









A Review of NYPD's June 29, 2016 Draft BWC Policy

From Police Body Worn Cameras: A Policy Scorecard
<https://www.bwcscorecard.org>

Department (by size) \$: DOJ funded	 Policy Available	 Officer Discretion	 Personal Privacy	 Officer Review	 Footage Retention	 Footage Misuse	 Footage Access	 Biometric Use
1 New York	✗	✓	✓	✗	✗	✓	✗	✗
2 Chicago \$	✓	✓	✓	✗	✗	✗	✗	✗
3 Los Angeles \$	✓	✓	○	✗	✗	○	✗	✗
4 Philadelphia	✗	?	?	?	?	?	?	?
5 Houston	✓	✓	○	✗	✓	✗	✗	✗
6 Washington, DC \$	✓	✓	○	✗	✗	○	○	✗
7 Dallas	✗	✓	○	✗	✓	○	✗	✗
8 Phoenix	✗	○	○	✗	✗	✗	✗	✗
9 Baltimore	✗	○	○	○	✗	✓	✗	✓
10 Miami-Dade \$	✗	✓	○	✗	✗	○	✗	✗
11 Las Vegas \$	✗	✓	✓	✗	✓	✓	✗	✗
12 Detroit \$	✗	?	?	?	?	?	?	?
13 Memphis	✗	✓	○	✗	✗	○	✗	✗
15 Milwaukee	✓	○	○	✗	✗	✗	✗	✗
16 San Antonio \$	✗	?	?	?	?	?	?	?
18 San Francisco	✓	✓	✓	✗	✗	○	✗	✗
21 Atlanta	?	?	?	?	?	?	?	?
26 Austin	○	○	✗	✗	✓	○	✗	✗
31 Cleveland	✗	✓	✓	✗	✗	✓	✗	✗
37 Seattle \$	✓	✓	○	✗	✗	✗	✗	✗
38 New Orleans \$	○	○	○	✗	✗	○	✗	✗
46 Albuquerque \$	✓	○	✗	✗	✗	✗	✗	✗
Oakland	✓	✓	○	○	✗	✓	✗	✗
Ferguson	✗	✗	✗	✗	✗	✗	✗	✗
Parker, CO	✓	✓	✓	○	○	○	✓	✗

Evaluation Criteria



Makes the Department Policy Publicly and Readily Available

- ✔ The department publishes the most recent publicly available version of its policy on its website, in a location that is easy for members of the public to find.
- The policy posted on the department's website either is outdated, or is difficult for members of the public to find.
- ✘ The department's policy is not available on its website.



Limits Officer Discretion on When to Record

- ✔ The policy clearly describes when officers must record, and requires officers to provide concrete justifications for failing to record required events.
- The policy clearly describes when officers must record, but does not require officers to provide concrete justifications for failing to record required events.
- ✘ The policy does not clearly describe when officers must record.



Addresses Personal Privacy Concerns

- ✔ The policy specifically protects categories of vulnerable individuals (e.g., victims of sex crimes) from being recorded without their informed consent.
- The policy mentions the importance of personal privacy, but either offers vague guidance on when not to record, or does not require informed consent from vulnerable individuals.
- ✘ The policy does not address personal privacy concerns.



Prohibits Officer Pre-Report Viewing

- ✔ The policy requires officers to file an initial written report or statement before relevant footage is reviewed, for all incidents.
- The policy requires officers to file an initial written report or statement before relevant footage is reviewed, for some incidents.
- ✘ The policy allows — or even encourages — officers to view relevant footage before filing an initial written report or statement.



Limits Retention of Footage

- ✔ The policy requires the department to delete unflagged footage within six months.
- The policy requires the department to delete unflagged footage — but after more than six months.
- ✘ The policy does not require the department to delete unflagged footage, or we are unable to determine whether the unflagged footage must be deleted.



Protects Footage Against Tampering and Misuse

- ✔ The policy expressly prohibits both footage tampering and unauthorized access, and indicates that all access to recorded footage will be logged or audited.
- The policy expressly prohibits both footage tampering and unauthorized access, but does not indicate that all access to recorded footage will be logged or audited.
- ✘ The policy does not expressly prohibit both footage tampering and unauthorized access.



Makes Footage Available to Individuals Filing Complaints

- ✔ The policy expressly allows individuals who are filing police misconduct complaints to view all relevant footage.
- The policy expressly allows individuals who are filing police misconduct complaints to view some relevant footage.
- ✘ The policy does not expressly allow individuals who are filing police misconduct complaints to view relevant footage.



Limits the Use of Biometric Technologies

- ✔ The policy sharply limits the use of biometric technologies (e.g., facial recognition) to identify individuals in footage.
- The policy places some limits on the use of biometric technologies (e.g., facial recognition) to identify individuals in footage.
- ✘ The policy places no limits on the use of biometric technologies (e.g., facial recognition) to identify individuals in footage.

New York Police Department



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- ✗ Makes the Department Policy Publicly and Readily Available
 - ✓ Limits Officer Discretion on When to Record
 - ✓ Addresses Personal Privacy Concerns
 - ✗ Prohibits Officer Pre-Report Viewing
 - ✗ Limits Retention of Footage
 - ✓ Protects Footage Against Tampering and Misuse
 - ✗ Makes Footage Available to Individuals Filing Complaints
 - ✗ Limits Biometric Searching of Footage

Last updated: July 13, 2016

✗ **Makes the Department Policy Publicly and Readily Available**

NYPD does not publish its BWC policy on its website. However, the department has released a draft of a new proposed policy and is actively soliciting feedback from the public. The [full text of the draft](#) is available from the [Policing Project](#) and is current through July 31, 2016.

✓ **Limits Officer Discretion on When to Record**

NYPD lists a specific set of police actions that officers must record (§3) and well as when they may not record (§5). Notably, the department prohibits recording of individuals engaged in political activity, citing the right to freedom of expression and association (§5.k)

3. MANDATORY ACTIVATION: UMOS must activate BWC prior to initiating or assisting another uniformed member of service with:

Taking any of the following investigative or enforcement actions:

- i. Arrests
 - ii. A summonses (only if the operator of the vehicle is present)
 - iii. A summonses (only if the operator of the vehicle is present) B and C summonses
 - iv. Vehicle stops
 - v. Investigative Encounters with suspects based on founded or reasonable suspicion, namely Level 2 (Common Law Right of Inquiry) and Level 3 (Terry Stops) Investigative Encounters, as described in P.G. 212-11
 - vi. Any search of a person or his or her property, excluding inventory searches
 - vii. Interactions with an Emotionally Disturbed Person
 - viii. Uses of force as defined in P.G. 221-03
 - ix. Pursuits
 - x. In-custody transportation of prisoners/arrested persons (including transportation to the stationhouse, hospital or any detention facility)
- b. Responding to the scene of any in-progress calls for service, including 10-13, the 10-30 series, 10-85 (excluding administrative assistance), calls for service involving a weapon, and Shot Spotter activations.
- c. Conducting an interior patrol of either a Housing Authority residential building (pursuant to P.G. 212-60)

or non-Housing Authority residential building enrolled in the Trespass Affidavit Program (pursuant to P.G. 212-59). BWCs must be activated immediately before entering the residential building and should not be deactivated until exiting the building and concluding any associated police action.

4. DISCRETIONARY ACTIVATION: UMOS may record other activities when, in the member's judgment, it would be beneficial to record, so long as recording is not prohibited by step 6 [Prohibited Recordings].

PROHIBITED RECORDINGS: BWCs shall only be used while conducting official law enforcement duties. Do not record any of the following events or locations:

- a. The performance of administrative duties or non-enforcement functions
- b. Activities within the command or Department facilities, except for lodging a prisoner
- c. Departmental meetings or training
- d. Personal conversations of or between Department personnel without the recorded employees' knowledge
- e. Personal, off-duty activity, including paid details
- f. Interviewing a current or potential confidential informant
- g. Interviewing the victim of a sex crime
- h. Strip searches
- i. When present in a court facility, except for the immediate lodging of a prisoner
- j. When present in a medical facility
 - i. If present in an ambulance, however, refrain from recording medical treatment or patient/caregiver conversations, but the UMOS may continue to record if necessary, e.g., the aided individual is in custody and potentially combative or is a victim and consents to the recording
- k. Any individuals who are engaged in political activity (See P.G. 212-72). Political activity is the exercise of a right of free expression or association for the purpose of maintaining or changing governmental policies or social conditions.
- l. Report the recording of a prohibited event listed in this step to the Patrol/Unit Supervisor and make an ACTIVITY LOG entry describing the event.

Circumstances in which deactivation is acceptable are also spelled out. (§3)

DEACTIVATION: Once the BWC has been activated, continue recording until the investigative or enforcement action is concluded. If the recorded event is an arrest, members should continue recording and not deactivate the BWC until the prisoner is lodged at a command for processing. a. The BWC may be deactivated upon a recorded request by a member of the public if in the judgment of the UMOS it is safe and advisable to do so and after considering all the circumstances, including the requester's right to privacy. If a suspect is present at the scene, do not deactivate the BWC.

When officers fail to record, NYPD requires them to document and justify such failures. (§3)

d. Upon discovery of a failure to record or the interruption of a recording involving any event listed in this step, report such failure or interruption to the Patrol/Unit 3 Supervisor and make an ACTIVITY LOG entry describing the event and the reason the event was not recorded.

✓ Addresses Personal Privacy Concerns

NYPD prohibits recording of certain vulnerable individuals as well as anyone engaged in First Amendment activity, and allows victims and witnesses to opt out of recording in non-confrontational situations. (§§5-6, Note following §3)

8. Do not activate the BWC to record any of the following:

...

5.a. The BWC may be deactivated upon a recorded request by a member of the public if in the judgment of the UMOS it is safe and advisable to do so and after considering all the circumstances, including the requester's right to privacy. If a suspect is present at the scene, do not deactivate the BWC.

6. PROHIBITED RECORDINGS: BWCs shall only be used while conducting official law enforcement duties. Do not record any of the following events or locations:

...

- g. Interviewing the victim of a sex crime
- h. Strip searches

...

j. When present in a medical facility

- i. If present in an ambulance, however, refrain from recording medical treatment or patient/caregiver conversations, but the UMOS may continue to record if necessary, e.g., the aided individual is in custody and potentially combative or is a victim and consents to the recording

- k. Any individuals who are engaged in political activity (See P.G. 212-72). Political activity is the exercise of a right of free expression or association for the purpose of maintaining or changing governmental policies or social conditions

NOTE: . . . The mandatory recording requirements in step 3 may cause the recording of initial accounts by victims or witnesses. Other than a victim of a sex crime, members should generally record initial encounters with witnesses or victims, such as a witness or victim's initial report, spontaneous utterances, physical injuries, or any relevant physical observations of the scene. However, members must consider the needs of victims and witnesses and the sensitivity of the nature of the crime being reported in deciding whether and for how long the statement should be recorded (provided that any deactivation is in accordance with step 5).

Any member of the public may request that a BWC be deactivated for privacy purposes unless a suspect is present. (§5.a)

The BWC may be deactivated upon a recorded request by a member of the public if in the judgment of the UMOS it is safe and advisable to do so and after considering all the circumstances, including the requester's right to privacy. If a suspect is present at the scene, do not deactivate the BWC.

Officers are encouraged to notify subjects that they are being recorded. (§2)

Upon activating a BWC for recording, members are encouraged to advise members of the public that they are being recorded as soon as it is safe and practicable to do so. Consent from a subject is not required to start or continue recording.

- a. Suggested notification: *Sir/Ma'am, I want to advise you that our interaction is being recorded by a body-camera.*

Prohibits Officer Pre-Report Viewing

NYPD allows officers to view footage in the performance of their duties, but in the event of a Level 3 use of force (deadly physical force) officers may not view footage before turning it over to a supervisor but may review recordings prior to making an official statement. (§9)

- a. In the performance of their duties, members may view their own BWC recordings, except for recordings related to a Level 3 use of force.
 - i. Members who record events related to a Level 3 use of force must refrain from reviewing BWC recordings of the event and immediately surrender his or her BWC to the Force Investigation Division Supervisor or other designated supervisor. The UMOS [Uniformed Member of the Service] may review recordings related to the Level 3 use of force before giving an official statement but at a time and place set by the Force Investigation Division Supervisor.
- b. Except as prohibited in 9(a), members may view BWC recordings made by other members if the viewing is in furtherance of an investigation, preparation of a case or other official purposes.

Limits Retention of Footage

The proposed NYPD policy gives permission to the Risk Management Bureau to delete video "if appropriate." However it does not specify, and thus does not require, a minimum or maximum retention period (§34).

. . . Risk Management Bureau may purge video, if appropriate

Protects Footage Against Tampering and Misuse

NYPD expressly prohibits footage tampering and unauthorized sharing of footage, and indicates that access to recorded footage will be logged or audited. (§§7-9)

- 7.e. Do not attempt to alter or delete BWC recordings. Members may correct or supplement the tags on their own recordings
- 8. . . . BWC recordings are the property of the New York City Police Department and shall be treated as official records and handled pursuant to existing Department policies and procedures. Do not duplicate, show, or

release BWC recordings except for official purposes.
9.b. . . . All viewings will be recorded and monitored by the BWC audit system.

✘ Makes Footage Available to Individuals Filing Complaints

NYPD does not appear to allow complainants access to footage. (Note following §3)

Requests by a witness or victim to view a BWC recording that depicts a suspect should be declined and referred to an Assistant District Attorney.

✘ Limits Biometric Searching of Footage

NYPD does not place any limits on the use of biometric technologies (e.g., facial recognition) to search footage.