

# City Council Memorandum

To: Mayor Hicks & City Council Members

From: Bryan D. Schafer, Chief of Police

Date: December 5, 2016

Item: Body-Worn Camera Program

## **Council Action Requested:**

Approval to fully implement body-worn cameras in the Hastings Police Department and approval of updated written policy.

## **Background Information:**

On January 19, 2016, nearly a year after researching the feasibility of body-worn cameras and policy development, the Hastings City Council approved a 6-month pilot project to evaluate body-worn cameras (BWC). Beginning in February, eight cameras were rotated through all Officers and Sergeants in the Patrol Division. Each wore and evaluated a body cam for two months then completed a brief evaluation of their observations. The formal testing concluded in August with favorable results. While we set out using recommended best practices and then current data practices law, several events occurred throughout the country igniting serious conversations in support of police use of this technology. Thus, the MN Legislature passed the Peace Officer Body-Worn Camera Bill on August 1, 2016 which outlines requirements for data classification, retention, audits, public input, and written policy for departments having or intending on implementing body-worn cameras. In essence, the body cam law amends portions of Minn. Stat. section 13.82 (Data Practices) and creates new sections 13.825 (Data Classification and Retention) and Minn. Stat. 626.8473 (Public Comment, Policies, Audits). The attached Hastings Police Department Mobile Video and Body-Worn Camera policy is reflective of these changes and follows the recommended language as set forth in the attached July 18, 2016, "League of Minnesota Cities (LMCIT) Model Policy for Body-Worn Cameras." Our policy has been reviewed and approved in form by City Attorney Dan Fluegel.

The following are key administrative considerations for Council:

## Process for Adoption of Updated Policy:

Minn. Stat. 626.8473, subd. 2 and subd. 3 requires a law enforcement agency to provide an opportunity for public comment before purchasing or implementing a body cam program. Furthermore, it allows for public comment and input when developing body cam written policies and procedures. Based on review by counsel and opinions from the MN Department of Administration (IPAD), the City has already met the requirements set forth for implementation under statute, however I recommend the opportunity for additional public input at the December 5<sup>th</sup> meeting, prior to final approval. We have

provided notice of this opportunity in the news section of our website homepage at www.hastingsmn.gov.

## Audit and City Council Requirements:

Minn. Stat. 13.825, subd. 9 also impose audit and reporting requirements. Law enforcement agencies using BWCs must arrange for independent, biennial audits of the BWC data to determine whether the data are appropriately classified, how the data are used, and whether data is being destroyed as required. The audits must also examine whether personnel have obtained unauthorized access to body cam data or inappropriately shared data with other agencies. These audit reports are public with few exceptions, and must be reviewed by City Council. In turn, the law mandates the Council suspend the body cam program if the audit shows a pattern of substantial noncompliance. The audit reports must also be provided to the Legislative Commission on Data Practices and Personal Data Privacy no later than 60 days following completion of the audit. The new statutes also provide for civil damages against BWC vendors for violations of the statutes and against law enforcement agencies for willful violations of the statutes.

While body-worn cameras are not without controversy, we believe full implementation is a progressive move in being both transparent and responsive to our community with a 21<sup>st</sup> Century Policing Vision. Despite the numerous requirements set forth in new statutes, we have identified the many steps we will take to achieve and maintain compliance through our policy.

## **Financial Impact:**

Full implementation costs have been included in the HPD 2017 annual budget.

## **Advisory Commission Discussion:**

Review and recommendation by the Public Safety Advisory Commission on

- January 15, 2015 Initial Pilot
- September 17, 2015 Policy Development

## **Council Committee Discussion:**

Review and recommendation by the Public Safety Committee of the Council:

- January 26, 2015 Initial Pilot
- November 16, 2015 Policy Development

#### Attachments:

- Hastings Police Department Mobile Video and Body-Worn Camera Policy
- LMCIT Model Use of Body Worn Camera Policy (7/18/2016)
- LMCIT law summary
- LMCIT Information Memo
- LMCIT MN Department of Administration (IPAD) highlights
- Test and Evaluation Guide and Summary
- Presentation

# Focus on New Laws: Police Body-Worn Cameras

This comprehensive new law will help cities understand how to handle the immense amount of data that comes from body camera recordings.

(Published Jun 13, 2016)

Chapter 171 (Link to: https://www.revisor.mn.gov/laws/?year=2016&type=0&doctype=Chapter&id=171) provides for the classification of data collected by portable recording systems (police body-worn cameras), retention and destruction of the data, audits of the data, as well as public comment and written policy requirements. The law takes effect Aug. 1, 2016.

# Classification of data

A new section of law is created in the Minnesota Government Data Practices Act (MGDPA) at Minnesota Statutes, section 13.825. This section applies to law enforcement agencies that use portable recording systems in investigations or in response to emergencies, incidents, and requests for service.

Outside of active criminal investigations (where data is generally confidential or protected nonpublic), body camera data is private or nonpublic data. Private data is accessible to the data subject.

However, again outside of active criminal investigations, body camera data is public in four situations:

When a peace officer discharges a firearm in the course of duty (but not when discharged for training purposes or killing animals).

When use of force by a peace officer results in "substantial bodily harm."

When a data subject requests that the data be made accessible to the public, after redacting undercover officers and those who have not consented to the release.

When body camera data documenting the basis for discipline is part of personnel data in final disposition of discipline.

There are four other situations when portable recording system data is, or may be, made public. The first situation allows law enforcement agencies to make public data that could aid the law enforcement process, promote public safety, or dispel widespread rumor or unrest, consistent with Minnesota Statutes, section 13.82, subdivision 15.

The other situations are reporting use of portable recording systems as part of arrest data (Minnesota Statutes, section 13.82, subdivision 2), and response or incident data (Minnesota Statutes, section 13.82, subdivision 6). Additionally, if the public still believes that portable recording system data should be disclosed, then an action can be brought in district court.

## Retention periods

Cities can generally rely on their record retention schedule for destruction of body camera data. But cities have to observe minimum retention periods of:

Ninety days for not active or inactive criminal investigative data.

# One year for:

Discharge of a firearm by a peace officer in the course of duty (but not for discharge for training purposes or killing animals).

Use of force by a peace officer resulting in substantial bodily harm.

Formal complaint made against an officer related to an incident.

Note: Any law enforcement agency that has portable recording systems before Aug. 1, 2016 needs to destroy the data, if required by the new law, 15 days after the effective date of Aug. 1, 2016.

There are certain situations where body camera data can be kept longer. Cities can retain body camera recordings for as long as reasonably necessary for possible evidentiary or exculpatory use. Similarly, subjects of the data can submit a written request to retain the body camera recording beyond the applicable retention period for possible evidentiary or exculpatory use.

Focus on New Laws: Police Body-Worn Cameras

## Biennial audit

Law enforcement agencies are required to conduct an independent, biennial audit of portable recording system data. The results are public, unless otherwise classified under the MGDPA.

In cities, the city council determines whether the law enforcement agency is complying with the law. If not, the city council can order additional independent audits.

A summary report must be provided to the Legislative Commission on Data Practices and Personal Data Privacy within 60 days following completion of the audit.

## Public comment required

The law adds a new public comment provision at Minnesota Statutes, section 626.8473. The law enforcement agency and city council must provide an opportunity for public comment before purchasing or implementing a system.

The law enforcement agency also has to provide an opportunity for public comment before written policy adoption.

## Written policy requirements

Minnesota Statutes, section 626.8473 also requires cities to adopt written policies before implementation of portable recording systems. These policies must be posted on the police department's website, if it has one.

Written policies must address eight topics:

- 1. Data classifications, access procedures, retention policies, and data security safeguards.
- 2. Testing of the portable recording systems.
- 3. System malfunction or failure, including documentation requirements.
- 4. Circumstances when recording is mandatory, prohibited, or at officer discretion when using the system.
- 5. Circumstances when a subject of the data must be given notice of a recording.
- 6. Circumstances under which a recording may be ended while an investigation, response, or incident is ongoing.
- 7. Secure storage and creation of backup copies of the data.
- 8. Compliance and violations of policy, which must include supervisory or internal audits and reviews, and employee discipline standards for unauthorized access.

Note: Any law enforcement agency that has portable recording systems before Aug. 1, 2016, needs to adopt a written policy consistent with the law by Jan. 15, 2017.

# LMC resources

To provide more details on the law and the specific provisions that were mentioned, the League has developed a frequently asked questions (FAQs) document.

View the League's FAQs (pdf) (Link to: http://www.lmc.org/media/document/1/bodyworncamerafaq.pdf?inline=true)

The League is also working on updating the Use of Body-Worn Cameras information memo, the Data Practices: Analyze, Classify, and Respond information memo, and the Model Use of Body-Worn Cameras Policy.

Read the current issue of the Cities Bulletin (Link to: http://www.lmc.org/page/1/cities-bulletin-newsletter.jsp)

\* By posting you are agreeing to the LMC Comment Policy (Link to: http://www.lmc.org/page/1/comment-policy.jsp).





# **Peace Officer Body-Worn Camera Data**

The new peace officer body-worn camera ("body cam") law amends portions of Minnesota Statutes, section 13.82 and creates new sections 13.825 and 626.8473.

The following highlights the major classifications and other requirements in the new law.

# Body Cam Data Classification and Retention

- Body cam data are generally private/nonpublic, except when the data is active criminal investigative data. (§ 13.825, subd. 2(a)(3))
- Active criminal investigative body cam data are confidential/protected nonpublic. (§ 13.825, subd. 2(a)(3); § 13.82, subd. 7)
- Body cam data that are not active or inactive criminal investigative data must be retained for at least 90 days. (§ 13.825, subd. 3)
- After an investigation is complete, body cam data are public if they document an incident where an officer discharges a weapon in the course of duty (not including training or killing an animal) and the data must be retained for at least one year. (§ 13.825, subd. 2, 3)
- After an investigation is complete, body cam data are public if the recording documents the use
  of force by a peace officer that results in substantial bodily harm and the data must be retained
  for at least one year. (§ 13.825, subd. 2, 3)
- Body cam data that are public personnel data under § 13.43, subd. 2 remain public. (§ 13.825, subd. 2(a)(4))
- Whether law enforcement used a body cam (or any portable recording system) is public in the context of arrest data (§ 13.82, subd. 2) and response or incident data. (§ 13.82, subd. 6)
- Law enforcement agencies may release any private/nonpublic body cam data to the public to aid law enforcement, promote public safety, or dispel rumor or unrest. (§ 13.82, subd. 15)

# Body Cam Data Subjects

- Subjects of the data (i.e. the person(s) recorded in the footage), including peace officers, have
  access to the private/nonpublic data and may request to have the data made public. (§ 13.825,
  subd. 2(a)(2))
- Publicly-released data must have redacted identities of non-consenting data subjects and undercover officers. (§ 13.825, subd. 2(a)(2); subd. 4)

## Data Sharing

Section 13.825 limits the sharing of not public body cam data between law enforcement agencies (§ 13.825, subd. 8) and requires agencies that use body cams to arrange for an independent, biennial audit to ensure compliance (§ 13.825, subd. 9).

# **Public Comment**

Section 626.8473 requires a law enforcement agency to allow for public comment and to create written policies and procedures before it purchases body cams or implements a body cam program. Such policies and procedures must be in place by January 15, 2017.

## Audits

The new law requires the Legislative Auditor to review compliance with the requirements in sections 13.825 and 626.8473 and submit the results to the legislature by January 15, 2020.

# **Frequently Asked Questions**

- 1. Do the same classifications and requirements in the new body cam law apply to other video that law enforcement agencies may maintain, such as squad camera video?
  - No. The New Body cam data law only applies to agencies that maintain a "portable recording system" defined as: "a device worn by a peace officer that is capable of both video and audio recording of the officer's activities and interactions with others or collecting digital multimedia evidence as part of an investigation." Squad cam data are classified under the general law enforcement data section 13.82.
- 2. Does the public comment requirement for an agency purchasing or implementing a portable recording system apply to an agency that already has systems in place? If an agency renews a contract or switches vendors would this language apply?
  - GENERALLY, A NEW LAW WILL NOT HAVE A RETROACTIVE EFFECT UNLESS THE LEGISLATURE SPECIFICALLY REQUIRES IT IN THE SESSION LAW. THERE IS NOT A RETROACTIVE EFFECT FOR THE PUBLIC COMMENT PROVISIONS, SO THE PUBLIC COMMENT LANGUAGE WILL APPLY ONLY TO AGENCIES THAT HAVE YET TO PURCHASE BODY CAMERAS OR IMPLEMENT A PROGRAM.
  - HOWEVER, BECAUSE THE LANGUAGE READS "...PURCHASES OR IMPLEMENTS..." IF AN AGENCY DECIDES TO PURCHASE ALL NEW BODY CAMERAS FROM A COMPLETELY NEW VENDOR (AS OPPOSED TO JUST RENEWING A CONTRACT), IT APPEARS THAT THE PUBLIC COMMENT LANGUAGE WOULD APPLY. NEW PURCHASES OF THIS SIZE ALSO LIKELY REQUIRE GOVERNING BODY APPROVAL AND DISCUSSION AT AN OPEN MEETING. A BODY COULD INCLUDE THE PUBLIC COMMENT PERIOD AT THE SAME OPEN MEETING.
- 3. The law states that the identity and activities of an on-duty officer engaged in law enforcement activities may not be redacted from a body cam video. Does this include undercover officers?
  No. The LAW SPECIFICALLY STATES THAT UNDERCOVER OFFICERS MUST BE REDACTED IN ANY BODY CAM VIDEOS PROVIDED TO A DATA SUBJECT OR THE PUBLIC.
- 4. Does a body cam video, classified as private, that is presented as evidence in court remain private data?
  - YES. UNLIKE GENERAL CRIMINAL INVESTIGATIVE DATA IN SECTION 13.82 THAT REVERT TO PUBLIC AFTER PRESENTATION IN COURT, BODY CAM DATA REVERT BACK TO THE CLASSIFICATIONS IN SECTION 13.825. IF THE DATA ARE PRIVATE BEFORE PRESENTATION IN COURT, THEY REMAIN PRIVATE. AS WITH ALL PRIVATE DATA, ANY SUBJECTS OF THE BODY CAM VIDEO MAY ALWAYS ACCESS THE VIDEO.

- 5. Are officers allowed to view body cam video prior to writing an incident report?

  IT DEPENDS. A PROVISION REQUIRING LAW ENFORCEMENT AGENCIES TO ALLOW OFFICERS TO VIEW VIDEO PRIOR TO WRITING A REPORT DID NOT MAKE IT INTO THE FINAL VERSION OF THE LAW. BECAUSE THE LAW NEITHER REQUIRES NOR PROHIBITS IT, AGENCIES CAN INDIVIDUALLY DECIDE WHETHER TO ALLOW THIS REVIEW. ADDITIONALLY, AGENCIES MIGHT CONSIDER INCLUDING THIS DECISION IN THEIR WRITTEN POLICY.
- 6. Must an officer request an individual's consent to record prior to entering into a private home? IT DEPENDS. THE LAW DOES NOT REQUIRE CONSENT PRIOR TO RECORDING IN A PRIVATE HOME. HOWEVER, THE LAW ENFORCEMENT AGENCY'S REQUIRED WRITTEN POLICY MUST INCLUDE CIRCUMSTANCES WHEN A DATA SUBJECT MUST BE GIVEN NOTICE OF A RECORDING. THE POLICY MUST ALSO INCLUDE CIRCUMSTANCES WHEN RECORDING IS MANDATORY, PROHIBITED, OR AT THE DISCRETION OF THE OFFICER AND CIRCUMSTANCES WHEN A RECORDING MAY BE ENDED WHILE AN INVESTIGATION, RESPONSE, OR INCIDENT IS ONGOING.
- 7. As a data subject, can I have access to a body cam video where I appear in the video when the criminal investigation is inactive?

YES. WHEN AN INVESTIGATION IS INACTIVE, AN INDIVIDUAL WHOSE IMAGE OR VOICE APPEARS IN A BODY CAM VIDEO (A DATA SUBJECT) CAN VIEW THE UNREDACTED VIDEO, INCLUDING ACCESS TO OTHER INDIVIDUALS AND PEACE OFFICERS WHO APPEAR IN THE VIDEO.

DATA SUBJECTS CAN ALSO REQUEST A COPY OF A BODY CAM VIDEO IN WHICH THEY APPEAR, OR REQUEST THAT THE VIDEO BE MADE ACCESSIBLE TO THE PUBLIC, AS LONG AS OTHER DATA SUBJECTS (NOT INCLUDING ON-DUTY PEACE OFFICERS ENGAGED IN AN INVESTIGATION OR RESPONSE) ARE REDACTED FROM THE VIDEO.

A LAW ENFORCEMENT AGENCY MUST ALWAYS REDACT UNDERCOVER OFFICERS.

8. If I request to see body cam data and my request is denied, what can I do?

THE NEW LAW SETS OUT A PROCESS IN SECTION 13.825, SUBD. 2(D) THAT ALLOWS ANY PERSON TO CHALLENGE A DETERMINATION ABOUT BODY CAM DATA ACCESS. THE COURT MAY ORDER THAT ALL OR PART OF THE DATA BE RELEASED TO THE PUBLIC OR TO THE PERSON BRINGING AN ACTION.

A REQUESTER CAN ALWAYS ALSO CONTACT IPAD FOR ANY DATA REQUEST ASSISTANCE.

# **Body-Worn Cameras Policy**

League of Minnesota Cities Model Policy

This League model policy was thoughtfully developed by our staff with the guidance of a working group. Models should be customized as appropriate for an individual city's circumstances in consultation with the city's attorney. Helpful background information on this model may be found in "*Use of Body-Worn Cameras*".

Where optional provisions are offered, you must choose one of the options, but choosing "option 1," for example, does not require you to choose "option 1" at every choice point.

Red typeface indicates that the language is included in response to a statutory mandate for guidance on that particular topic. While this language is recommended, agencies may certainly have other options for addressing mandatory policy elements.



This icon marks comments that explain the reasons for inclusion of particular language in the model, or that will help you decide on different possible approaches offered in the policy. Delete them before adopting your customized policy.

[Italic brackets] Text marked this way is a placeholder for agency-specific language.

# CITY OF [CITY NAME] USE OF BODY-WORN CAMERAS POLICY

# **Purpose**

The primary purpose of using body-worn-cameras (BWCs) is to capture evidence arising from police-citizen encounters. This policy sets forth guidelines governing the use of BWCs and administering the data that results. Compliance with these guidelines is mandatory, but it is recognized that officers must also attend to other primary duties and the safety of all concerned, sometimes in circumstances that are tense, uncertain, and rapidly evolving.



The reference to tense and uncertain circumstances is derived from the U.S. Supreme Court's decision in *Graham v. Connor*, 490 U.S. 386, 397 (1989).

# **Policy**

It is the policy of this department to authorize and require the use of department-issued BWCs as set forth below, and to administer BWC data as provided by law.

# Scope

This policy governs the use of BWCs in the course of official duties. It does not apply to the use of squad-based (dash-cam) recording systems. The chief or chief's designee may supersede this policy by providing specific instructions for BWC use to individual officers, or providing specific instructions pertaining to particular events or classes of events, including but not limited to political rallies and demonstrations. The chief or designee may also provide specific instructions or standard operating procedures for BWC use to officers assigned to specialized

details, such as carrying out duties in courts or guarding prisoners or patients in hospitals and mental health facilities.



Members of the model policy working group expressed that the policy should: (1) allow for the issuance of special instructions on BWC use to officers deemed to be *Giglio*-impaired; and (2) ensure that discretion exists to override normal recording guidelines for events where their use might be perceived as a form of political or viewpoint-based surveillance. In addition, members identified a concern that the "general" guidelines for BWC use could be poorly suited to the activities performed by court bailiffs, and that agencies should therefore have express authority to depart from them for special assignments and duties.

## **Definitions**

The following phrases have special meanings as used in this policy:

- A. MGDPA or Data Practices Act refers to the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.
- B. **Records Retention Schedule** refers to the General Records Retention Schedule for Minnesota Cities.



County agencies will need to modify the policy to meet their own record retention schedule.

- C. Law enforcement-related information means information captured or available for capture by use of a BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.
- D. Evidentiary value means that the information may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in considering an allegation against a law enforcement agency or officer.



"[R]elated civil or administrative proceeding" refers, for example, to implied consent or forfeiture actions arising from an encounter or arrest. The working group sought to clarify that the policy does not obligate officers to collect BWC data solely for use in third-party tort litigation.

- E. General citizen contact means an informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a wrecker, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.
- F. Adversarial means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or at least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.



This definition is used to identify conflict situations, since they may evolve into more consequential matters or give rise to complaints against officers. Later provisions in this policy require officers to record adversarial encounters. Some working group members disfavored the term "adversarial," and agencies may wish to consider other terminology better suited to their communities.

- G. Unintentionally recorded footage is a video recording that results from an officer's inadvertence or neglect in operating the officer's BWC, provided that no portion of the resulting recording has evidentiary value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in station house locker rooms, restrooms, and recordings made while officers were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.
- H. **Official duties**, for purposes of this policy, means that the officer is on duty and performing authorized law enforcement services on behalf of this agency.

# Use and Documentation

- A. Officers may use only department-issued BWCs in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this department.
- B. Officers who have been issued BWCs shall operate and use them consistent with this policy. Officers shall conduct a function test of their issued BWCs at the beginning of each shift to make sure the devices are operating properly. Officers noting a malfunction during testing or at any other time shall promptly report the malfunction to the officer's supervisor and shall document the report in writing. Supervisors shall take prompt action to address malfunctions and document the steps taken in writing.



Under Minn. Stat. § 626.8473, subd. 3(b)(2)-(3), policies must contain procedures for identifying and addressing malfunctions, including procedures for officers to test the functioning of their equipment. The actual steps to be used for function testing will likely vary based on the systems and technologies in place. Agencies should consider incorporating device-specific protocols for function testing into this policy. Satisfactory documentation of malfunctions and steps taken to address them could include emails, notes, or memoranda that the agency maintains as part of its BWC program records.

- C. Officers should wear their issued BWCs at the location on their body and in the manner specified in training.
- D. Officers must document BWC use and non-use as follows:



Agencies may need to conform the requirements and terminology of parts D (1) and (2) to their records management system or existing business practices. These provisions are recommended to assure that agencies document and maintain information about: (1) recordings, so that existing ones can be located, linked to a particular event, and disclosed by the prosecution as may be required by criminal discovery obligations; and (2) instances of non-recording, when it would be reasonable to expect BWC footage to exist in the circumstances.

- 1. Whenever an officer makes a recording, the existence of the recording shall be documented in an incident report or [CAD record/other documentation of the event].
- 2. Whenever an officer fails to record an activity that is required to be recorded under this policy or captures only a part of the activity, the officer must document the circumstances and reasons for not recording in an incident report or [CAD record/other documentation of the event]. Supervisors shall review these reports and initiate any corrective action deemed necessary.
- E. The department will maintain the following records and documents relating to BWC use, which are classified as public data:
  - 1. The total number of BWCs owned or maintained by the agency;
  - 2. A daily record of the total number of BWCs actually deployed and used by officers and, if applicable, the precincts in which they were used;
  - 3. The total amount of recorded BWC data collected and maintained; and
  - 4. This policy, together with the Records Retention Schedule.

# General Guidelines for Recording

#### Choose one:

A. Option 1 Officers shall activate their BWCs when responding to all calls for service and during all law enforcement-related encounters and activities, including but not limited to pursuits, *Terry* stops of motorists or pedestrians, arrests, searches, suspect interviews and interrogations, and during any police/citizen contacts that becomes adversarial. However, officers need not activate their cameras when it would be unsafe, impossible, or impractical to do so, but such instances of not recording when otherwise required must be documented as specified in the Use and Documentation guidelines, part (D)(2) (above).



See LMC Information Memo, "<u>Use of Body-Worn Cameras</u>," Section IV, Deciding what to record. Option 1 requires the recording of all responses to calls for service and law enforcement-related activities.

Or,

A. Option 2 Officers shall activate their BWCs when anticipating that they will be involved in, become involved in, or witness other officers of this agency involved in a pursuit, *Terry* stop of a motorist or pedestrian, search, seizure, arrest, use of force, adversarial contact, and during other activities likely to yield information having evidentiary value. However, officers need not activate their cameras when it would be unsafe, impossible, or impractical to do so, but such instances of not recording when otherwise required must be documented as specified in the Use and Documentation guidelines, part (D)(2) (above).



Option 2 more narrowly defines the class of events to be recorded. As compared with Option 1, this language: (1) eliminates the requirement of recording all responses to calls for service; (2) continues to require the recording of contacts and events having constitutional dimensions and those likely to result in complaints against officers and agencies; and (3) leaves it to officers to identify other circumstances "likely to yield information having evidentiary value."

- B. Officers have discretion to record or not record general citizen contacts.
- C. Officers have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded.
- Some commentators suggest that an announcement that BWCs are being used might have a civilizing effect in the field, and advocate telling people they are being recorded. However, the working group believed that an announcement requirement would distract officers from their duties and could become a debating point during tense enforcement encounters.
- D. Once activated, the BWC should continue recording until the conclusion of the incident or encounter, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. The officer having charge of a scene shall likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. If the recording is discontinued while an investigation, response, or incident is ongoing, officers shall state the reasons for ceasing the recording on camera before deactivating their BWC. If circumstances change, officers shall reactivate their cameras as required by this policy to capture information having evidentiary value.
- A statement on camera such as, "Everything has settled down and the action appears to be over" should often suffice as a statement of reasons for stopping to record.
- E. Officers shall not intentionally block the BWC's audio or visual recording functionality to defeat the purposes of this policy.
  - This provision is to be read in conjunction with the statement of "Purpose" set forth above: "The primary purpose of using BWCs is to capture *evidence* arising from police-citizen encounters." The working group considered a variety of scenarios in which it would be appropriate for officers to block the recording functionality of their BWCs, such as to avoid capturing irrelevant images of an undressed bystander within a private home; images of a mobile computer screen displaying private or confidential data; or audio of officers conferring about an arrest decision or tactical situation. Momentary blocking may be administratively preferable to turning the camera off and back on, since doing so would result in multiple data files that would each need to be processed and administered.
- F. Notwithstanding any other provision in this policy, officers shall not use their BWCs to record other agency personnel during non-enforcement related activities, such as during pre- and post-shift time in locker rooms, during meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation.

# Special Guidelines for Recording

Officers may, in the exercise of sound discretion, determine:

A. To use their BWCs to record any police-citizen encounter if there is reason to believe the recording would potentially yield information having evidentiary value, unless such recording is otherwise expressly prohibited.



This provision is included to ensure that officers are clearly vested with discretion to use their BWCs to capture information having evidentiary value.

B. To use their BWCs to take recorded statements from persons believed to be victims of and witnesses to crimes, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.

# In addition,

C. Officers need not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value. When responding to an apparent mental health crisis or event, BWCs shall be activated as necessary to document any use of force and the basis for it, and any other information having evidentiary value, but need not be activated when doing so would serve only to record symptoms or behaviors believed to be attributable to the mental health issue.



The language in parts B and C is for use with Option 2 under General guidelines for recording. This language is unnecessary and confusing for agencies choosing Option 1, since Option 1 already requires the recording of all responses to calls for service and all law enforcement-related encounters and activities.

D. Officers [shall] [should] use their [BWCs] [BWCs and squad-based audio/video systems] to record their transportation and the physical transfer of persons in their custody to hospitals, detox and mental health care facilities, juvenile detention centers, and jails, but otherwise should not record in these facilities unless the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use-of-force incident.



Agencies should consider recording all transports of persons in custody as a safeguard against liability and to document any incriminating statements. The best means of accomplishing this may depend on the technologies the agency is using. While squad-based audio/video systems with rearfacing cameras may be better suited for recording a prisoner's behavior during transport, the officer's BWC may capture more of the officer's interaction with the prisoner at the time he or she is removed from the car and transferred to the custody of another.

# **Downloading and Labeling Data**

A. Each officer using a BWC is responsible for transferring or assuring the proper transfer of the data from his or her camera to [specify data storage location] by the end of that officer's shift. However, if the officer is involved in a shooting, in-custody death, or other

law enforcement activity resulting in death or great bodily harm, a supervisor or investigator shall take custody of the officer's BWC and assume responsibility for transferring the data from it.



Agencies will need to conform this language to their own technologies and business practices. The central idea is that the responsibility for handling daily transfers of routine BWC data rests with the individual officer unless the process is automated. However, when the officer is involved in a significant event that will result in the agency immediately initiating an investigation, then someone else (an appropriate supervisor or investigator) should take custody of the involved officer's BWC and take care of transferring the data. Doing so will safeguard the integrity of the evidence and protect the officer against allegations of mishandling evidence.

B. Officers shall label the BWC data files at the time of video capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate labeling. [Include any technology-specific instructions for this process; if metadata is not being stored, then the information could be documented in a video log or other record.] Officers should assign as many of the following labels as are applicable to each file:



See Section V-A, Labeling data for retention purposes, in Information Memo, "<u>Use of Body-Worn Cameras</u>."

1. **Evidence—criminal:** The information has evidentiary value with respect to an actual or suspected criminal incident or charging decision.



The Records Retention Schedule for Minnesota Cities provides that retention periods for cases that have been charged are based on the status of court proceedings. (Code POL 05840.) For uncharged offenses, retention is seven years or permanent in the case of homicides (Code POL 03300 for adults; POL 03400 for juveniles). Counties will need to consult their own records retention schedule for guidance.

 Evidence—force: Whether or not enforcement action was taken or an arrest resulted, the event involved the application of force by a law enforcement officer of this or another agency.



These recordings must be maintained for six years regardless of the disposition of any related criminal case. (Code POL 05920.) Some working group members expressed a desire for use of a term different than "force" to describe this category. Agencies are free to adopt other terminology as they deem appropriate. Counties will need to consult their own records retention schedule for guidance.

3. **Evidence—property:** Whether or not enforcement action was taken or an arrest resulted, an officer seized property from an individual or directed an individual to dispossess property.



Evidence/property logs are subject to a one-year minimal retention period. (Code POL 03740.) Counties will need to consult their own records retention schedule for guidance.

- 4. **Evidence—administrative:** The incident involved an adversarial encounter or resulted in a complaint against the officer.
  - The definition of "adversarial encounter" is intended to trigger the recording of interactions thought likely to result in complaints against an officer or the agency. Video that turns out to have evidentiary value in any internal investigation is subject to a six-year retention period. (Code POL 05880.) A shorter retention period may be utilized if no complaint or investigation arises. Counties will need to consult their own records retention schedule for guidance.
- 5. **Evidence—other:** The recording has potential evidentiary value for reasons identified by the officer at the time of labeling.
  - Retention will depend on the reason stated for maintaining the data. Counties will need to consult their own records retention schedule for guidance.
- 6. **Training:** The event was such that it may have value for training.
  - No minimal retention period exists. Counties will need to consult their own records retention schedule for guidance.
- 7. **Not evidence:** The recording does not contain any of the foregoing categories of information and has no apparent evidentiary value. Recordings of general citizen contacts and unintentionally recorded footage are not evidence.
  - Data not identified as having evidentiary value is subject to a 90-day retention period under Minn. Stat. § 13.825, subd. 3(a).
- C. In addition, officers shall flag each file as appropriate to indicate that it contains information about data subjects who may have rights under the MGDPA limiting disclosure of information about them. These individuals include:
  - This provision assumes that the software being utilized will allow flagging. See Section V-B, Data access issues and flagging, in LMC Information Memo, "Use of Body-Worn Cameras."
  - 1. Victims and alleged victims of criminal sexual conduct and sex trafficking.
  - 2. Victims of child abuse or neglect.
  - 3. Vulnerable adults who are victims of maltreatment.
  - 4. Undercover officers.
  - 5. Informants.
  - 6. When the video is clearly offensive to common sensitivities.
  - 7. Victims of and witnesses to crimes, if the victim or witness has requested not to be identified publicly.

- 8. Individuals who called 911, and services subscribers whose lines were used to place a call to the 911 system.
- 9. Mandated reporters.
- 10. Juvenile witnesses, if the nature of the event or activity justifies protecting the identity of the witness.
- 11. Juveniles who are or may be delinquent or engaged in criminal acts.
- 12. Individuals who make complaints about violations with respect to the use of real property.
- 13. Officers and employees who are the subject of a complaint related to the events captured on video.
- 14. Other individuals whose identities the officer believes may be legally protected from public disclosure.
- D. Labeling and flagging designations may be corrected or amended based on additional information.

# Administering Access to BWC Data:

- A. **Data subjects.** Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:
  - 1. Any person or entity whose image or voice is documented in the data.
  - 2. The officer who collected the data.
  - 3. Any other officer whose voice or image is documented in the data, regardless of whether that officer is or can be identified by the recording.
- B. **BWC data is presumptively private.** BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:
  - 1. BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities.
  - 2. Some BWC data is classified as confidential (see C. below).
  - 3. Some BWC data is classified as public (see D. below).

- C. **Confidential data.** BWC data that is collected or created as part of an active criminal investigation is confidential. This classification takes precedence over the "private" classification listed above and the "public" classifications listed below.
- D. Public data. The following BWC data is public:
  - 1. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous.
  - 2. Data that documents the use of force by a peace officer that results in substantial bodily harm.
  - 3. Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted [*if practicable*]. In addition, any data on undercover officers must be redacted.
  - The "if practicable" language is noted as optional but recommended because two sections of the law are in disagreement as to the privacy protections given to data subjects who have not consented to the release of data about themselves. Minn. Stat. §13.825, subd. 2(a)(2) provides that when a data subject requests that data be made available to the public, the agency must first, "if practicable," redact data on all other non-officer subjects who have not consented to the public release. However, under subdivision 4(b) of the same statute, there is no "if practicable" qualification on the obligation to redact data on non-consenting data subjects when providing a requestor with a copy of the data. For the sake of affording consistent protection to non-consenting data subjects, agencies may wish to redact information about them in all cases.
  - 4. Data that documents the final disposition of a disciplinary action against a public employee.

However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that other classification. For instance, data that reveals protected identities under Minn. Stat. § 13.82, subd. 17 (e.g., certain victims, witnesses, and others) should not be released even if it would otherwise fit into one of the public categories listed above.

- E. Access to BWC data by non-employees. Officers shall refer members of the media or public seeking access to BWC data to [the responsible authority/data practices designee], who shall process the request in accordance with the MGDPA and other governing laws. In particular:
  - 1. An individual shall be allowed to review recorded BWC data about him- or herself and other data subjects in the recording, but access shall not be granted:
    - a. If the data was collected or created as part of an active investigation.

- b. To portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as portions that would reveal identities protected by Minn. Stat. § 13.82, subd. 17.
- 2. Unless the data is part of an active investigation, an individual data subject shall be provided with a copy of the recording upon request, but subject to the following guidelines on redaction:
  - a. Data on other individuals in the recording who do not consent to the release must be redacted.
  - 1
- See above note at section D(3) on public data.
- b. Data that would identify undercover officers must be redacted.
- c. Data on other officers who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.
- F. Access by peace officers and law enforcement employees. No employee may have access to the department's BWC data except for legitimate law enforcement or data administration purposes:

#### Choose one:

- 1. Option 1 Officers may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Officers may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident.

See Information Memo, "Use of Body-Worn Cameras", Section V-C, Officer access to video and critical incidents.

#### Or,

- 1. Option 2 Officers may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Except as provided in the critical incident response policy, officers may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident.
- 2. Agency personnel shall document their reasons for accessing stored BWC data [in the manner provided within the database] [or, specify manner of documentation] at the time of each access. Agency personnel are prohibited from accessing BWC data for non-business reasons and from sharing the data for non-law enforcement related

- purposes, including but not limited to uploading BWC data recorded or maintained by this agency to public and social media websites.
- 3. Employees seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.
- G. Other authorized disclosures of data. Officers may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. § 13.82, subd. 15, as may be amended from time to time. Officers should generally limit these displays in order to protect against the incidental disclosure of individuals whose identities are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screen shots, muting the audio, or playing the audio but not displaying video. In addition,
  - BWC data may be shared with other law enforcement agencies only for legitimate law enforcement purposes that are documented in writing at the time of the disclosure.
  - 2. BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.



The documentation requirements in parts F(2) and G(1) are intended to foster accountability with regard to the limitations on access to and dissemination of BWC data applicable to law enforcement employees and to aid the agency in achieving favorable audit results.

# **Data Security Safeguards**

A. [Specify data security safeguards to be used in your agency and in connection with the particular BWC technologies being employed, including any procedures for making backup copies of the data.]

#### Choose one:

B. [Option 1] Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to access or view agency BWC data.

Or,

- B. [Option 2] Access to BWC data from city or personally owned and approved devices shall be managed in accordance with established city policy.
- C. Officers shall not intentionally edit, alter, or erase any BWC recording unless otherwise expressly authorized by the chief or the chief's designee.
- D. As required by Minn. Stat. § 13.825, subd. 9, as may be amended from time to time, this agency shall obtain an independent biennial audit of its BWC program.

# **Agency Use of Data**

A. At least once a month, supervisors will randomly review BWC usage by each officer to ensure compliance with this policy [and to identify any performance areas in which additional training or guidance is required.]



See Information Memo, "<u>Use of Body-Worn Cameras</u>", Section V-D, Supervisory review, for policy considerations pertaining to supervisory review of data for performance assessment.

- B. In addition, supervisors and other assigned personnel may access BWC data for the purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about officer misconduct or performance.
- C. Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for discipline.



This language is based on the Peace Officer Discipline Procedures Act, Minn. Stat. § 626.89, subd. 10.

D. Officers should contact their supervisors to discuss retaining and using BWC footage for training purposes. Officer objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field training officers may utilize BWC data with trainees for the purpose of providing coaching and feedback on the trainees' performance.

# **Data Retention**

- A. All BWC data shall be retained for a minimum period of 90 days. There are no exceptions for erroneously recorded or non-evidentiary data.
- B. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year.
- C. Certain kinds of BWC data must be retained for six years:
  - 1. Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review.
  - 2. Data documenting circumstances that have given rise to a formal complaint against an officer.



Minn. Stat. § 13.825, subd. 3(b) provides for the data referenced in Parts C(1) and C(2) to be maintained for a minimum of one year and then destroyed according to the agency's retention schedule. However, the General Records Retention Schedule for Minnesota Cities establishes

six-year retention periods for force incidents where a supervisory review is completed (Code POL 05929), and also for data that has evidentiary value in any internal investigation. (Code POL 05880.) Counties will need to consult their own records retention schedule for guidance.

- D. Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.
  - County agencies will need to consult their own records retention schedule for guidance.
- E. Subject to Part F (below), all other BWC footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after 90 days.
- F. Upon written request by a BWC data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The agency will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.
- G. The department shall maintain an inventory of BWC recordings having evidentiary value.



The <u>General Records Retention Schedule for Minnesota Cities</u> indicates that agencies shall permanently maintain an inventory of evidentiary audio and video recordings. (POL 05810.) Counties will need to consult their own records retention schedule for guidance.

H. The department will post this policy, together with [a link to] its Records Retention Schedule, on its website.

# Compliance

Supervisors shall monitor for compliance with this policy. The unauthorized access to or disclosure of BWC data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to Minn. Stat. § 13.09.

In regards to the Body-Worn Camera evaluation guide we handed out to all the officers after their initial trial period, here are suggestions and comments I received from their questionnaire.

**Capability**: The responses received were "good, clear picture, decent, very good". General consensus with the Low Light Performance was "poor and night time had difficulties". Download can take a lot of time, but the data transfer is easy to do. The audio is clear, but there can be wind noise from time to time.

**Usability:** The responses received were overall good. The size and weight is comfortable, but the eight hour battery is a little bulky, but worth it. The inverse was, of course, the four hour battery sucked. While engaged in an altercation, the camera's wire tends to cause the video footage to cut in and out. Powering up/down the device is easy to do as well as activating/deactivating. Some officers wanted to know if there were any other camera systems we could try before we made a large purchase of several more. Most officers have not been exposed to any other camera systems.

**Deployability:** The biggest problem our officers are having with Deployability is the squad seatbelt tends to get in the way. The camera's durability seems to be fine, but again, the wire during an altercation tends to cause the video to short-out, making several video files of one incident and sometimes losing video footage during the altercation. Attaching the camera on the officer's uniform using a clip seems to work well with most officers.

**Viewing Videos:** The complaint I hear most often when officers downloading videos is the time it takes to complete this task. The process for downloading is easy for officers. The overall usability comments I received is "good, fine and decent".

Policy Considerations: The comments I received were "just enforcement action likely, clarify discretion verses must always, policy written to protect city, let officer decide when to use them, etc." Based on some of these comments, it seems our officers don't understand we are directed by best practices policy established by the league of MN cities. Maybe we need to continue having the discussion about why we need to use the cameras on all of our police actions.

**The Most Common Reason for Not Activating:** Most officers responded with "forgetting, simple calls and medicals".

The Most Common Reason for Conscious of activating: Most officers are conscious of activating for traffic stops, domestics, and higher profile type calls.

# The Greatest Benefit to the Officer: Officers offered several reasons for the benefits -

- It's like having another set of eyes.
- To prevent wrongful complaints against an officer.
- Using video for court and to back up officers reports.
- Shows how people respond to officers and their attitudes.
- Documents events.
- Good for evidence collection and for spontaneous utterances.

# Additional Suggestions Officers Had About the program: Officers offered the following suggestions -

- Having an adjustable red light feature on the camera for the officers working nights.
- Try another body camera brand.
- Can we get a camera to automatically activate when going code three?
- Using a bigger camera may be more user friendly.
- Let it be the officer's choice when to activate camera.











The League of Minnesota Cities Insurance Trust thanks the following organizations that comprised the working group to develop and review the model policy: Minnesota Counties Intergovernmental Trust, Minnesota Chiefs of Police Association, Minnesota Association of City Attorneys, Minnesota County Attorneys Association, Minneapolis Police Department, St. Paul Police Department, Cannon Falls Police Department, Burnsville Police Department, and Columbia Heights Police Department. Their participation does not necessarily signify agency endorsement of the model policy by the individual's employing agency.

# **INFORMATION MEMO**

# **Use of Body-Worn Cameras**

State law offers significant guidance on policies governing law enforcement use of body-worn cameras (BWC) and the resulting data. This discussion and the linked model policy are intended to help cities administer BWC programs and data soundly and in accordance with law.

#### **RELEVANT LINKS:**

See, Justice Department Announces \$20 Million in Funding to Support Body-Worn Camera Pilot Program, May 1, 2015, (last viewed June 29, 2016).

2016 Minnesota Laws ch. 171, section 6, to be codified as Minn. Stat. § 626.8473, subd. 2.

2016 Minnesota Laws ch. 171, section 6, to be codified as Minn. Stat. § 626.8473, subd. 3.

# I. Program considerations

Body-worn cameras (BWCs) are a relatively new addition to the law enforcement toolkit. According to the United States Department of Justice, they hold "tremendous promise" for improving public safety and increasing transparency and accountability. In addition, BWCs provide a means of capturing more convincing proof for use in criminal cases and protecting officers against false claims of wrongdoing. However, communities considering a move toward body cameras should also take stock of the costs involved in setting up and maintaining a BWC program. These will include purchasing the necessary hardware and software, arranging and paying for data storage, responding to requests for access, preparing data for release, and paying for independent biennial audits of the BWC program.

# II. Transparency, reporting, and external oversight

Minnesota's new laws mandate that communities moving forward with a BWC program receive public comments at three junctures in the process. First, enforcement agencies must provide an opportunity for public comment before purchasing or implementing a BWC system. Minimally, the agency must receive comments by mail and email, but may certainly hold public meetings and forums if desired. Second, the council or board with budget oversight for the agency needs to allow public comment at one of its regular

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

2016 Minnesota Laws ch. 171, section 5, to be codified as Minn. Stat. § 13.825, subd.

2016 Minnesota Laws ch. 171, section 5, to be codified as Minn. Stat. § 13.825, subd. 10.

2016 Minnesota Laws ch. 171, section 6, to be codified as Minn. Stat. § 626.8473, subd. 3.

PERF Policy.

meetings. Third, agencies must allow for public comment and input when developing their BWC policies.

Next, the legislation appears to be forward looking in that it anticipates further evolution of BWC technologies. It requires agencies that obtain BWC equipment with capabilities that go beyond recording video and audio to notify the BCA of these acquisitions within 10 days. In turn, these notifications will be accessible to the public and must be posted on the BCA's website.

Finally, the new legislation imposes independent audit requirements on agencies that operate BWC programs. Agencies will be required to arrange for an independent biennial audit to determine whether they are classifying data as required by law, how the data is being used, and whether the data is being purged and destroyed as required by statute. The audits must also examine whether personnel have obtained unauthorized access to BWC data or inappropriately shared data with other agencies. The audit results are public with few exceptions, and must be reviewed by the governing body. In turn, the law mandates the governing body to order the suspension of a BWC program if the audit shows a pattern of substantial noncompliance with legal requirements. Summaries of the audit results must be provided to the Legislative Commission on Data Practices and Personal Data Privacy within 60 days following completion of the audit.

# III. Policy requirements

Minnesota's new legislation mandates that agencies have a written policy to govern their BWC programs. Professional organizations, including the International Association of Chiefs of Police (IACP) and the Police Executive Research Forum (PERF) have released model policies in the past to aid agencies in developing their own guidelines. While these may be useful references, Minnesota law now lists a number of areas that must be covered by the policy, including state-specific rules on the administration and retention of BWC data. The 2016 state law identifies the following as mandatory policy elements:

- Data classifications, access procedures, and retention policies.
- Procedures for testing the recording equipment, documenting malfunction reports, and addressing malfunctions.
- Circumstances under which recording is mandatory, prohibited, or is left to officer discretion.
- Circumstances under which officers must tell people they are being recorded.
- Guidelines for when a recording may be ended.
- Procedures for the secure storage of data and the creation of backup copies.
- Procedures to ensure compliance with the policy and to address violations.

**Red typeface** in the League's model policy indicates that the language is included to satisfy a requirement for guidance on that particular topic. While this language is recommended, agencies may certainly have other options for addressing mandatory elements.

# IV. Deciding what to record

The new legislation does not establish mandatory rules for when officers are required to record or are prohibited from recording. Agencies must instead cover these topics in their written policies, along with specifying when decisions to record are left to the discretion of officers in the field.

Developing guidelines on when to record involves tradeoffs, and as of now, there is no recognized consensus as to best practices. If the agency's goal for having BWCs is to maximize accountability, then the most logical policy choice might be to have officers turn on their cameras whenever they respond to a call for service or interact with someone in the community. On the other hand, if the agency's goal is just to gather better proof for use in criminal cases, then it might make sense to have officers treat body cameras like any other evidence-gathering tool, and exercise their professional judgment in deciding when to record.

Most all agree that officers should turn on their cameras when they anticipate making an arrest, using force, or finding themselves in conflict situations with members of the public. The model acknowledges these differing schools of thought and also the areas of common agreement. Option 1 under "General guidelines for recording" requires the activation of cameras during all responses to calls for service and law enforcement-related activities. Option 2 more narrowly defines the class of events subject to mandatory recording, and then relies on officer judgment to identify and record other circumstances likely to yield relevant evidence. Both options require recording in situations such as arrests, uses of force, and public contacts that involve conflict.

Body-worn cameras, LMC Model Policy.

2016 Minnesota Laws ch. 171, section 6, to be codified as Minn. Stat. § 626.8473, subd. 3(b)(4).

Body-worn cameras, LMC Model Policy.

Practical and economic considerations, as well as philosophical ones, come to bear on deciding which option to choose and how much (i.e., when) to record. Once video data is recorded, it must be administered and retained in accordance with legal requirements. Agencies should expect that data storage costs and the time it takes to administer data will increase commensurately with the amount of data they choose to collect and store. Desires for accountability and transparency may weigh in favor of mandatory, broad, and encompassing recording requirements. But considerations of cost and practicality may point toward less mandatory recording and more reliance on officer judgment.

Deciding which approach is best involves weighing these competing factors in the context of the prevailing social, political, and economic considerations within each community. This is a determination particularly suited to elected officials acting on input from law enforcement professionals. Agencies should consult with their city councils or county boards to develop a community-specific approach.

# V. Data administration issues

Part of the new legislation treats data collected through the use of BWCs differently than most other forms of data. While most government data is presumptively public, BWC data is presumptively private. A specific provision, applicable only to BWC data, delineates who is a subject of the data. The new laws also establish unique access rights to BWC data. The model policy contains a multi-page section under the heading of "Administering access to BWC data" to address these issues. There are ambiguities in the new law, and agencies are encouraged to consult with their city attorneys or legal advisors for guidance.

# A. Labeling data for retention purposes

Administering BWC data under both the Minnesota Government Data Practices Act and the Records Retention Schedule is complicated. In very general terms, the Records Retention Schedule indicates how long entities need to keep data, and the Data Practices Act describes who is to have access. But BWC data is unlike other kinds of law enforcement data because retention is governed both by the Data Practices Act and the city's or county's records retention schedule.

2016 Minnesota Laws ch. 171, section 5, to be codified as Minn. Stat. § 13.825.

Body-worn cameras, LMC Model Policy.

2016 Minnesota Laws ch. 171, section 5, to be codified as Minn. Stat. § 13.825, subd. 3(a).

2016 Minnesota Laws ch. 171, section 5, to be codified as Minn. Stat. § 13.825, subd. 3(b).

General Records Retention Schedule for Minnesota

General Records Retention Schedule for Minnesota Counties Under the 2016 Data Practices amendments, all BWC data must be maintained for a period of 90 days and then be destroyed according to the agency's retention schedule. Some specific kinds of BWC data must be maintained for one year and then be destroyed under the records retention schedule, such as data documenting duty-related firearms discharges, certain uses of force, and cases in which a formal complaint is made against an officer. But the expiration of these minimum retention periods under Data Practices does not necessarily mean that the data can or must be destroyed.

Rather, the General Records Retention Schedule for Minnesota Cities (and the concordant General Records Retention Schedule for Counties) basically "kicks in" once the statutory retention periods have passed. The model policy includes a series of suggested labels for BWC data files, and envisions that officers will assign those labels to data files at the time of capture or transfer into storage. The labels have been developed to help agencies match up data files with the correct retention periods. For instance, if an officer has a recording from a DUI or disorderly conduct arrest, the model provides for labeling that file as "Evidence—Criminal." This label correlates to the category of "Arrest & Charge," found in the General Records Retention Schedule for Minnesota Cities. The retention schedule directs that this data should be maintained until the disposition of the criminal case, which may take longer than the statutory 90-day retention period. By labeling this data at the time it is captured or moved to storage, the agency is informing itself from the outset that this data has evidentiary value in a criminal case, and should be retained accordingly.

Agencies that choose not to deal with labeling data files at the time of capture or storage are likely deferring, rather than avoiding, the work involved in determining the correct retention period. Various BWC systems may offer different options for labeling data files, and agencies may find it useful to keep their own systems in mind when developing their policy.

# B. Data access issues and flagging

The model policy also provides for a system of flagging BWC files to indicate the likely presence of information about individuals whose identities may be legally protected from disclosure to others. Examples of such individuals include undercover officers, victims of criminal sexual conduct, and vulnerable adults who are victims of maltreatment. Whether or not agencies use the flagging process, the categories of protected identities listed in the policy may serve as a useful checklist when responding to requests for access to BWC data. The policy includes the more commonly occurring protected identities, but is not intended to be all-inclusive.

Body-worn cameras, LMC

Model Policy.

# C. Officer access to video and critical incidents

PERF notes that officers will be able to report and testify more accurately when they are provided access to "all possible evidence of the event." It is extremely unlikely that an officer could ever perceive or recall the same amount of information captured by a digital, high-definition recording device, particularly when under stress. The model recommends allowing officers to review BWC video footage before writing reports, giving statements, or providing testimony concerning typical law enforcement events. As PERF counsels, withholding video evidence from an officer until after he or she testifies can "unfairly undermine the officer's credibility."

Some agencies and prosecutors have expressed reservations, however, about allowing officers to view BWC and other video footage prior to giving statements about an officer-involved shooting or other critical incident. Because the BWC captures more information than the officer could have possibly perceived at the time, the concern is that viewing the video may taint the officer's recollection by introducing new information to him or her before a statement is obtained. The model provides two options for addressing this situation, and leaves it to agencies to include restrictions on viewing videos in their policies addressing critical incidents.

Whether or not an agency allows officers to review video footage before being interviewed about a critical incident, PERF's concern about unreasonably undermining officers' credibility warrants consideration. BWC footage is likely to bring forward a greater amount of information and more accurate details than a human observer or participant. It follows that comparing an officer's recollection to the video is not a fair measure of credibility or truthfulness.

# D. Supervisory review

Under the new legislation, agency policies must include procedures for making sure that personnel are complying with the policy. One of the obvious measures for ensuring that officers are following the policy is to involve supervisors in monitoring BWC use. Under the heading, "Agency Use of Data," the model requires that supervisors review BWC "usage" on a monthly basis for the purpose of determining whether officers have used their cameras in accordance with the department's guidelines. Reviewing "usage" could be limited to a cursory comparison of when officers are making recordings, and how they are labeling them, as compared to other records of the officer's activities. An alternative position is to have supervisors review actual footage to gain an additional perspective on officer performance in the field.

The IACP's model policy takes the position that supervisors should review random BWC recordings at least monthly to observe officer performance in the field. PERF, however, notes there is ongoing debate over this issue. While random supervisory review may promote accountability, officers may see this practice as an expression of mistrust and become resentful. This is an issue for agencies to consider in light of their own particular circumstances.

# VI. Further assistance

The issue of body-worn cameras is a policy area with developing concerns. To discuss latest developments or for assistance with your questions, please contact the League of Minnesota Cities or the Minnesota Counties Intergovernmental Trust.

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# Mobile Video and Body-Worn Camera Procedures

#### 446.1 PURPOSE

The use of Mobile Video Recording (MVR) and body-worn cameras (BWCs) in law enforcement is relatively new. The primary purpose of using these systems is to capture evidence arising from police-citizen encounters while enhancing the Department's mission by accurately documenting those encounters. While this technology allows for the collection of valuable information, it opens up many questions about how to balance public demands for accountability and transparency with the privacy concerns of those being recorded. In deciding what to record, this policy also reflects a balance between the desire to establish exacting and detailed requirements and the reality that officers must attend to their primary duties and the safety of all concerned, often in circumstances that are tense, uncertain, and rapidly evolving.

#### 446.2 **POLICY**

It is the policy of the Hastings Police Department to authorize and require the use of department-issued MVR and BWCs as set forth below. This policy provides guidance on the use and management of the systems and the recorded media

#### 446.3 SCOPE

This policy governs the use of the MVR and BWCs in the course of official duties. It does not apply to the use of surreptitious recording devices in undercover operations. The chief or chief's designee may supersede this policy by providing specific instructions for the use of MVR's or BWCs to individual officers, or providing specific instructions for the use of MVRs and BWCs pertaining to certain events or classes of events, including but not limited to political rallies and demonstrations. The chief or chief's designee may also provide specific instructions or standard operating procedures for MVR and BWC use to officers assigned to specialized details, such as carrying out duties in courts or guarding prisoners or patients in hospitals and mental health facilities.

## 446.4 DEFINITIONS

Definitions related to this policy include:

**Activate** means any process that causes the MVR or BWC system to transmit or store audio-video signals.

Adversarial means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or at least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.

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Body-Worn Camera (BWC) means any system that captures audio and video signals that is capable of being individually worn by officers.

Critical Incident is an incident involving any of the following:

- Use of Deadly Force by or against a Hastings Police Officer;
- Death or Great Bodily Harm to an officer:
- Death or Great Bodily Harm to a person who is custody or control of an officer;
- Any action by an officer that causes or is intended to cause Death or Great Bodily Harm.

<u>Deactivation</u> is any process that causes the BWC or MVR to stop recording. Deactivation will be done manually.

**Evidentiary value** means that the information may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in considering an allegation against a law enforcement agency or officer.

**General Citizen Contact** means an informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a wrecker, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.

Law enforcement-related information means information captured or available for capture by use of a BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision

MGDPA or Data Practices Act refers to the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.

**Mobile Video Recorder (MVR)** means any system that captures audio and video signals that is capable of installation in a vehicle.

**MVR/BWC** Administrator means personnel certified or trained in the operational use of MVRs and BWCs, storage and retrieval procedures, who assigns, tracks and maintains MVR and BWC equipment, oversees needed repairs or replacement equipment through the vendor, controls user rights and access, and acts as a liaison with the vendor. Also responsible for the training of law enforcement operators on the use of MVR and BWCs.

Official duties, for purposes of this policy, means that the officer is on duty and performing authorized law enforcement services on behalf of this agency.

Recorded media means video signals recorded or digitally stored on a storage device or portable media.

**Records Retention Schedule** refers to the General Records Retention Schedule for Minnesota Cities.

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

- Domestic abuse incident interview
- Felony Crime
- Pursuit
- Squad Accidents

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- Any incident for which the officer or supervisor believes the recording to be of evidentiary or administrative value
- Any event that an officer or supervisor believes should be brought to the immediate attention of Command Staff.

**Unintentionally recorded footage** is a video recording that results from an officer's inadvertence or neglect in operating the officer's BWC, provided that no portion of the resulting recording has evidentiary or administrative value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in station house locker rooms, restrooms, and recordings made while officers were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.

#### 446.5 MOBILE VIDEO RECORDER OBJECTIVES

The Hastings Police Department has adopted the use of MVRs and BWC's to accomplish the following objectives:

- A. To enhance officer safety.
- B. To document statements and events during the course of an incident.
- C. To enhance the officer's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/presentation.
- D. To preserve audio and visual information for use in current and future investigations.
- E. To provide a tool for self-critique and field evaluation during officer training.
- F. To enhance the public trust by preserving factual representations of officer-citizen interactions.
- G. To assist with the defense of civil actions against law enforcement officers and the City of Hastings.
- H. To assist with the training and evaluation of officers.

## 446.6 USE AND DOCUMENTATION

- A. Officers may use only department-issued MVRs and BWCs in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this department.
- B. Officers who are issued a BWC or an MVR will activate the systems consistent with this policy. Officers shall conduct a function test of their issued BWCs at the beginning of each shift to make sure the devices are operating properly. Officers noting a malfunction during testing or at any other time shall promptly report the malfunction to the officer's supervisor and shall document the report in writing. Supervisors shall take prompt action to address malfunctions and document the steps taken in writing.
- C. Officers should wear their issued BWCs at the location on their body and in the manner specified in training.
- D. Any damage, loss or theft of MVR and BWC equipment shall immediately be reported to the Shift Sergeant and MVR administrator in writing.
- E. During their shift, officers will follow the established policies and procedures for documenting, categorizing and retaining any recorded media.
- F. Officers must document MVR and BWC use and nonuse as follows:
  - 1. Whenever an officer makes a recording, the existence of the recording shall be documented in the applicable incident report or citation.
  - Whenever an officer fails to record an activity that is required to be recorded under this policy or captures only a part of the activity, the officer must document the circumstances and reasons for not recording in an incident report. Supervisors shall review these reports and initiate any corrective action deemed necessary.

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- G. Any time an officer reasonably believes a recorded contact may be beneficial in a noncriminal matter (e.g., adversarial contact), the officer should promptly notify a supervisor of the existence of the recording and label it accordingly.
- H. <u>The department will maintain the following records and documents relating to BWC use, which are classified as public data:</u>
  - 1. The total number of BWCs owned or maintained by the agency;
  - 2. A daily record of the total number of BWCs actually deployed and used by officers and, if applicable, the precincts in which they were used;
  - 3. The total amount of recorded BWC data collected and maintained; and
  - 4. This policy, together with the Records Retention Schedule.

#### 446.7 SUPERVISOR RESPONSIBILITIES

Supervisors shall ensure officers are using their MVR and BWC equipment per policy. Supervisors should determine corrective action for non-functioning MVR and BWC equipment.

When a **significant incident** arises that requires the immediate retrieval of the recorded media, a supervisor shall respond to the scene and ensure that the MVR and BWC is properly uploaded.

When a **critical incident** arises, the supervisor shall ensure the involved and/or witness officers maintain custody of their MVR and BWC equipment until the BCA or other authorized investigative authority takes custody of the equipment.

#### 446.8 GENERAL GUIDELINES FOR ACTIVATION

Officers shall activate their MVR and BWCs when responding to all calls for service and during all law enforcement-related encounters and activities, including but not limited to traffic stops, suspicious person stops, suspicious vehicle stops, pursuits, suspicious person stops, arrests, searches, suspect interviews and interrogations (Miranda), and during any police/citizen contacts that becomes adversarial. However, officers need not activate their cameras when it would be unsafe, impossible, or impractical to do so, but such instances of not recording when otherwise required must be documented as specified in the Use and Documentation guidelines, part (g) above.

- A. Officers have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded.
- B. Once activated, the MVR and BWC should continue recording until the conclusion of the incident or encounter, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. The officer having charge of a scene shall likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. If the recording is discontinued while an investigation, response, or incident is ongoing, officers shall state the reasons for ceasing the recording on camera before deactivating their BWC. If circumstances change, officers shall reactivate their cameras as required by this policy to capture information having evidentiary value.
- C. Officers shall not intentionally block the MVR or BWC's audio or visual recording functionality to defeat the purposes of this policy.
- D. Notwithstanding any other provision in this policy, officers shall not use their BWCs to record other agency personnel during non-enforcement related activities, such as during pre- and post-shift time in locker rooms, during meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation.
- E. Officers are prohibited from using department-issued MVR and BWC equipment for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

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- F. There shall be no audio or video recordings made in any court of law, unless authorized by a judge (Minn. Court Rule 4, General Rules of Practice).
- G. Officers will try to avoid recording videos of persons who are nude or when sensitive human areas are exposed.
- H. Officers shall not intentionally edit, alter, or erase any MVR or BWC recording unless otherwise expressly authorized by the Chief of Police or their designee.
- I. Members shall not record another department member without a court order unless lawfully authorized by the Chief of Police, or authorized designee, for the purpose of conducting criminal investigation.

### 446.9 SPECIAL GUIDELINES FOR RECORDING

Officers may, in the exercise of sound discretion, determine:

- A. To use their MVR and BWC to record any police-citizen encounter if there is reason to believe the recording would potentially yield information having evidentiary value, unless such recording is otherwise expressly prohibited.
- B. To use their MVR and BWC to take recorded statements from persons believed to be victims and witnesses of crimes, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.
- C. Officers need not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value. When responding to an apparent mental health crisis or event, BWCs shall be activated as necessary to document any use of force and the basis for it, and any other information having evidentiary value, but need not be activated when doing so would serve only to record symptoms or behaviors believed to be attributable to the mental health issue.
- D. Officers should use their MVR and BWC to record their transportation and the physical transfer of persons in their custody to hospitals, detox and mental health care facilities, juvenile detention centers, and jails, but otherwise should not record in these facilities unless the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use-of-force incident

### 446.10 DOWNLOADING AND LABELING DATA

Each officer using a BWC is responsible for transferring or assuring the proper transfer of the data from his or her camera to the HPD local server by the end of the officer's shift. However, if the officer is involved in critical incident, the involved and/or witness officers maintain custody of their MVR and BWC equipment until the BCA or other authorized investigative authority takes custody of the equipment.

Officers shall label MVR and BWC data files at the time of video capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate labeling. Officers should assign one of the following labels to each file:

- A. Report Video created when an incident report is generated, whether it is for an initial report, arrest, or supplemental report. This agency requires a report when any of the below LMCIT categories apply.
- \* NOTE this label encompasses all MVR and BWC media evidence as recommended by LMCIT (i.e. Evidence-criminal, Evidence- force, Evidence- property, Evidence- administration, & Evidence- other).
- B. Citation No Report Video created when a citation is issued where no case number is assigned nor a police report generated. (i.e. traffic citation).

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C. <u>Event - No Report - Video created when any law enforcement activity (Normally CAD calls and/or self-initiated calls) where there is no written report or citation.</u>

\*NOTE this label reflects the LMCIT recommended "Not Evidence" category.

- D. Accidental Video created accidentally and has no law enforcement value.
- E. Test Video created when conducting a functional test of the equipment

Any MVR and BWC media may be evaluated for training value by the MVR/BWC Administrator and used with the consent of the Chief of Police or their designee.

### 446.11 MVR AND BWC ADMINISTRATOR RESPONSIBILITIES

The MVR administrator is responsible for managing media:

- A. Pursuant to a court order.
- B. In accordance with established records retention policies, including reissuing all other media deemed to be of no evidentiary value.
- C. In instances where privacy issues are noted.
- D. Ordering, issuing, retrieving and storing all MVR and BWC equipment.
- E. Logs reflecting MVR equipment assignments, serial number, the date it was issued, and the officer to which it was issued.

### 446.12 ADMINISTERING ACCESS TO BWC DATA

- A. <u>Data subjects.</u> Under <u>Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:</u>
  - 1. Any person or entity whose image or voice is documented in the data.
  - 2. The officer who collected the data.
  - 3. Any other officer whose voice or image is documented in the data, regardless of whether that officer is or can be identified by the recording.
- B. BWC data is presumptively private. BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:
  - 1. <u>BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities.</u>
  - 2. <u>Some BWC data is classified as confidential (see C. below).</u>
  - 3. Some BWC data is classified as public (see D. below).
- C. <u>Confidential data.</u> BWC data that is collected or created as part of an active criminal investigation is confidential. This classification takes Precedence over the "private" classification listed above and the "public" classifications listed below.
- D. Public data. The following BWC data is public:
  - 1. <u>Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous.</u>
  - 2. <u>Data that documents the use of force by a peace officer that results in substantial bodily harm.</u>
  - 3. <u>Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted. In addition, any data on undercover officers must be redacted.</u>
  - 4. <u>Data that documents the final disposition of a disciplinary action against a public employee.</u>

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However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that other classification. For instance, data that reveals protected identities under Minn. Stat. § 13.82, subd. 17 (e.g., certain victims, witnesses, and others) should not be released even if it would otherwise fit into one of the public categories listed above.

- E. Access to BWC data by non-employees. Officers shall refer members of the media or public seeking access to BWC data to the Police Records Manager or their designee, who shall process the request in accordance with the MGDPA and other governing laws. In particular:
  - 1. <u>An individual shall be allowed to review recorded BWC data about him or herself and other data subjects in the recording, but access shall not be granted:</u>
    - (a) If the data was collected or created as part of an active investigation.
    - (b) To portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as portions that would reveal Identities protected by Minn. Stat. § 13.82, subd. 17.
  - 2. <u>Unless the data is part of an active investigation, an individual data subject shall be provided with a copy of the recording upon request, but subject to the following guidelines on redaction:</u>
    - (a) Data on other individuals in the recording who do not consent to the release must be redacted.
    - (b) Data that would identify undercover officers must be redacted.
    - (c) <u>Data on other officers who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.</u>
- G. Access by peace officers and law enforcement employees. No employee may have access to the department's BWC data except for legitimate law enforcement or data administration purposes:
  - 1. Officers may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. With the exception of critical incidents, officers may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident.
  - 2. Agency personnel shall document their reasons for accessing stored BWC data in the notes portion of the VuVault viewing screen at the time of each access. Agency personnel are prohibited from accessing BWC data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading BWC data recorded or maintained by this agency to public and social media websites.
  - 3. Employees seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.
- H. Other authorized disclosures of data. Officers may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. § 13.82, subd. 15, as may be amended from time to time. Officers should generally limit these displays in order to protect against the incidental disclosure of individuals whose identities are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screen shots, muting the audio, or playing the audio but not displaying video. In addition,
  - 1. <u>BWC data may be shared with other law enforcement agencies only for legitimate law enforcement purposes that are documented in writing at the time of the disclosure.</u>
  - 2. <u>BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.</u>

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### 446.13 DATA SECURITY SAFEGUARDS

- A. The City of Hastings complies with the CJIS Security Policy version 5.5, Policy Area 8, Media

  Protection. Digital media is stored within a controlled area of the Hastings Police Department.

  Digital media is sanitized using DoD 5220.22 M option of Active KillDisk.
- B. Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to access or view agency BWC data.
- C. Officers shall not intentionally edit, alter, or erase any BWC recording unless otherwise expressly authorized by the chief or the chief's designee.
- D. As required by Minn. Stat. § 13.825, subd. 9, as may be amended from time to time, this agency shall obtain an independent biennial audit of its BWC program.

### 446.14 AGENCY USE OF DATA

- A. At least once a month, supervisors will randomly review BWC usage by each officer to ensure compliance with this policy and to identify any performance areas in which additional training or guidance is required.
- B. In addition, supervisors and other assigned personnel may access BWC data for the purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about officer misconduct or performance.
- C. Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for discipline.
- D. Officers should contact their supervisors to discuss retaining and using BWC footage for training purposes. Officer objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field training officers may utilize BWC data with trainees for the purpose of providing coaching and feedback on the trainees' performance.

### 446.15 DATA RETENTION

- A. All BWC data shall be retained for a minimum period of 90 days. There are no exceptions for erroneously recorded or non-evidentiary data.
- B. <u>Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year.</u>
- C. <u>Certain kinds of BWC data must be retained for six years:</u>
  - 1. <u>Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review.</u>
  - 2. <u>Data documenting circumstances that have given rise to a formal complaint against an officer.</u>
- D. Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.
- E. <u>Subject to Part F (below), all other BWC footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after 90 days.</u>
- F. Upon written request by a BWC data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The agency will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.

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- G. The department shall maintain an inventory of BWC recordings having evidentlary value.
- H. The department will post this policy, together with its Records Retention Schedule, on its website.
- I. The following retention periods have been assigned to Hastings Police Department Media Labels. If information comes to light indicating that non-evidentiary data has evidentiary value or value for training, it may be reclassified and retained for a longer period:
  - 1. Report (Minimum of Seven year retention)
  - 2. Citation No Report (Three year retention)
  - 3. Event No Report (90 day retention)
  - 4. Accidental (90 day retention)
  - 5. Test (90 day retention)

### **446.16 TRAINING**

Users of the MVR and BWC systems and supervisors shall successfully complete an approved course of instruction prior to being deployed. This training shall be documented by the Sergeant.

### 446.17 MISUSE

In no event shall any recording be used or shown for the purpose of ridiculing, embarrassing or intimidating any employee.

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Body-Worn Cameras Final Approval Request

City Council Meeting December 5, 2016



"Pride in Service"

- Development Overview
- **Pilot Process**
- **Evaluation Guide and Summary**
- 2016 Legislation
- **Key Points**
- Costing
- Requested Action by Council
- Comments/Questions



## Program Content

- Component of 21st Century Policing
- Evolving technology
- Builds trust and legitimacy
- Officer wellness and safety
- Development History
- Public Safety Advisory Commission 1/15/2015
- Public Safety Committee 1/26/2015
- City Council Approval 2/2/2015
- City Council Pilot Approval 1/19/2016



# Development Overview

- February August 2016
- All Sgts. and Officers in Patrol Division
- 2-month evaluation
- Evaluation completed by each officer



### Pilot Process

Evaluation Guide

Categories

Capability

UsabiltyDenlovahi

Deployability

Policy Considerations

Reasons for activating/not activating Greatest Officer benefits

Additional Suggestions



# **Evaluation Summary**

- Capability
- · HD quality is good.
- Some limitation in extreme low-light.
- . Usabilty
- · Comfortable
- Battery life was of some concern
- 4-hour battery.
- · Replaced with 8-hour batteries.
- Some difficulties with cords which were replaced with upgrades free of charge.
- Deployability
- Durable
- Location and manner of attaching to the uniform works well.





### Policy Considerations

- Clarifying discretion 446.8
- responding to all calls for service and during all law enforcement-related encounters and activities...... Option 1] Officers shall activate their BWCs when
- involved in, or witness other officers of this agency anticipating that they will be involved in, become Option 2]Officers shall activate their BWCs when involved in...
- encounter, or until it becomes apparent that additional Once activated, the MVR and BWC should continue recording is unlikely to capture information having recording until the conclusion of the incident or evidentiary value.

# **Evaluation Summary**



### Greatest Benefits

- · Increases transparency and accountability.
- Captures convincing proof for criminal cases,
- Good for evidence collection.
- Provides assistance in recounting events for police reports.



# **Evaluation Summary**

- Peace Officer Body-Worn Camera Bil
- Adopted August 1, 2016
- Set forth requirements for
- Data classification
- Retention
- Audits
- Public input
- intending on implementing body-worn cameras. Written policy for departments having or



## 2016 Legislation

- Four Key Points of the Law
- BWC data is generally private/nonpublicMN Stat. 13.825
- Opportunity for Public Comment
- MN Stat. 626.8473
- Prior to purchasing or implementing program.
  - Input into developing policy.
- Audits and City Council Requirements
  - MN Stat, 13.825
- Independent, biennial audits of data.
- Classification
- Use of the data.
- Proper destruction of data.
- Unauthorized use of the data.
- Unauthorized sharing of the data.

## 2016 Legislation



- Public Data
- The total number of BWCs owned or maintained by the agency;
- and, if applicable, the precincts in which they A daily record of the total number of BWCs actually deployed and used by officers were used;
- The total amount of recorded BWC data collected and maintained; and
- This policy, together with the Records Retention Schedule.



## 2016 Legislation

- Estimated future costs
- Adequate space for approx. 3 years

- Currently on-track
  \$2000.00 after 3<sup>rd</sup> year
  \$2000.00 every 3<sup>rd</sup> year thereafter
- Full deployment @ \$12,510.00 0
  - 15 Additional Cameras 23 Total Cameras
- Est. life span of a camera is 5 years





### VIII-C-1

- · City Council
- Allow an opportunity for public comment
- Endorse the revised policy
- Approval for full implementation 2017



### Action Request

Thank You!



"Pride in Service"