevalence of violent situations. As to off-duty employment, the Commission recommends camera use be required any time an officer is in uniform and retains the power to arrest, since at these times, the officer is still acting as a representative of the City of Minneapolis and can incur city liability or misconduct complaints.

Notification

Best Practices

Notification has multiple facets, which include: Who must be notified when an interaction is being recorded? When and how must they be notified? Whether or not the civilian has been notified of recording, can an officer accommodate a civilian's request to deactivate a camera to stop recording? The language regarding notification in the SOP states: "[i]f asked, officers should inform those inquiring that audio-video recording equipment is in use." It does not require notification in any particular situation or identify how a civilian should be notified, though the quoted language seems to imply direct verbal notification from an officer.

Advocacy groups suggest that instead of only informing those that ask, officers inform all civilians of the recording, as long it is practical and does not threaten officer safety.[80] Other agencies conform to this best practices recommendation, such as Seattle whose policy requires notification as soon as practical and requires that the notification be on camera.[81] But the mode of notification can differ. Notification could be direct, as it is in Seattle, requiring verbal notification that the recording is taking place. Alternatively, the notification could be indirect, with a red solid or flashing light[82] on the body camera itself that indicates it is recording, or language on the officer's uniform stating a body camera is in use.[83]

Notification requirements can also vary depending on the encounter. For instance, one best practice policy requires notification whenever practical in public settings but requires

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[78] Appendix 2, Community Comment 83
[79] Appendix 2, Community Comment 84
[80] Center for Democracy and Technology, 3
[81] Seattle Police Manual 16.091 POL-1: Body-Worn Video Pilot Program (6).
[82] Per New Orleans Police Department Policy Manual 447.3 (b)(3), the devices the NOPD uses have flashing red LED lights that indicate they are recording.
[83] Center for Democracy and Technology, 3; Stanley, "Police Body-Mounted Cameras", 5.

mandatory notification when in a place of expected privacy.[84] The mode of notification could change between these two situations as well, requiring indirect notification in public settings and direct notification in potentially private homes or similar situations. Moving beyond simple notification, some organizations recommend and agencies require consent in some situations[85], including filming in private homes. If consent is required, an officer would not be able to film if asked not to by a civilian, as long as the officer was not actively involved in a law enforcement incident. This consent requirement would exclude certain activities such as searches of homes when officers have legally obtained warrants.[86][87] Another suggestion is that consent always be obtained when interviewing crime victims and witnesses, consent documented either in writing or on camera, as that is the best balance of privacy concerns with the need to accurately document events.[88]

Notification serves an additional positive role beyond civilian awareness and privacy protections. Officers note that by notifying a civilian than an interaction is being recorded, officers can sometimes deescalate tumultuous situations.[89] This aligns with the idea asserted as a strong positive for body camera use, that knowing one is on camera improves behavior.[90]

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[84] To assess whether there is a reasonable expectation of privacy in a given location, courts often apply Fourth Amendment analysis set forth in *Katz v. United States*, 389 US 347, 361 (1967) (Harlan, Concurring) asking whether the person exhibited an actual or subjective "expectation of privacy" in the communication and whether that expectation is "one that society is prepared to recognize as reasonable." Cited by International Association of Chiefs of Police, "Concepts and Issues", 3. (Appendix 31).

[85] Seattle Police Manual 16.091- POL-1 (5) requires consent to record "in residences or other private areas" and that recording be stopped if consent not given, though this is not applicable when potential crimes are in process or other circumstances that would legally allow officers to be present without a warrant.

[86] ACLU Senior Policy Analyst Jay Stanley asserts that "[a]n officer who is entering somebody's house shouldn't be able to turn the camera on in that house without permission unless it's a S.W.A.T. raid or there's a warrant" and that officers should have discretion to turn off cameras in any consensual home entry. Stanley, Jay. "Body-Worn Camera Programs— Privacy Perspective." Bureau of Justice Assistance Interview. *Bureau of Justice Assistance*. Web. 27 July 2015. <https://www.bja.gov/bwc/Topics-Privacy.html>. (Appendix 30).

[87] A general rule could be that if an officer must legally ask permission to enter a premises, that officer should also ask for permission to record. International Association of Chiefs of Police, "Concepts and Issues", 4.

[88] Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned. 41. Washington, DC: Office of Community Oriented Policing Services.

[89] Miller, 19, 40.

[90] Ariel, Barak, William A. Farrar, and Alex Sutherland. "The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial." *Journal of Quantitative Criminology* (2014) 9. Web. (in specific reference to officer behavior). (Appendix 32).

Studies have suggested that this applies to officers wearing the cameras but could also apply to civilians who are made aware that their actions are also recorded.[91]

A note on consent: Minnesota is a single-consent state, meaning that state law allows filming as long as one party consents which, in the case of body camera use, can be the officer.[92] As such, the current policy is not in violation of state law by not requiring notification and consent in public or private spaces; it is merely a best practice recommendation to do so.

To loop back to deactivation, this question of consent and the policy around it will affect the policy around deactivation. For instance, if consent is required for filming in a private home and a civilian does not give her consent to that filming, the deactivation policy must allow for deactivation of the body camera when entering that home.

Community Input

Community input was highly in favor of notification changes to body camera policy. Comments called for notification of recording when entering a home[93], notification to those participating in investigations[94], and notification to crime witnesses and victims.[95] One community comment called for cameras to be equipped with red lights to show they are recording.[96] Another comment stated that not only should all citizens be notified of recording, they should also be notified that they can request the footage.[97] One more suggested that notification of recording be accompanied by notification of the policies surrounding body camera use.[98]

PCOC Recommendation

The PCOC recommends that officers display indirect notification at all times when filming, whether that be with a red light or with language on their uniforms close to the PVR device. The PCOC also recommends that in public spaces, while indirect notification may be sufficient, officers still inform members of the public whenever practical. In any consensual encounter in a private residence, or another space of protected privacy, the PCOC recommends that officers be required to notify those present and obtain their consent to continue filming. If that

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[91] Ariel, 10. Noting that the report did not collect data specific to this issue but that the psychological mechanisms between officers and community members are substantially similar but that the issue also needs to be further explored.

[92] Minn. Stat. § 626A.02 Subd. 2 (c) (Appendix 33) governs this issue and states "[i]t is not unlawful under this chapter for a person acting under color of law to intercept a wire, electronic, or oral communication, where such person is a party to the communication or one of the parties to the communication has given prior consent to such interception."

[93] Appendix 2, Community Comment 85

[94] Appendix 2, Community Comment 86

[95] Appendix 2, Community Comment 88

[96] Appendix 2, Community Comment 90

[97] Appendix 2, Community Comment 87

[98] Appendix 2, Community Comment 89

consent is not obtained, the camera should be deactivated until consent given, or if the encounter becomes a law enforcement activity. This policy will protect crime witnesses and victims, as well as other members of the public who wish to minimize recordings of their non-law enforcement related interactions.

Viewing

Best Practices

There are two issues within the Viewing topic that require discussion. The first is the viewing of body camera footage by officers before writing police reports on incidents. The second is who should be able to review videos, how often and whether they can be reviewed for body camera policy compliance or misconduct, or both.

As to the officer viewing before writing a report, the current SOP states: "[t]o ensure the accuracy of reports, an officer should review audio and video before making a report or statement."[99] This policy and practice is common among other departments body camera use[100] and PERF reports that most police executives are in favor of viewing before giving statements and writing reports.[101] Those in favor say such viewing assists officers to more clearly recall events and get to the truth of what happened during an incident.[102]

The Seattle Police Department, however, does not explicitly allow for such viewing,[103] a policy more consistent with recommendations by community groups and advocacy organizations[104] who contest pre-report viewing for two key reasons. The first is that viewing the video before writing a report allows for inaccuracy in the report and potential manipulation of an officer's

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[99] SOP

[100] The Los Angeles Police Chief Special Order XVIII requires officers to view footage before documenting an incident, arrest, search, interview, use of force, or other investigative activity. The Duluth Police Department Policy Manual 418.6 (a) states officers "may" view recorded media before report writing. The same ability is provided for in the Burnsville Police Department Policy Manual 800.13 (a). New Orleans Police Department Policy Manual PR447.6 also states officer "may" review footage to help ensure accuracy and consistency of reports.

[101] Miller, 29.

[102] Miller, 29.

[103] Seattle Police Manual 16.091-POL 2 (1) lists all purposes for which employees may view recordings, and prior to writing a report excluded from the list.

[104] *But see* Fraternal Order Of Police, *Body-Worn Camera ("BWC") Recommended Best Practices* (n.d.): 5-6. Fraternal Order of Police. Web. 3 Aug. 2015. <http://www.fop.net/programs/education/webinar/BestPracticesBWC.pdf> recommending that officers be able to "view their own recordings at any time" but "not have the ability to edit, delete, or otherwise modify their own recordings." The report also recommends that officers be able to view video before giving a statement following a critical incident, and before being questioned in an internal investigation.

personal awareness of what occurred during an incident.[105] It must be noted that body cameras and the footage they produce have limitations which include the fact that a chest mounted camera does not follow the officer's eyes and therefore does not necessarily see what the officer sees, the view can be blocked, the camera only records in 2-D and one camera angle may not be enough to determine exactly what happened in a given incident.[106]

The second issue with officer viewing video before writing a report is that it diminishes both the reports' and an officer's testimony's evidentiary value.[107] This is because both the report and officer's statements are no longer based solely on their individual witnessing and understanding of an incident, but instead the video's presentation of that incident. These two reasons lead advocacy groups including the ACLU, Color of Change, the Leadership Conference on Civil and Human Rights, National Urban League and others to recommend that officers be unable to view videos before writing reports.[108]

To mitigate this issue, the MPD could require report writing before viewing footage but allow officers to add clearly marked addendums to their reports following video viewing to explain any lack of clarity or consistency between the two. Another compromise could include limiting or restricting viewing by an officer when that officer is suspected of wrongdoing or involved in a shooting or other serious use of force.[109]

In regard to the second issue in the viewing topic, who reviews the recordings and when, the current SOP states: "[t]he PVR equipment is not to be used for the purpose of surveillance of officers, initiating an investigation or initiating disciplinary action against an officer. However, data captured by the PVR may be accessed and/or used as evidence: relating to a complaint of

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[105] In a NPR interview with Sam Walker, emeritus professor of criminal justice at the University of Nebraska, Omaha, he notes that viewing footage before report writing should not be allowed since a historical issue is "officers give accounts of incidents that are not factually correct, and they're often covering up their actions." The article notes that "[i]f an officer is planning to lie, video is a good guide to what kind of lie he can get away with." Kaste, Matin. "Can Cop-Worn Cameras Restore Faith In New Orleans Police?" *NPR*. NPR, 22 May 2014. Web. 05 Aug. 2015. <http://www.npr.org/sections/alltechconsidered/2014/05/22/314912840/can-cop-worn-cameras-restore-faith-in-new-orleans-police>.

[106] "10 Limitations on Body Cameras."

[107] The Civil Rights Principles on Body Worn Cameras cites preservation of the independent of evidentiary value of officer reports as a reason to prohibit officer viewing before report writing. "Civil Rights, Privacy, and Media Rights Groups Release Principles for Law Enforcement Body Worn Cameras." *The Leadership Conference on Civil and Human Rights*. 15 May 2015. Web. 01 Aug. 2015. <http://www.civilrights.org/press/2015/body-camera-principles.html>.

[108] "Civil Rights, Privacy, and Media Rights Groups Release Principles for Law Enforcement Body Worn Cameras" signed by listed groups, full list in Appendix 36.

[109] International Association of Chiefs of Police, "Model Policy", 2.

misconduct made against an officer; or in situations where evidence of officer misconduct is discovered during the course of authorized access or review of PVR data with regard to pending administrative, criminal, civil, or traffic matters."[110] It also requires supervisor viewing of "any pertinent PVR video" when conducting force reviews.[111] These policies again closely align with other agencies[112] and go further than some by allowing footage to be used as evidence of officer misconduct if discovered while viewing the footage for other proscribed matters.[113] This is a positive for advocacy practitioners and community groups whose interest in body cameras' is greatly driven by the cameras' ability to promote accountability in law enforcement agencies, meaning misconduct captured on body camera footage must be addressed and corrective action taken.[114]

The current SOP does not mandate, however, periodic reviews of footage for correct equipment use, policy compliance, or misconduct. There is a split between agencies regarding this practice and whether it is required or prohibited.[115] Some agencies, including Daytona Beach, prohibit periodic review and focus exclusively on incident-based viewing.[116] This is contrasted by body camera use in Fort Worth, where the police chief says periodic reviews are critical to accountability. Topeka Police Department's policy lies between these allowing periodic review of only those officers who have received numerous complaints.[117]

Best practice literature supports periodic reviews. The International Association of Chiefs of Police suggests they take place at least on a monthly basis and review equipment functionality, policy compliance and potential areas for further training and guidance.[118] Reviews for policy compliance can ensure that cameras are being activated or deactivated at appropriate times, that notification is taking place in accordance with policy, and that videos are being properly classified and therefore properly retained. Footage can also be periodically reviewed for officer misconduct, in addition to policy compliance, looking for any policy

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[110] Minneapolis Police Department Body Camera SOP
[111] Minneapolis Police Department Body Camera SOP
[112] The Los Angeles Police Chief Special Order XIX also calls for review of footage for use of force investigations, as does the Seattle Police Manual 16.091 POL-2 (2).
[113] Duluth Police Department Policy Manual 418.6 (k) only allows footage to be used as evidence related to a complaint made against an officer. 418.2 does not to allow footage to initiate disciplinary action against an officer. Seattle Police Manual 16.091- POL-2 (2) goes further by allowing viewing for performance appraisal but 16.091- POL-2 (3) limits potential consequences by stating that minor misconduct will not result in discipline but more minor corrective action such as training referral or career coaching.
[114] Stanley, "Privacy Perspective."
[115] Miller, 25.
[116] Miller, 25.
[117] Miller, 25.
[118] International Association of Chiefs of Police, "Model Policy", 2.

violations and upon discovery, potential corrective action.[119] PERF recommends that supervisors be permitted to review footage for policy compliance specifically when officers are still in their probationary periods, when officers have a pattern of allegations of abuse, when an officer agrees to review as a condition of returning to duty, and when an officer is identified through early intervention system.[120] PERF also suggests that reviews be conducted by an internal audit unit to avoid undermining trust between officers and supervisors.[121]

Community Input

Community members are overwhelmingly against officers being able to view body camera footage before writing reports.[122] Comments note that allowing such viewing will allow reports to be falsified[123] and go so far as to assert that it must be assured that officers will not view footage before writing reports.[124] Comments also note evidentiary value, stating that viewing before report writing would remove any independent evidentiary value from those reports[125], and instead reflect merely what the officer saw when watching the footage.[126]

As to supervisor viewing of footage, community comments expressed the opinion that supervisors should be able to review videos for policy violations[127] and could do so by completing regular auditing of footage.[128] One comment expressed the idea of both random video checking and targeted review when concerns or complaints about a particular officer arise.[129] Lastly, when a complaint is made, community comments call for a supervisor to view the footage.[130]

PCOC Recommendation

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[119] The Kentucky League of Cities created a body camera policy that calls for a review of a taped event of each officer every 60 days, a meeting following the review for positive reinforcement or constructive criticism, and allows for disciplinary or corrective action in the case of infractions. Kentucky League of Cities, and Policies, Legal & Liability Risk Management Institute. "Policy Body Worn Video Recording (BWV)." *Legal & Liability Risk Management Institute*. 4. 2014. Web. 03 Aug. 2015. <http://www.klc.org/UserFiles/files/BODYCamModelPolicyDec2014.pdf>.
[120] Miller, 46.
[121] Miller, 46.
[122] Appendix 2, Community Comment 93, 94, 96, 98, 101
[123] Appendix 2, Community Comment 92
[124] Appendix 2, Community Comment 94
[125] Appendix 2, Community Comment 96
[126] Appendix 2, Community Comment 101
[127] Appendix 2, Community Comment 91
[128] Appendix 2, Community Comment 97
[129] Appendix 2, Community Comment 99
[130] Appendix 2, Community Comment 103

Taking both best practices research and community comments into account, and because of the consistency between both, the PCOC recommends that officers not be allowed to view body camera footage before writing reports. The PCOC bases this recommendation on reasons stated by both community members and best practices, that not allowing such viewing will preserve the evidentiary value of reports, provide multiple perspectives on an incident, and reduce potential falsification of reports.

The PCOC also recommends that in situations that require a force review, officers involved in the use of force not be allowed to view footage until after all investigative decisions have been made, and that supervisors ensure that viewing is prohibited.

As to supervisor viewing, the PCOC recommends that supervisors view footage as a part of force reviews and whenever a compliant is made against an officer. The PCOC also recommends that footage be regularly reviewed. There should be random reviews for policy compliance and categorization, and targeted reviews when there is a concern or multiple complaints made against an officer. Misconduct noted in the random or targeted reviews should be addressed with appropriate corrective action.

Public Access and Retention

Best Practices

Body camera footage is currently public and governed by Minnesota Statute 13.82, Comprehensive Law Enforcement Data. This Statute only allows for a small number of exceptions to footage being public, including the identities of undercover police officers[131], victims of sexual assault[132], informants[133], and mandated reporters.[134] Beyond these exceptions, body camera footage being public means that any member of the public can request the footage, receive it, and have no restrictions on how it is used.

In regard to public access the SOP currently only states: "[r]equests made by the public for PVR video will be processed by the Records Information Unit (RIU), in conjunction with the Precinct Supervisor, the Crime Lab Video Forensics Section and the Public Information Office." The internal audit report of the pilot body camera program noted that "the public disclosure processes are highly manual and require various levels of review, which could impact how efficiently and effectively the Police Records Information Unit is able to keep up with demand while maintaining strong privacy" and recommended that a process be established that will be better able to accommodate the demand.[135] The report also suggests that a formal public data

[131] Minn. Stat. 13.82(a)
[132] Minn. Stat. 13.82(b)
[133] Minn. Stat. 13.82(c)
[134] Minn. Stat. 13.82(h)
[135] Tetsell, Will, and City Auditor Internal Audit Department. "Police Body Camera Consultation Memorandum." City of Minneapolis, 23 July 2015. Web. 27 July 2015.

request process be established and that the volume of public data requests, dependencies and potential bottlenecks be formally monitored.[136]

Due to state law already noted, an updated body camera policy could not reduce what footage is publically available. The Minnesota legislature has considered changes to the current law but has yet to make any adjustments specific to body camera footage. A bill was proposed during the 2015 legislative session, but failed to pass, that would have classified body camera footage as private, with the exception of footage taken in public places, and footage of a police officer using a deadly weapon or force that resulted in substantial bodily harm, which would remain public.[137] Public interest groups such as the ACLU are closer aligned with the policy set forth in that bill, since that group recommends that footage not be public unless it contains footage of a use of force situation, in which case the public must be able to see it in order for the body cameras to truly be used as a tool for officer accountability.[138] Other states with police departments with body camera programs have enacted laws to limit public access to body camera footage.[139] They hope that such limits protect the privacy of citizens whose images and voices may be captured on body camera footage in private spaces.

Unlike strict public access, the MPD policy can determine retention periods for body camera footage. The current SOP requires non-classified video be retained for one year and classified video be retained for six years. The current classifications are: non-event police event, police evidence, and significant/critical incidents.[140] The internal audit reports noted that approximately 17% of videos in the pilot program were unclassified, an issue that must be addressed since that lack of categorization could lead to premature deletion.[141] The report recommended that a process be implemented to verify correct categorization.[142] This could be done as a part of the periodic reviews for policy compliance discussed in the *Viewing* section.

<http://www.minneapolismn.gov/www/groups/public/@clerk/documents/webcontent/wcms1p-144361.pdf>.

[136] Tetsell, 10.

[137] Minn. State Legislature SF 498

[138] Stanley, "Privacy Perspective."

[139] South Carolina passed a law in June 2015 that requires all state and local law enforcement agencies to implement body cameras but also exempts the footage from disclosure under the Freedom of Information Act. SC Code of Law 23-1-240(1)(G)(1). A law recently passed in May 2015 in Florida makes body camera footage confidential when "taken within the interior of a private residence…within the interior of a facility that offers health care, mental health care, or social services or… taken in a place that a reasonable person would expect to be private." Laws of Florida Ch. 2015-41, 119.071(2)(2)(a-b). (Appendix 40).

[140] Tetsell, 12.

[141] Tetsell, 11.

[142] Tetsell, 12.

The report also suggested that an additional category be included for ongoing litigation or court cases, to insure evidence will not be disposed of prematurely.[143]

Retention periods differ among other agencies but are most commonly for between 60 to 90 days according to a PREF report.[144] But this is not always the case; some departments including Rialto, Fort Collins, Albuquerque, Daytona Beach, and Toronto retain videos for at least as long as a citizen can make a complaint.[145][146] If the complaint deadline was applied as the standard retention in Minneapolis, the base retention period would be 280 days.[147] Retention of video footage of a potential crime could be limited by state evidentiary rules[148] but always retained until adjudication or final disposition.[149][150] Videos could also be "flagged" for use of force leading to detention or arrest or where a complaint has been filed, and they could be retained for a more extended time period, for instance three years.[151] Video of an incident resulting in a death could be retained even longer. These recommendations are contrasted by a call to destroy footage sooner in order to protect privacy[152] and reduce footage storage costs.[153]

No matter the retention time used, it is important that the time is publically accessible as it best allows for civilian complaint filing and promotes transparency and accountability.[154]

Community Input

Many public comments focused on public access to body camera footage and a lesser but still significant number of comments focused on retention. As to public access, community members emphasized the need for there to be public access to at least some body camera

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[143] Tetsell, 12.
[144] Miller, 17.
[145]Miller, 17.
[146] The International Association of Chiefs of Police also offers complaint filling schedules as a guideline for retention schedules, though also notes the cost of storage and a department's need to balance that with the desire to have information available. International Association of Chiefs of Police, "Concepts and Issues", 5.
[147] Minneapolis City Ordinance § 172.30(a) "Absent extenuating circumstances deemed sufficient to warrant untimely filing, no person may file a complaint if more than two hundred seventy (270) days have elapsed since the alleged misconduct."
[148] Other agencies often use those guidelines for retention times, See Miller, 16-17.
[149] Center for Democracy and Technology.
[150] Minnesota's statute of limitations for criminal offenses can be found at Minn. Stat. § 628.26.
[151] The ACLU asserts these "flagged" categories and the three year retention period, citing it as the retention schedule used in Washington State. Stanley, "Police Body-Mounted Cameras", 6.
[152] The ACLU states that without a reason to preserve video evidence, recordings should be deleted quickly. Stanley, "Police Body-Mounted Cameras", 6.
[153] PERF notes reduced retention times as a way to reduce costs associated with storage. Miller, 17.
[154] Miller, 19; Stanley, "Police Body-Mounted Cameras", 6.

footage, if not all footage. Access to all footage must be provided to subjects of the video[155] and their legal representatives.[156] One comment stated that public access must be provided in any use of force incident[157]; another noted that all footage should be public unless there is an active investigation into the incident.[158] Another comment stated that public access should only be granted with the subject of the footage's consent.[159] Comments asserted that public access is key to body cameras' promotion of police accountability[160]. Another noted that public access to video is an additional incentive for officers to be on better behavior.[161]

Other community comments focused on retention of footage, with comments stating that footage should be retained for the length of time civilians can file complaints against officers.[162] Another comment stated that videos should be flagged for arrests and complaints made and then retained longer.[163] At the same time, videos that are irrelevant should not be retained.[164] As to classification of video, what determines retention periods, one community comment noted the potential for abuse in officer discretion over such classification.[165] Another comment noted that those who are subjects in the footage should be informed of the classification the footage will have.[166] Lastly, as to the public access process, community comments asserted the importance of a specific process created to handle such requests[167] and that MPD needs to be well trained to handle such requests.[168]

PCOC Recommendation

The PCOC makes no recommendation in regard to public access to body camera footage, since this access is governed by Minnesota law. The PCOC supports the MPD adherence to that law when releasing body camera footage.

As to retention, the PCOC recommends that all video footage be retained for the duration of time within which a civilian complaint can be made against an officer, which is 280 days. Following that initial period, all data classified as police evidence or significant/critical incidents should be retained based on Minnesota's Statute of Limitations for the potential crime

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[155] Appendix 2, Community Comment 107
[156] Appendix 2, Community Comment 108
[157] Appendix 2, Community Comment 116
[158] Appendix 2, Community Comment 115
[159] Appendix 2, Community Comment 135
[160] Appendix 2, Community Comment 109
[161] Appendix 2, Community Comment 133
[162] Appendix 2, Community Comment 119
[163] Appendix 2, Community Comment 127
[164] Appendix 2, Community Comment 128
[165] Appendix 2, Community Comment 130
[166] Appendix 2, Community Comment 118
[167] Appendix 2, Community Comment 122
[168] Appendix 2, Community Comment 121

captured in the footage. Any data containing officer use of force should be retained for three years, and any footage containing officer or civilian death should be retained in perpetuity. The classification categories should be expanded to include "court cases", as suggested with the internal audit report and videos classified as court cases should be retained for the duration of investigation, adjudication and final dispositions.

Due to the potential for abuse and human error in video classification, and therefore potentially inappropriate retention periods, that PCOC recommends that classification of footage be reviewed with random and targeted reviews recommend in the *Viewing* section.

The PCOC additionally recommends that a defined system be developed to handle data requests. This should involve the creation of a prepared form requesters can fill out and that is available online and in print form. There should be a specific chain of MPD offices with specific duties in regard to those requests. One such system could be that the Public Records Office house the form and receive requests, those requests are then processed by the Records Information Unit, in conjunction with Precinct supervisors, the Crime Lab Forensics Section, and the Public Information Office.

Accountability

Best Practices

The SOP states that one of the purposes of the body camera program is to "[a]ssist in the assessment of contacts between officers and the public by reviewing procedures and interpersonal reactions."[169] It could be implied that this language points toward officer accountability and promoting public trust, but neither of those purposes are explicitly stated. Best practices literature shows that accountability and transparency are key benefits to body cameras in the eyes of the public and therefore should be promoted.[170] It is also asserted that body cameras offer an objective view of officers' actions and that viewing the footage will lead to accountability through discipline and corrective action when misconduct takes place.

Beyond a focus on accountability as a central purpose of the program, best practices research suggests that discipline or corrective action needs to be articulated in the policy and actually enforced in the program. Currently, the SOP does not explicitly include discipline as a consequence for failure to follow policy, or for misconduct documented in body camera footage. Lacking such discipline or consequences listed in the policy causes speculation in the community that the policy will actually be followed. For falling to activate, deactivation, deactivating prematurely, failing to notify civilians of the recording, prematurely viewing video, or tampering with video, consequences that could be articulated in the policy include

[169] Minneapolis Police Department Body Camera SOP

[170] Miller, 5, notes improvement in transparency for the public, improved community-police relations and fewer civilian complaints as benefits of body cameras.

disciplinary action up to and including dismissal[171]; the presumption of police misconduct in the event that footage is not available that should have been according to the policy, as discussed in the *Deactivation* section; and criminal penalties, especially for police tampering with cameras or footage.[172] Additionally, MPD could respond to misconduct with regular corrective action, the same way it would if a complaint of misconduct was filed and found to have merit. This consequence for discovered misconduct would be consistent with the MPD policy requiring employees to "immediately report any violation of rules, regulations, or laws that come to their attention to the Internal Affairs Unit."[173]

While it is important to specify discipline for not following policy, or for committing misconduct in the policy, a policy should state how exactly those issues will be identified. This is why articulating a procedure for viewing footage is so important. As discussed in the *Viewing* section of this report, that review could take place for all officers on a regular basis, either randomly and/or based on previous policy or misconduct issues.

Lastly, though this does not necessarily pertain to what will be written in the policy itself, best practices research demonstrates that it is hugely important that policy be administered and enforced as written.[174] This is essential in using body cameras to build and improve community trust in law enforcement.[175]

Community Input

Community comments regarding accountability focused on the important part body cameras could play in promoting police accountability. Comments included statements that cameras could hold officers accountable for violence and derogatory language.[176] Another comment

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[171] International Association of Chiefs of Police, "Concepts and Issues", 3.

[172] Stahly-Butts, Marbre, and Anand Subramanian. "Policy 10: Body Cameras." *Building Momentum From The Ground Up: A Toolkit for Promoting Justice in Policing* (2014): 32. Policy Link, Center for Popular Democracy, June 2015. Web. 22 July 2015. <http://www.policylink.org/sites/default/files/JusticeInPolicing-9.pdf>.

[173] Minneapolis Police Department Policy and Procedure Manual 5-105(6) Professional Code of Conduct (Appendix 49).

[174] The ACLU reports that in cities including Albuquerque and Denver, officer compliance with body camera policies can be as low as 30%. Stanley, "Police Body-Mounted Cameras", 4.

[175] U.S Department of Justice, Civil Rights Division. "Albuquerque Police Department." Letter to Mayor Richard J. Berry. 10 Apr. 2014. *Department of Justice*. Web. 03 Aug. 2015. <http://www.justice.gov/sites/default/files/crt/legacy/2014/04/10/apd_findings_4-10-14.pdf>. Albuquerque's implementation of body cameras has had a "limited impact" on community trust because the implementation has been "highly inconsistent" with a lack of necessary supervision and oversight, appearing to only have been implemented to "placate public criticism" at 6-7, 23. For instance, the report notes that often use of force incidents are not recorded, even when the contact was initiated by an officer, with little to no consequence. At 26.

[176] Appendix 2, Community Comment 137

stated that cameras can tell a different story than what an officer tells[177], that if a video shows that an officer lied about an incident, he or she should be prosecuted[178], and that cameras allow for criminal charges against officer.[179] Others noted that body cameras are one small piece of creating a system of accountability[180], and another noted that body cameras and dash cameras are a part of a comprehensive strategy for accountability and safety.[181]

As to accountability in following the body camera policy, community comments noted the need for discipline for failure to follow the body camera policy[182], and for misconduct captured in the footage and brought to the attention of any supervisor.[183] Distrust was expressed that such action will take place following the cameras rollout.[184] Lastly, it was noted that using body cameras in violation of the policy, such as for surveillance, will undermine the public trust and accountability that body cameras could promote.[185]

PCOC Recommendation

The PCOC recommends, due especially to distrust expressed in community comments, that it be made clear in the policy that one of the purposes of body cameras in to promote accountability and increase community trust in the MPD. In addition, the PCOC recommends that consequences be clearly defined for failure to follow the policy, and for any misconduct captured on the footage of which a supervisor becomes aware. Lastly, the PCOC recommends that such consequences be accurately enforced in practice.

Policy Creation

Best Practices

PERF reports that approximately a third of all police departments that have implemented body cameras do not have a policy in place for their use.[186] According to best practices research, having a detailed policy in place before utilization is a key way to make a program successful and avoid the potential pitfalls of overwhelmed departments and officers, and unhappy community members.

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[177] Appendix 2, Community Comment 144
[178] Appendix 2, Community Comment 150
[179] Appendix 2, Community Comment 142
[180] Appendix 2, Community Comment 149
[181] Appendix 2, Community Comment 153
[182] Appendix 2, Community Comment 141
[183] Appendix 2, Community Comment 152
[184] Appendix 2, Community Comment 140, 141, 147, 152
[185] Appendix 2, Community Comment 154
[186] Miller.

Policies should be created with input from the communities they serve.[187] It is to this end that the PCOC held listening sessions and encouraged written input via email. As well as incorporating community input in policy creation, those polices must also be very accessible to community members, both by being straightforward and easy to understand, but also by being posted in accessible places such as department and city websites, social media sites, and available at police departments in hard copy form. Additionally, it must be ensured that the same degree of community involvement and accessibility be applied to any policy assessment and change as well.[188]

Related to the idea of policy change, best practice literature suggests that body camera policies should be consistently reevaluated[189], assessed and studied in order to decide when and what changes need to take place. This concept is not included in the current SOP but was another suggestion made following the internal audit of the body camera pilot program.[190] Success in implementation could be measured by assessing the numbers of community complaints and uses of force, the identification and correction internal agency problems, and the degree of effectiveness in evidence collection.[191] Other departments have undertaken such studies and done so by partnering with academic institutions in their areas. It is the work and findings of studies done through these partnerships on which this recommended policy is based. It addition to studying the MPD specific policy and practice outcomes, more best practice literature will be produced, more police departments are sure to implement the cameras, and available body camera technology will change[192], all of which could continue to inform potential changes to the MPD's body camera policy.[193]

Community Input

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[187] "Civil Rights, Privacy, and Media Rights Groups Release Principles for Law Enforcement Body Worn Cameras."

[188] "Civil Rights, Privacy, and Media Rights Groups Release Principles for Law Enforcement Body Worn Cameras."

[189] Mosler, Damon. "Body-Worn Camera Programs— Prosecution Perspective." Bureau of Justice Assistance Interview. *Bureau of Justice Assistance*. Web. 27 July 2015. <https://www.bja.gov/bwc/pdfs/transcripts/BWC_Interview_Mosler_transcript-508.pdf>. (Appendix 44).

[190] The audit report notes that police body camera programs are still developing and that the MPD should revisit policies and procedures frequently as it evolves and "operational efficiencies are noted or legislation changes impact the program." Tetsell, 7.

[191] Measures noted by PERF as perceived benefits of body camera programs. Miller, 5-9.

[192] Stanley, "Privacy Perspective."

[193] An example of this is the recently formed and announced ABA Task Force on Law Enforcement Body Camera that will conduct a comprehensive study of best practices and policies and what effect they have on the criminal justice system and individual liberties. "ABA Task Force on Law Enforcement Body Camera to Establish Best Practices, Address Individual Liberties." *American Bar Association*. 01 Aug. 2015. Web. 03 Aug. 2015. (Appendix 45).

The community stressed the importance of community involvement in policy making[194], and the importance of the details of the policy.[195] One comment noted the need for the policy to adhere to changing technology[196], that policy needs to be changed and revised[197], and that, in general, accountability is needed for any changes in the policy.[198] Lastly, one comment noted the need for the policy to be transparent and available for everyone.[199]

PCOC Recommendation

Based on best practices and community comments, the PCOC recommends first that a detailed policy, in particular the PCOC recommended policy, be adopted prior to rollout of the body camera program. Second, the PCOC recommends that the final policy be made available to the community online and in hard copy form. Third, the PCOC recommends that the MPD partner with an academic institution to conduct impact reports on the program for at least the first two years. Fourth, the Commission recommends that the program be audited yearly. Fifth, the Commission recommends that the policy be revised three years following the rollout and that this revision be informed by the impact reports and audits. This revision should be done in partnership with the PCOC, who commits to again collecting community comment and incorporate the community in any policy changes. Lastly, if the MPD desires to revise the policy prior to the three year mark, any proposed changes shall be submitted to the PCOC, assessed by the Commission and the public via public comment, and responded to with recommendations before any actual revision takes place.

Conclusion

The completion of best practices research and community comment demonstrates to the PCOC the importance of body camera implementation in the Minneapolis Police Department but also the importance of a detailed and thoughtful policy for their use. The Redlined MPD Body Camera SOP that follows is the PCOC's best effort to synthesize the priorities of the residents of Minneapolis, lessons learned by other law enforcement agencies, and the plethora of best practices literature into an effective body camera policy that works for all stakeholders and promotes trust, increases accuracy and best protects all.

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[194] Appendix 2, Community Comment 169
[195] Appendix 2, Community Comment 155
[196] Appendix 2, Community Comment 164
[197] Appendix 2, Community Comment 156
[198] Appendix 2, Community Comment 171
[199] Appendix 2, Community Comment 166

Recommendations

The Police Conduct Oversight Commission Recommends the following actions to the Minneapolis Police Department:

1. Implement body cameras in the Minneapolis Police Department.
2. **Adopt the Police Conduct Oversight Commission's Red-Lined Policy and all recommendations therein.**
3. When conducting periodic reviews of body camera footage for policy compliance, those reviews should be conducted by supervisory staff who are not direct supervisors of officers' whose footage is being reviewed.
4. When releasing video per a public data request in accordance with Minn. Stat. Ch. 13, contact and inform any subjects of the footage prior to the release.
5. Partner with an academic institution to conduct an impact study on body camera use by the Minneapolis Police Department for at least the first two years of the program's operation.
6. Invite the Commission to conduct an additional Research and Study two years following the body camera program rollout. This Research and Study will contain updated body camera best practices research and analysis, community input gathered through community listening sessions, and a recommended revised body camera policy.
7. Adopt recommendations stated in the City of Minneapolis Internal Audit Department: Police Body Camera Consultation Memorandum.

Red-Lined MPD Body Camera SOP

Purpose

The content of this SOP will provide MPD personnel with guidelines and procedures for the use, management, access, retention, handling of evidence**,** storage, and retrieval of recorded media captured by Portable Video Recording (PVR) equipment ~~during the PVR trial period~~. The purpose of utilizing PVR equipment by Minneapolis Police Department officers ~~during the trial period~~ is to accomplish the following:

- Capture digital audio-video evidence for criminal, civil, and traffic-related court cases.
- ~~Assist officers with recalling facts or other details captured by the equipment that will help them accurately articulate a chain of events when writing reports.~~
- Be used as a training tool for officer safety and best practices in the MPD.
- Assist in the assessment of contacts between officers and the public by reviewing procedures and interpersonal actions.
- ~~Increase accountability and transparency in an effort to promote community trust in the MPD.~~[200]
- ~~Assist in the assessment of different manufactures of PVR equipment/systems~~
- ~~Develop a future SOP~~
- ~~Develop a policy and procedure~~

The PVR equipment is not to be used for the purpose of surveillance of officers, initiating an investigation or initiating disciplinary action against an officer. However, data captured by the PVR may be accessed and/or used as evidence: relating to a complaint of misconduct made against an officer; or in situations where evidence of officer misconduct is discovered during the course of authorized access or review of PVR data with regard to equipment functionality, policy compliance, or pending administrative, criminal, civil, or traffic matters.

In no event shall any recording be used or shown for the purpose of ridiculing, embarrassing or intimidating any witness, suspect, person inadvertently caught on the PVR, employee or officer. The PVR may not be used for the purpose of intimidating an individual or to discourage an individual from observing police activity, making appropriate inquiries of an officer, or making a complaint.[201]

~~For the PVR trial phase,~~ Minneapolis Police Department employees will be responsible for performing assigned duties in accordance with the ~~Portable Video Recording~~ MPD Body Camera SOP. All officers who are issued a PVR must have a basic knowledge and

[200] Added purpose in response to doubts expressed via community comments, that the MPD will use body cameras to hold officers accountable. Appendix 2, Community Comment 140, 141, 147, 152

[201] Language from Fraternal Order of Police, 3 (Appendix 16)

understanding of the operation of the PVR. Officers must receive training in the use of the PVR by an authorized MPD employee and only those officers that have received the department authorized training may operate a PVR. All MPD employees who have access to the PVR systems shall receive training on these systems.

Officers issued a PVR must use that PVR in accordance with this policy while on-duty and also when engaged in off-duty employment when the officer is in uniform, retains arrest power, and can incur city liability. [202]

The term "officer" is used generically in this document and does not assume a level of rank, such as Patrol Officer. It includes all applicable sworn and non-sworn personnel.

OFFICER RESPONSIBILITIES

Officers assigned the PVR shall use it in accordance with MPD training, MPD SOP guidelines, and the manufacturer's recommendations.

Officers assigned a PVR shall complete department authorized training in the use and operation of the
PVR's.

Officers should wear the PVR during their shift at all times during which they could reasonably anticipate that they may become involved in a situation for which activation is appropriate in accordance with the "Activation" section of this policy. However, officers should not wear the PVR in situations where any recordings are prohibited, such as court.

Officers shall conduct a PVR equipment check to ensure that the equipment is working properly at the beginning of their shift and periodically throughout the shift.

Officers shall notify their immediate supervisor as soon as practical of any missing, damaged, or malfunctioning PVR equipment.

Officers should notify their immediate supervisor of any recorded event believed to be of value for administrative review or training purposes.

Officers shall upload all PVR digital data at the conclusion of their shift by placing their PVR in the assigned docking stations. Officers shall classify recorded events as ~~appropriate based on the options available under the classification/storage software~~ non-event police event, police evidence, significant/critical incidents, and court cases.[203] This classification should be done shortly after the recorded incident is concluded, but must be done prior to upload at the end of the officer's shift.

[202] Appendix 2, Community Comment 81, 82
[203] Tetsell, 12.

Officers who are equipped with a PVR and are operating a squad car that is equipped with Mobile Video Recording (MVR) equipment shall activate the MVR as required by policy, procedures/guidelines, and should activate the PVR ~~as soon as practical and without comprising officer safety~~ in compliance with the Activation section of this policy. The PVR should be a supplement to the MVR, not a substitute or replacement. [204]

~~If asked, officers should inform those inquiring that audio-video recording equipment is in use.~~ For any non-consensual encounter in a public place between officers and members of the public, officers are expected to display indirect notification of recording at all times whether it be in the form of a red light on the PVR[205], or language on the uniform in close proximity to the PVR.[206] Officers must also verbally inform members of the public that the interaction is being recorded, whenever practicable.

For any consensual encounter, especially in a private residence[207] or another place of expected privacy, officers should directly inform members of the public that the interaction is being recorded and ask to obtain their consent.[208] If the member(s) of the public does not give consent, lack of consent must be explained on camera and deactivate the camera until obtaining consent or reactivate if the encounter becomes non-consensual and therefore a law enforcement action. Consensual encounters could include but are not limited to interactions with: officers in an undercover capacity, confidential reliable informants, crime victims and crime witnesses.

RESTRICTIONS

Officers shall not use the PVR to record interactions solely with or among other department employees; except in circumstances for which activation is appropriate in accordance with the "Activation" section of this policy.

Officers shall not use the PVR for personal use or any other reason inconsistent with the "purposes" as set forth in this policy.

~~Officers shall not use a PVR for off-duty employment without prior approval of the Chief or her designee.~~[209]~~Officers shall not use a PVR for SWAT related operations.~~[210]

Disabling PVR equipment and/or altering, duplicating, deleting or destroying PVR recordings is prohibited, except by authorized personnel.

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[204] Community Comment 175 (Appendix 2); Supported by Footnote 24
[205] Appendix 2, Community Comment 90
[206] Center for Democracy and Technology, 3; Stanley, "Police Body-Mounted Cameras", 5.
[207] Stanley, "Privacy Perspective" (Appendix 30)
[208] International Association of Chiefs of Police, "Issues and Concepts", 4 (Appendix 31)
[209] Appendix 2, Community Comment 81, 82
[210] Appendix 2, Community Comment 80; Stanley, "Police Body-Mounted Cameras", 5 (Appendix 10)

SUPERVISOR RESPONSIBILITIES

Supervisors shall ensure that officers follow established procedures for the use and maintenance of PVR
equipment and the completion of PVR documentation by conducting random monthly reviews of PVR footage and classification.[211] Targeted reviews should also take place each month of any officer still in his or her probationary period, any officer with a history of complaints of verbal and physical abuse, and of any officer who accepts regular review as a condition or returning the field.[212] These reviews can also identify any potential officer misconduct which will then be addressed with appropriate corrective action.[213]

Ensure that appropriate measures are taken when informed of any missing, damaged, or malfunctioning
PVR equipment.

Respond to the scene of an incident that requires immediate retrieval of recordings and ensure that the appropriate downloading procedures are followed.

When conducting force reviews, supervisors should view any pertinent PVR video as part of the review and ensure the officer involved in the use of force is prohibited for viewing the video until final investigative decisions have been made.[214]

ACTIVATION

Officers should manually activate the PVR to Record Mode when reasonably safe and practical in the following situations:

- All consensual community contacts[215]
- All calls for service[216]
- All law enforcement activities[217]

These situations could include but are not limited to:

- Traffic stops
- Suspicious vehicle stops

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[211] Appendix 2, Community Comment 91, 97, 99; Stanley, "Privacy Perspective" (Appendix 30), Kentucky League of Cities, 4 (Appendix 37)
[212] Appendix 2, Community Comment 99; Miller, 46 (Appendix 14)
[213] Consistent with Minneapolis Police Department Policy and Procedure Manual: 5-105 Professional Code of Conduct (6) requiring employees to "immediately report any violation of rules, regulations, or laws that come to their attention."
[214] Appendix 2, Community Comment 94 calls for someone to ensure that footage is not viewed; International Association of Chiefs of Police, "Model Policy", 2 suggest limits and restrictions when an officers involved in a shooting other serious use of force.
[215] Appendix 2, Community Comment 45 calls for all community contacts; Center for Democracy and Technology (Appendix 11)
[216] Appendix 2, Community Comment 43; Stanley, "Police Mounted Cameras", 2 (Appendix 10)
[217] Appendix 2, Community Comment 44; Stanley, "Police Mounted Cameras", 2 (Appendix 10)

- Suspicious person stops
- Priority responses
- Vehicle pursuits
- Arrest situation
- Work-related transports
- Vehicle searches
- Physical confrontations
- Crimes in progress
- In any situation that the officer feels appropriate when taking a statement and/or gathering information from a victim, suspect or witness

- Any Significant Incident (see definitions)
- When advising an individual of their Miranda rights
- When ordered to do by a supervisor
- ~~Any time an officer feels it is appropriate to preserve audio or visual evidence consistent with the purposes stated in this policy~~.[218]

The PVR shall not be activated for the purpose of surveillance.[219] At First Amendment Assemblies, the PVR shall not be activated for the purpose of identifying and recording the presence of individual participants who are not engaged in unlawful conduct.[220]

The reason for failure to activate a body camera must be documented in Visinet and in a written report if one is required for the incident. [221]

If an officer failed to activate a PVR in a situation where activation is required, there will be an evidentiary presumption against said officer if a complaint of misconduct is filed.[222] The presumption can be rebutted by contrary evidence or by proof of exigent circumstances that made policy compliance impossible.[223] Officers will be given a six month grace period from the program rollout date before this presumption will apply.[224]

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[218] Appendix 2, Community Comment 47 states that officers should not have discretion as to when to activate a camera.
[219] Appendix 2, Community Comment 63
[220] Appendix 2, Community Comment 58; ACLU, "A Model Act", 2 (Appendix 17); District of Columbia General Police Order, 9-10 (Appendix 5)
[221]Appendix 2, Community Comment 54 calls for officers to explain why a camera was not activated
[222] Appendix 2, Community Comment 46 calls for consequences for not activating the camera; Stanley, "Police Mounted Cameras", 4-5 (Appendix 10 CHECK NUMBER); Stanly-Butts, 32 (Appendix 18); Collins (Appendix 23)
[223] Language from Stanley, "Police Mounted Cameras", 4-5 (Appendix 10) check number
[224] In acknowledgement that body cameras will be new to many officers and will require training and practice before perfecting use and policy compliance.

DEACTIVATION

Once activated, the PVR may be deactivated at the conclusion of an incident which for this policy is defined as when an officer has terminated contact with an individual, cleared the scene of a reported incident, or has completed transport of a civilian or arrestee[225], or during activities such as:

- While protecting accident scenes
- Monitoring assigned traffic posts
- ~~Assisting motorists~~[226]
- To protect the identity of an officer in an undercover capacity
- To protect the identity of a confidential reliable informant
- The incident or event is such duration that the PVR is deactivated to conserve power and/or storage.
- ~~The officer reasonable believes that the stopping of the recording will not result in the loss of critical evidence.~~[227]
- Once an event has been stabilized, if it is necessary to discuss issues surrounding the incident/investigation with a supervisor or another officer in private, officers may turn off their PVR. This includes discussions between Field Training Officers with officers in training that are specific to training issues.
- If ~~a request is made for a PVR to be turned off by a party being contacted, the officer should take into account the overall circumstances and what is most beneficial to all involved, before deciding to honor the request. For example, an officer may choose to turn off the PVR if its operation is inhibiting a victim or witness from giving a statement. It is up to the officer to make the determination as to what is best for the investigation or contact. If the PVR is deactivated, the officer should note the reason in their report/supplement.~~ consent is required to film an interaction, meaning it is not a law enforcement activity, including but not limited to interactions with individuals in their homes, crime victims, and witnesses, and consent is not given, the officer can and must deactivate the PVR.[228]

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[225] Appendix 2, Community Comment 73, 74; Language from New Orleans Department Policy Manual 447.5

[226] Allowing for deactivation while assisting motorists would contradict the Activation section of this policy's requirement to activate a camera for all consensual community contacts.

[227] Appendix 2, Community Comment 68

[228] Appendix 2, Community Comment 71 calls for the right to give or withhold consent when filming in private homes in non-emergency situations; Appendix 2, Community Comment 75 calls for consent from victims and witnesses being filmed; Further supported by Miller, 19 (Appendix 14); International Association of Chiefs of Police "Model Policy" (Appendix 22)

- When ordered by a supervisor and that supervisor states the reason for deactivation on the PVR and in any written report or supplement.[229]

When a PVR is deactivated officers should note the reason by narration prior to deactivation. If a report is prepared, the deactivation and the reason therefore should also be noted in the officer's report or supplement.

If an officer prematurely deactivates a PVR in a situation where deactivation is inappropriate, there will be an evidentiary presumption against said officer if a complaint of misconduct is filed. The presumption can be rebutted by contrary evidence or by proof of exigent circumstances that made policy compliance impossible.[230] Officers will be given a six month grace period from the program rollout date before this presumption will apply.

UPLOADING DATA AND REPORT WRITING

Data from the PVR shall be fully uploaded and shall not be altered, edited, erased, tampered with or redacted in any way prior to upload.

To ensure the evidentiary value of officer reports and statements[231], and to offer a more holistic view of an incident[232], officers must not review audio or video data prior to making a report or statement[233]~~the accuracy of reports, an officer should review audio and video data before making a report or statement.~~

An officer shall note the following in his/her report:

- Whether audio or video evidence was gathered relating to the events described in the report.
- If the PVR was deactivated prior to the conclusion of the event, the fact that the PVR was deactivated and the basis for deactivation.

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[229] This requirement strengthens the assertion that the reason for deactivation should be documented, supported by Appendix 2, Community Comment 77; International Association of Chiefs of Police "Model Policy" (Appendix 22)

[230] See analysis in Footnote 53

[231] Appendix 2, Community Comment 96; "Rights, Privacy and Media Rights Groups Release Principles for Law Enforcement Body Worn Cameras" (Appendix 36)

[232] Appendix 2, Community Comment 98 suggests that viewing before report writing should not be allowed so as to be able to compare the two after the report is completed; "10 Limitations on Body Cameras" (Appendix 35)

[233] Appendix 2, Community Comment 93, 94, 96, 98, 101; Seattle Police Manual 16.091 (Appendix 9) does not explicitly allow for such viewing; Kaste (Appendix 34).

- Any malfunction of the PVR equipment in either the recording or the uploading of the event, if known at the time of report writing.[234]

Follow the completion of a written report, when the incident does not require a force review, an officer may view PVR footage of an incident and may make clearly marked addendums in his/her report to clarify or explain any inconsistencies.

PVR DATA RETENTION

Data that is not classified under one of the specified classification options, which are police evidence, significant/critical incidents and court cases, shall be retained for ~~one year~~ 280 days as that is the timeframe in which a civilian may make a complaint against a police officer.[235]

All data classified police evidence or significant/critical incidents shall be retained for the period of time allotted by the statute of limitations of the potential crime (as defined by Minn. Stat. 628.26), for which the footage could serve as evidence[236], ~~All data that is classified under one of the specified classification options shall be retained at least six years but~~ in no event less than as otherwise provided under the Minneapolis Records Management Policy, whichever is longer.

Any data containing officer use of force shall be retained for three years.[237] Any data containing officer or civilian death shall be retained in perpetuity.

Any data classified as court cases shall be retained for the duration of investigation, adjudication and final dispositions.[238]

PVR ACCESS/REQUESTS FOR DUPLICATION OF RECORDINGS

All PVR recordings are the property of the MPD and original PVR recordings shall remain in the sole custody of the MPD, unless necessary for the preparation of civil, criminal or administrative matters, used in court as evidence, provided to an expert for analysis, or required to be provided to another by lawful order.

Nothing herein shall preclude MPD personnel from reviewing or using recorded data for the purposes of investigation or prosecution of crimes ~~or preparation of reports~~. Recorded data

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[234] Because an officer will not be viewing the footage before writing his/her report, it may be impossible to know of a malfunction at the time of report writing.
[235] Appendix 2, Community Comment 119; International Association of Chiefs of Police, "Concepts and Issues", 5 (Appendix 31).
[236] Miller, 16-17 (Appendix 14)
[237] Appendix 2, Community Comment 127; Stanley "Police Body-Mounted Cameras", 6 (Appendix 10)
[238] Center for Democracy and Technology (Appendix 11)

may only be used for training purposes with the approval of the Deputy Chief of Professional Standards.

Following the completion of a written report, and when an incident does not require a force review, a~~A~~n officer is entitled to access audio and video data: derived from PVR equipment issued to him/her; in which his/her voice or image appears; when reasonable and necessary for the officer to perform the essential functions of his/her job; or to defend against allegations of substandard performance or misconduct. Requests by MPD personnel for duplication of PVR data for purposes of official MPD business shall be directed to the Crime Lab Video Forensics section via submission of the Crime Lab Video Request for Services form (MP-9069)

Requests by MPD personnel for duplication of PVR data for non-work related purposes (e.g. teaching, personal reasons) shall be submitted to the Records Information Unit and are subject to the Minnesota Government Data Practices Act and City of Minneapolis data charges.

Public data requests and subject data requests should be made at the Records and Information Unit via a prepared form available in hard copy at the Public Information Office or Records and Information Unit and in electronic copy at the Public Information Office or Records and Information Unit website. The copy must be completed in its entirety and submitted to the office via postal mail, email or delivered in person. ~~Requests made by the public for PVR video will be processed by the Records Information Unit (RIU), in conjunction with Precinct Supervisors, the Crime Lab Video Forensics Section and the Public Information Office.~~

Requests will then be processed by the Record Information Unit (RIU), who will work in conjunction with Precinct Supervisors, the Crime Lab Video Forensics Section and the Public Information Office to do so.[239]

The information that will be released is governed by Minnesota Statutes, Chapter 13 and is public unless it falls under an exception detailed in the Chapter. Footage that is a part of a criminal or internal investigation cannot be released until said investigation is closed.

Records Information Unit responsibilities:

- Determine nature of the request;
- Ensure video is not part of an active criminal or internal investigation;
- Submit Crime Lab Video Request for Services form (MP-9069) to the CLU requesting duplication of video;
- Receive recorded media intended for release;

[239] Possible chain of duties as to public access requests, as suggested by Tetsell (Appendix 28)

- Ensure the Public Information Office reviews video prior to release to make certain that only public information is released;
- Notify requestor video is ready;
- Collect fees and release video.
- Crime Lab Video Forensics Section responsibilities:
- Receive requests via Crime Lab Video Request for Services form (MP-9069).
- Process requests according to Crime Lab Division

SOP's. Public Information Office responsibilities:

- Maintain and update as needed video request forms in hard copy and electronic copy.
- Receive requests and forward to the RIU.
- Coordinate with Records Information Unit to manage requests.
- Review all videos to be released.

Whenever PVR Data (or access to review such data) is provided to a person or entity other than MPD
personnel, the requestor shall be given the Video Advisory attached hereto as Appendix A.

POLICY REVISION[240]

The body camera program shall be audited yearly to ensure policy compliance and satisfaction with the equipment.

The MPD shall revise the body camera policy in the third year of the program's operation. This revision shall be informed by:

- Impact reports from academic partners,
- Audit reports on the program, and
- Research and Studies conducted by the PCOC, including the community input and proposed revised policy therein.

If the MPD desires to revise the policy prior to the third year of program operation, all proposed revisions must be presented to the PCOC prior to implementation.

The PCOC will then conduct an abbreviated research and study on such revisions, including community input[241], and make recommendations to the MPD on said revision.

Revisions shall not be made to the policy until after the PCOC recommendations are made, and any revision shall be informed by such recommendations.

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[240] Policy revision supported by Mosler; Tetsell, 7.
[241] Community input in changes supported by "Civil Rights, Privacy, and Media Rights Groups Release Principles for Law Enforcement Body Worn Cameras."

POLICY ACCESSIBILITY

The Body Camera Policy shall be made available to members of the public by posting it on the MPD website and social media sites, including it in the MPD manual, and having hard copies available at all precincts.

DISCIPLINE

Failure to follow any procedure detailed in this policy will be considered a policy violation and consequences will follow the MPD A-D discipline matrix.[242]

DEFINITIONS

Activation: Any process which causes the PVR system to record audio and/or video data. Activation will be done manually.

Categorize: To classify an event that has been recorded and for which a predetermined retention period has been set.

Consensual Encounters: Non-law enforcement encounters with community members, where consent to be recorded has been obtained.

Critical Incident: An incident involving any of the following situations occurring in the line of duty:

- The use of Deadly Force by or against a Minneapolis Police Officer;
- Death or Great Bodily Harm to an officer;
- Death or Great Bodily Harm to a person who is in the custody or control of an officer;
- Any action by an officer that causes or is intended to cause Death or Great Bodily Harm.

Deadly Force: Minn. Stat. §609.066 states that: "Force which the actor uses with the purpose of causing, or which the actor should reasonably know creates a substantial risk of causing death or great bodily harm. The intentional discharge of a firearm other than a firearm loaded with less-lethal munitions and used by a peace officer within the scope of official duties, in the direction of another person, or at a vehicle in which another person is believed to be, constitutes deadly force."

De-activation: Any process in which causes the PVR system to stop recording. De-activation will be done manually.

Designated Upload Site: Location where officers complete the task of uploading PVR recordings to a storage server through a PC or docking station.

[242] Added to ensure accountability in response to the doubts expressed in Appendix 2, Community Comment 140, 141, 147, 152

Great Bodily Harm: Bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily harm.

Mobile Video Recorder (MVR): Audio/video recording equipment designed for fixed installation in patrol vehicles that includes at a minimum, a camera, microphone, recorder and LCD monitor• Digital: Digitized (text, graphics, audio, and video).

Portable Video Recording (PVR) System: Digital audio-video recording equipment designed to be worn on a person.

PVR Equipment Check: An audio-video test to ensure that the PVR equipment is in working order. This check shall include a test of the video and microphone recording components and a date and time check.

PVR Operational Guide: Training manual/guide which outlines the protocol for operating the PVR system/equipment.

Pre-Event Recording: Video stored by the PVR system prior to manual activation. This is a configurable feature for the digital PVR system and is preset to record video prior to manual activation. The pre-event recording is included as part of the incident and is viewable during playback.

PVR Uploading: The act of transferring recorded data from the PVR to the storage server.

Record Mode*:* Any time PVR equipment is recording audio and video as indicated on the LCD monitor, wireless microphone and/or DVR.

Recorded Media: Audio-video signals recorded on any of several storage devices, including but not limited to, portable digital storage devices (e.g. CD, DVD, hard drive, flash drive).

Significant Incident: Includes, but are not limited to, any of the following situations occurring in the line of duty:

- Critical incident;
- Domestic abuse incident interview;
- Felony crime;
- Pursuit;
- Squad accident;
- Any incident in which the officer or sworn supervisor believes the recording to be of evidentiary and/or administrative value;
- The identity of someone in the video needs to be protected;

- Man-made or natural disaster or act of terrorism;
- Any event that an officer or supervisor believes should be brought to the immediate attention of police command staff;
- Any time that a citizen makes allegations of police misconduct or discrimination during the incident.