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ACLU
Mississippi

STRIKING THE RIGHT BALANCE



An Analysis of Body-worn Camera Policies in Mississippi

ACLU

Mississippi

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EXECUTIVE SUMMARY

Body-worn cameras (BWCs) have the potential to serve as a much-needed oversight tool. There is a growing recognition that the United States has a real problem with police violence. Events in Ferguson, New York, Baltimore, Milwaukee, Saint Paul and countless others have brought national attention to police use of excessive force and serious problems of racial profiling, and that attention has not dissipated in the last four years. Unfortunately, Mississippi has not been an exception. The officer-involved deaths of Jonathan Sanders, “Ronnie” Shumpert, Christian Bowman, Ismael Lopez, and dozens others, raised serious questions, and without audiovisual records, those questions have largely gone unanswered.

While BWCs are not a silver bullet to end police misconduct, they can be part of the solution when adopted alongside policies that effectively balance police protection and citizen privacy. Recording police-civilian encounters can help promote police accountability, deter misconduct by law enforcement officers (LEOs) and civilians, further officer safety, and provide relatively objective evidence to assist with the resolution of civilian complaints against police. Without good policies in place, BWCs risk becoming just another surveillance device.

Increasing reports of law enforcement agencies acquiring BWCs led the ACLU of Mississippi to take a deeper look into the use of BWCs. There is a legitimate public interest in the acquisition and deployment of BWCs—particularly regarding when and how they are used and when and how the recorded data is retained. The ACLU of Mississippi initiated a project to gather and report to the public information on the use of BWCs by agencies throughout the state. That project has led to the publication of this report and recommendations regarding the use of BWCs in Mississippi.

To understand the use of BWCs in Mississippi, the ACLU of Mississippi sent Public Records Act (PRA) requests to 147 local agencies to collect existing policies for review. We received and reviewed 65 local policies from sheriffs’ and police departments in response to these requests. For more information on the methodology used to gather and review the data, please see Appendix A of this report.

“ IT IS RECKLESS TO HAVE VARYING POLICIES FROM COMMUNITY TO COMMUNITY. TOO MUCH IS AT STAKE. THERE ARE GRAVE IMPLICATIONS FOR CONSTITUTIONALLY PROTECTED RIGHTS. ”

A review of existing local policies reveals that not only is BWC implementation inconsistent, but many policies lack basic privacy safeguards and bare-minimum accountability provisions. The piecemeal implementation of BWCs not only leads to confusion and frustration among community members, but the policy shortcomings allow law enforcement officials to inappropriately withhold information—thereby deepening the divide between police and the community.

As a result of the vast disparities from jurisdiction to jurisdiction, Mississippians now face a bewildering array of policies governing the use of BWCs, and the privacy concerns that accompany the retention and disclosure of personally identifiable data acquired through their use. It is reckless to have varying policies from community to community. Too much is at stake. There are grave implications for constitutionally protected rights.



While some individual policies do a better job in addressing these principles than others, as a whole, the 65 local agency BWC policies reviewed fail to ensure that BWCs are deployed in a way that promotes transparency, accountability, and trust.

There are key gaps between policy and principle that threaten individual liberty. For instance:

- Zero policies require LEOs notify individuals that they are being recorded.
- Less than 20% of policies require LEOs deactivate BWCs if a resident requested deactivation as a condition of consenting to the LEOs' entry into a residence.
- Zero of the 65 policies give apparent victims of domestic violence the authority to require deactivation during the interview.
- Most of the policies do not lift the activation of BWCs on school settings.
- Most of the policies do not allow for subjects of the BWC footage the right to review the footage. The others either do not address the issue, only allow access if it would serve an investigation, or require the sheriff's or chief's authorization.

The ACLU's statewide model policy for BWCs presents a solution to these issues. Our policy strikes the right balance of accountability and transparency. While not mandating BWC use, our policy imposes privacy restrictions, training requirements, and guidance for the use, retention, and storage of recorded data. The model policy is attached as Appendix B.

Mississippians should not be expected to be familiar with dozens of different policies in order to understand policies governing the use of BWCs. Mississippians should not need to seek out and understand various, often complicated provisions that vary from one jurisdiction to the next. They should not be in fear that their deeply personal experiences and sensitive information will be needlessly exposed due to unbalanced retention schedules and public disclosure policies. Yet, based on the ACLU of Mississippi's review of the existing BWC policies across the state, these are legitimate concerns presently facing Mississippians. To address these gaps this report calls for state leadership to require statewide uniformity and standards that ensure rights are secure.

Policy Guideline No. 1 – The state must enact legislation that assures policies governing BWCs are uniform across Mississippi in each of four key areas: when and how they are activated by officers; how long the data they collect is kept; who has access to the data collected; and consequences of failure to comply with law or policy regarding their use.

The lack of uniformity in the 65 local policies reviewed by the ACLU of Mississippi makes clear that Mississippi needs to establish certain minimum mandatory criteria for policies governing the use of BWCs by agencies choosing to deploy them.

Policy Guideline No. 2 – The state must enact legislation assuring Mississippians that violations of federal and state laws and departmental policies governing the use of BWCs do not result in harm to individuals.

BWCs should not be a tool to engage in unchecked surveillance. To minimize the incentive for engaging in mass surveillance, legislation should be enacted that provides that any data collected or stored in contravention of federal or state law or in violation of departmental policy governing the use of BWCs (or any other surveillance technology) will be immediately destroyed and will not be admissible in any criminal or civil case.

Protections must be implemented to ensure that individuals are not the ones who face consequences if an LEO fails to follow department policy. For example, criminal defendants should have a rebuttable evidentiary presumption when they assert that exculpatory evidence was destroyed or not captured. In addition, individuals suing the government should have a rebuttable evidentiary presumption when they reasonably assert that evidence supporting their claim was destroyed or not captured.

Policy Guideline No. 3 – The state must enact legislation ensuring that personally identifiable data collected by BWCs is not disseminated to third parties for non-law enforcement purposes without the subject’s consent, except where such public disclosure is categorically determined to be in the public interest.

The purpose of policies governing the use of BWCs is to create more transparent, accountable, and trusted law enforcement agencies, and thus, policies that wholly disregard the privacy interests and liberty of Mississippians effectively negate the goal of BWCs.

Data collected by BWCs should not be exploited by agencies or third parties for commercial uses. Agencies that contract with third parties to maintain the data should ensure safeguards are in place to protect the data from unauthorized disclosure.

Legislation must be passed to unambiguously establish that data subjects the right to review any BWC collected data personally identifiable to them and prohibit third-parties from independently accessing, viewing, or altering the data unless they are acting as agents of a law enforcement agency with which the agency has contracted for data storage and maintenance. Personal identifiable information about data subjects should not be released without their consent unless it is necessary to assure transparency and accountability for the actions of law enforcement or the data subjects involved.

Our review of policies from 65 LEAs across the state found that local policies largely fail to comply with these guidelines. Although there are other issues related to BWCs, this report highlights key findings and recommendations in 3 areas of concern to ensure that deployment of BWCs is truly a win-win for both the police and the public:

- The need for policies that protect the liberty and privacy rights of Mississippians;
- The need for policies that protect civilians’ right to review footage of their own encounters and the public’s right to review footage of incidents that concern public interest; and
- The need for consequences for officers’ failure to comply with provisions of policies in order to ensure accountability in the use of BWCs.

BWCs can bring greater transparency to law enforcement interactions with the public. In order for BWCs to benefit officers and civilians alike, a statewide policy providing uniform guidelines is crucial to ensure effective use by the men and women who protect communities throughout the great state of Mississippi.



STRIKE THE RIGHT BALANCE

Introduction to the Analysis

Local and state agencies should decide whether to acquire and deploy BWCs with appropriate input and participation from the communities they serve. However, for BWCs to be an effective tool of community policing, state law requiring uniform standards must guide their use.

The following principles guide the statewide model policy in striking the right balance of privacy, public access, and accountability.

1. BWC policies should include protections of Mississippians' privacy rights and civil liberties.

- Officers must be required to notify people when the cameras are on and they are being recorded.
- Absent exigent circumstances, people who are being filmed should have the right to request that BWCs be turned off when the officer is entering their private residence without a warrant. The same right should be afforded to people when they are seeking to make an anonymous report of a crime or claim to be a victim of a crime. Their request should be filmed.

“...FOR BWCs TO BE AN EFFECTIVE TOOL OF COMMUNITY POLICING, STATE LAW REQUIRING UNIFORM STANDARDS MUST GUIDE THEIR USE.”

- Policies must prohibit use of body worn cameras to gather information about people surreptitiously. They should not be activated during public events for the purpose of surveilling those in attendance.
- Policies should include specific guidelines for recording children and in schools.



2. BWC policies should allow for subject access in all cases and public access in certain cases.

- Policies should provide access to the videos by the people recorded for as long as the government retains them.
- BWC policies should allow for public disclosure of videos on matters of public concern.

3. BWC policies should include provisions to ensure accountability.

- Generally, LEOs should record all interactions with the public, including all investigatory interactions and consensual encounters.
- Strict policies should guide how the recorded information is uploaded from the individual camera and stored so that videos cannot be manipulated, erased, or viewed before an officer writes an initial report. Officers should be allowed to watch the video after making their initial statements and/or completed their incident report, and then have the chance to supplement their initial statement and/or report.
- Failure to comply with the policies governing the use of the cameras and videos should result in appropriate disciplinary action.

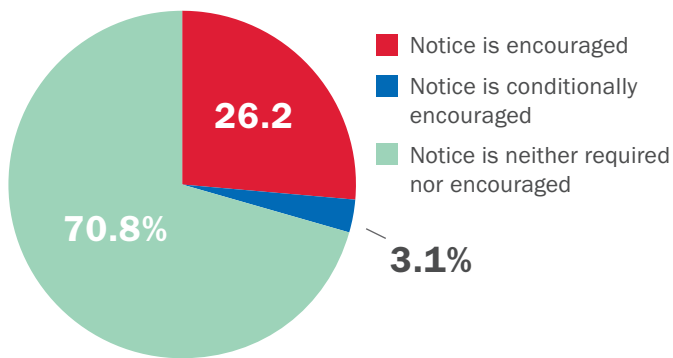


PROTECT THE LIBERTY, RIGHTS, AND PRIVACY OF MISSISSIPPIANS

The ACLU of Mississippi’s analysis found that current BWC policies—with limited exception—disregard and jeopardize the privacy rights of Mississippians.

Key Finding No. 1: All 65 BWC policies analyzed permit LEOs to record individuals without notification.

Are LEOs required to give notice?



- Seventeen policies provide that officers “should inform individuals that they are being recorded.”¹
- One policy only encourages LEOs to provide notice to residents,² and another policy only encourages LEOs “to advise persons they are being recorded if the advisement might gain compliance, deescalate a situation, or assist in the investigation.”³
- None of the 65 policies require officers to notify individuals that they are being recorded, and although 19 policies encourage notice in at least certain situations,⁴ the remaining 46 policies fail to even do that.
- Of the 46 policies that either fail to address the issue altogether or explicitly state there is no obligation to notify individuals, only three explicitly provide that LEOs have discretion to honor request.⁵

Recommendation No. 1 – BWC policies must require police to inform people that they are being filmed.

BWCs have the potential to record interactions and locations that members of the public may wish to remain private. Thus, it is important that BWC policies include clear notice and privacy protections. Mississippians deserve to know when BWCs are actively recording them.

“MISSISSIPPIANS SHOULD NOT FEAR THAT THEIR GOVERNMENT IS RECORDING THEIR PERSONAL CONVERSATIONS OR THEIR ENGAGEMENT IN FIRST AMENDMENT-PROTECTED ACTIVITIES.”

To protect the privacy of members of the public, the deployment of BWCs should be limited to uniformed LEOs and those non-uniformed officers involved in SWAT actions or other planned use of force and enforcement actions. This recommendation closely mirrors a recommendation made by the Police Executive Research Forum, which justified the importance of notice by pointing out that “[t]he mere knowledge that one is being recorded can help promote civility during police-citizen encounters.”⁶

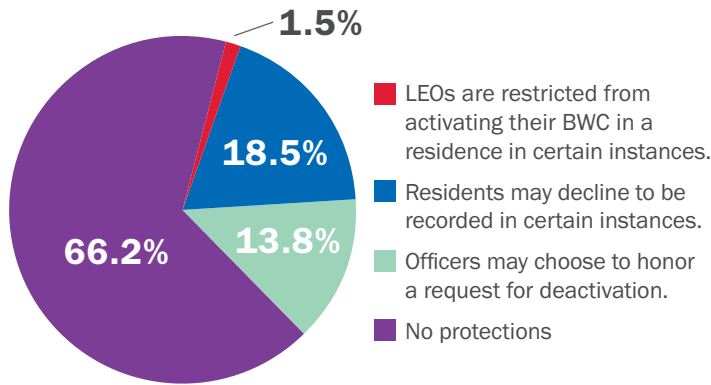
LEOs should also be required to notify individuals that they are being recorded by the BWC. This notification should be made as soon as reasonably possible following initiation of the encounter. The only exception to this mandate should be instances involving law enforcement pursuits or other exigent circumstances where the officer cannot reasonably be expected to provide immediate notice. In those cases, the officer should provide notice at the first reasonable opportunity.

Mississippians should not fear that their government is recording their personal conversations or their engagement in First Amendment-protected activities.

Key Finding No. 2: Individuals in private homes, apparent crime victims, and witnesses have little control over whether they are recorded.

In the privacy of your own home...

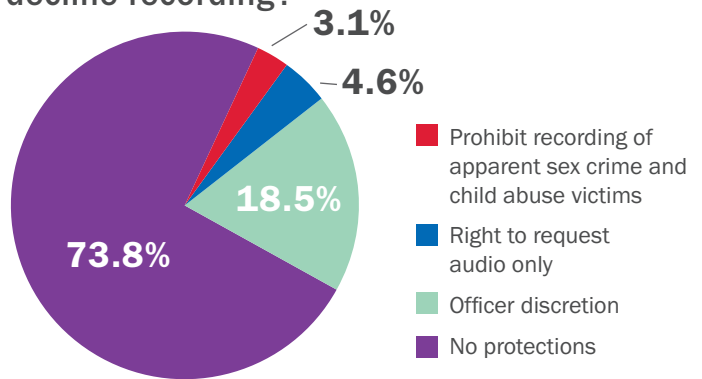
Does the policy prohibit use of BWCs in a private residence if the resident objects?



- Only twelve of 65 agencies limit the use of BWCs in a private residence if the resident objects, but each of those policies contain ambiguous language.⁷ Moreover, none of the policies include a mandatory notice requirement. Accordingly, residents may not know that the BWC is activated in the first place, and, therefore, may not know there is a need to exercise this right.
- Nine policies give the officer the discretion to deactivate the BWC at the resident’s request.⁸
- One policy prohibits recordings in residences unless the officer is there lawfully for a reason other than consent.⁹
- Forty-three policies either fail to address this issue or explicitly state that residents consenting to officers entering their home have no expectation of privacy and their requests do not have to be honored.

Protections for apparent crime victims...

Does a crime victim have the right to decline recording?

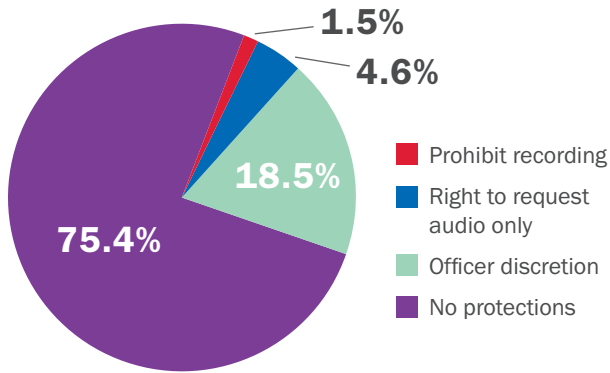


- None of the 65 policies give all apparent victims the authority to require deactivation during the interview.
- Two policies categorically prohibit recording apparent sex crimes and child abuse victims, but one of those policies explicitly requires the recording of apparent domestic violence victims.¹⁰
- Forty-eight policies do not allow any apparent victims to request deactivation.
- Only three of the 65 policies give apparent victims the right to have only the audio and not video recorded.¹¹ Of those three, none place a positive obligation on its officers to inform individuals that they are being recorded. Thus, even in the three jurisdictions with merely partial privacy protections, Mississippians may not know that they may exercise this right.
- Although 12 policies give the officer discretion to deactivate if requested,¹² one of those policies explicitly prohibits deactivation when interviewing an apparent victim of domestic violence.¹³



Privacy protections for witnesses...

Does an anonymous witness have the right to decline recording?



Although several policies prohibit the recording of confidential informants, it is unclear whether the same protections are provided to witnesses who seek to maintain anonymity.

- One policy arguably prohibits officers from recording “confidential sources.”¹⁴
- Forty-nine policies do not allow witnesses to require deactivation.
- Twelve policies give the officer discretion.¹⁵
- Three policies give the witness the right to require video not be recorded, but audio is still mandatory.¹⁶
- Although one policy allows anonymous sources to forego recording, notice is not required, and it is therefore unclear whether the witness will have the knowledge necessary to make the request.

Recommendation No. 2 – BWC policies must require police inform people that they may ask not to be filmed when police enter the privacy of their home (or other location where they have a reasonable expectation of privacy) without a warrant or when they are crime victims or witnesses who are seeking to provide information to police confidentially.

The importance of protecting the privacy of Mississippians should lead all agencies to mandate that people have a right to tell law

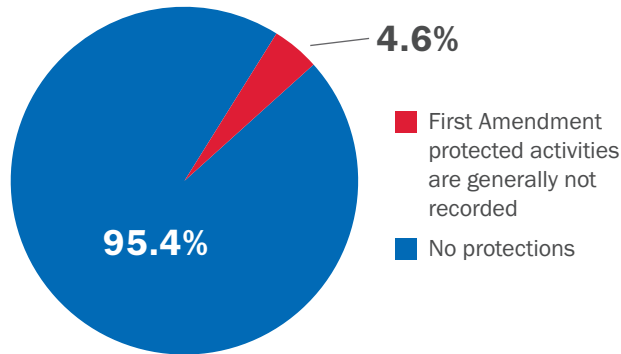
enforcement to turn cameras off in their homes and other private spaces, and that the police inform them of that right. Notice of the right not to be filmed should be given immediately upon entering a home or other location where the people have a reasonable expectation of privacy. LEOs should seek permission from the resident(s) to record inside the house or private location. If the permission is denied, the officer(s) should be required to abide by the individual’s request and cease recording. The request to record inside the house or other private location and any denial should be recorded on the BWC. The only exception to the requirement to turn BWCs off in private spaces upon request should be when entry is authorized by a search warrant or exigent circumstances justifying a warrantless search, or when after notice of both the right to refuse a search and to prohibit recording, the individual consents to the search and the recording.

BWC policies should protect the privacy of crime victims and persons seeking to report a crime or assist in a law enforcement investigation anonymously. LEOs with BWCs should be required to ask a crime victim or person seeking to remain anonymous, as soon as practicable, if they wish to have the BWC deactivated. If the answer is yes, then the law enforcement officer should immediately deactivate the BWC. The request to deactivate the camera should be recorded by the BWC.



Key Finding No. 3: The vast majority of agencies using BWCs fail to safeguard First Amendment protected activity from potential surveillance.

Does the policy prohibit recording of First Amendment protected activities?



- Only two agencies provide explicit prohibitions in their policies against the use of BWCs to record First Amendment-protected activities.¹⁷
- One policy states that the protests will not affect policy/procedure unless the commanding officer decides otherwise.¹⁸
- The remaining 62 agencies fail to include language relevant to protecting this right.

“ THE PURPOSE OF BODY-WORN CAMERAS IS TO SERVE AS A CHECK AND BALANCE ON THE ENORMOUS POWER THAT SOCIETY CONFERS ON LEOs. ”

Recommendation No. 3 – BWC policies must prohibit the use of BWCs for mass video and audio surveillance and when people are engaging in activities protected by the First Amendment.

Law-abiding residents should not fear that their government is recording First Amendment-protected activities, such as political protests or faith services. If misused, BWCs can put this

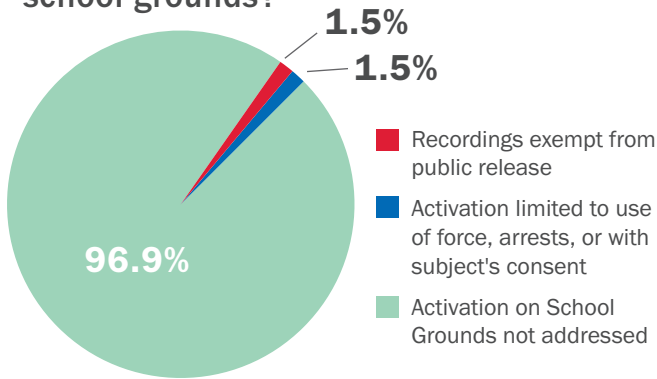


right in jeopardy. The U.S. Supreme Court has said private membership organizations cannot be compelled to turn over their membership lists to the government,¹⁹ but BWCs could give law enforcement the ability to make an end run around this protection. Thus, policies should prohibit the use of BWCs to conduct general surveillance at public gatherings.

The purpose of BWCs is to serve as a check and balance on the enormous power that society confers on LEOs, including the power to arrest and even use deadly force in some circumstances—a power that has unfortunately been abused far too many times. Mississippians do not support the acquisition and deployment of BWCs to serve as intelligence gathering tools helping police collect information on people exercising their rights. Even if video was collected without any intent to gather intelligence on a local mosque or political rally, the possibility that LEOs or other government actors would use the recordings in the future, apply facial recognition software, or use it for other, nebulous “intelligence” purposes remains. In many communities, there are serious concerns--based on a longstanding history of government surveillance of religious and political minorities--that instead of being a tool for much-needed police oversight, BWCs could become just another surveillance device. Therefore, BWC policies should prohibit the use of BWCs to gather intelligence information during First Amendment-protected activities if the activity is unrelated to a call for service or other interaction between a law enforcement officer and member of the public in a public space.

Key Finding No. 4: Only two agencies surveyed explicitly referenced the use of BWCs on school grounds.

Does the policy cover recording on school grounds?



- Only two agencies discuss the use of BWCs on school grounds, and of those, only one agency actually limits the activation of BWCs on school grounds.²⁰
- The only other agency to address the concerns raised by BWCs on school grounds—rather than limiting BWC activation on school grounds—exempts recordings in the school setting from public release.²¹
- The remaining 63 agencies fail to address activation on school grounds.

Recommendation No. 4 – BWC policies should recognize the heightened privacy interests of children and restrict use of BWCs on primary and secondary school grounds. BWCs should be activated only when law enforcement is engaged in the physical restraint or other use of force against a student.

The over-reliance by Mississippi’s public schools on law enforcement and the courts to correct student misbehavior makes the need to restrict the use of BWCs on school grounds that much more vital. LEOs acting in their official capacity should not be present on elementary or secondary school grounds unless responding to a real and imminent threat of harm to individuals on school property.



Mississippi’s public schools should focus their finite resources on evidence-based solutions to school discipline issues, and not on increasing the number or role of school safety and school resource officers. Unless a situation presents a real and imminent harm to students, parents, school faculty or staff, students should not encounter LEOs who have the power to interrogate, arrest, and use force against them.

Unfortunately, in many school systems throughout the state, students are exposed to law enforcement on a regular basis, either through the establishment of a school resource officer (SRO) program or the use of local law enforcement to police student misbehavior. The ACLU of Mississippi opposes the over-reliance of law enforcement in primary and secondary schools, especially given the inadequate training required under state law. However, BWC policies should ensure that any officer deployed to a primary or secondary school must activate their BWC for each encounter with a student that involves physical restraint or other use of force upon a student. If the restraint or use of force is not reasonably anticipated, the videotaping should begin as soon as reasonably possible after it begins.

BWC policies should prohibit the use of BWCs as a tool for law enforcement to routinely videotape outside of such situations. BWCs should not be used to conduct general surveillance in schools or at school activities or to record any non-criminal conduct by students, teachers, or parents in school or at school activities.

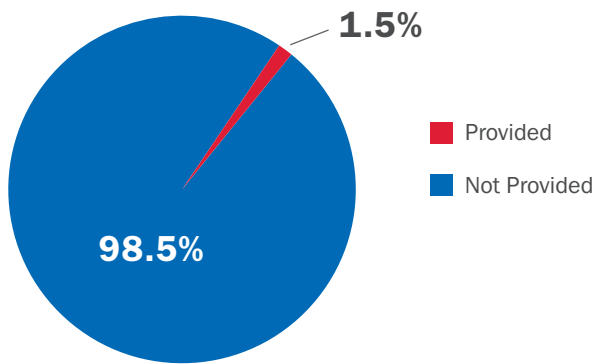


PROTECT THE PUBLIC'S RIGHT TO KNOW

The policies governing the collection and dissemination of personally identifiable data using BWCs should respect both the individual right of privacy of the data subject and the right of the public to access public records.

Key Finding No. 5: Local policies include no provisions guaranteeing data subjects access to video in which they appear.

Are individuals afforded the right to review recordings in which they appear?



- Only one policy gives people who are subjects of recordings the right to review the footage.²²
- Three agencies allow citizens to review footage only if it would serve an investigative purpose, such as identifying a suspect.²³
- The remaining 61 agencies fail to include any specific language ensuring that individuals recorded by BWCs can access the data.

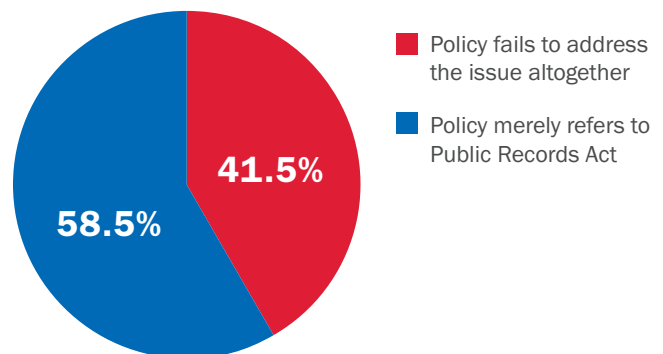
Recommendation No. 5 – BWC policies must provide that individuals who are filmed have a right to view any video on which they appear as long as the law enforcement agency or its agents maintain the video.

Individuals recorded by BWCs should have access to the data for so long as it is maintained by a public agency. Where copies

of such videos would reveal the identities of other private individuals, Mississippi law should be amended, if necessary, to assure that the public agency providing the copies redacts such personally identifiable information before providing the video where appropriate under the circumstances. Individuals who are the subjects of BWC videos should have the authority to permit the disclosure of the data to their attorneys and to any other third party so long as the identities of any other private individuals are protected by video redaction.

Key Finding No. 6: None of the policies explicitly provide that recordings of events of major public importance, such as an officer-involved shooting, will be released to the public.

What data is available to the public and when?



- Thirty-eight policies state that public access can be requested through public records requests;²⁴ however, these policies fail to clarify disclosure issues that may be unique to data collected via BWC. Instead, they rely on vague, boilerplate language.²⁵
- Twenty-seven policies make no clear reference to a process for public access to BWC data.²⁶

Recommendation No. 6 – BWC policies should allow for public disclosure of videos on matters of public concern.

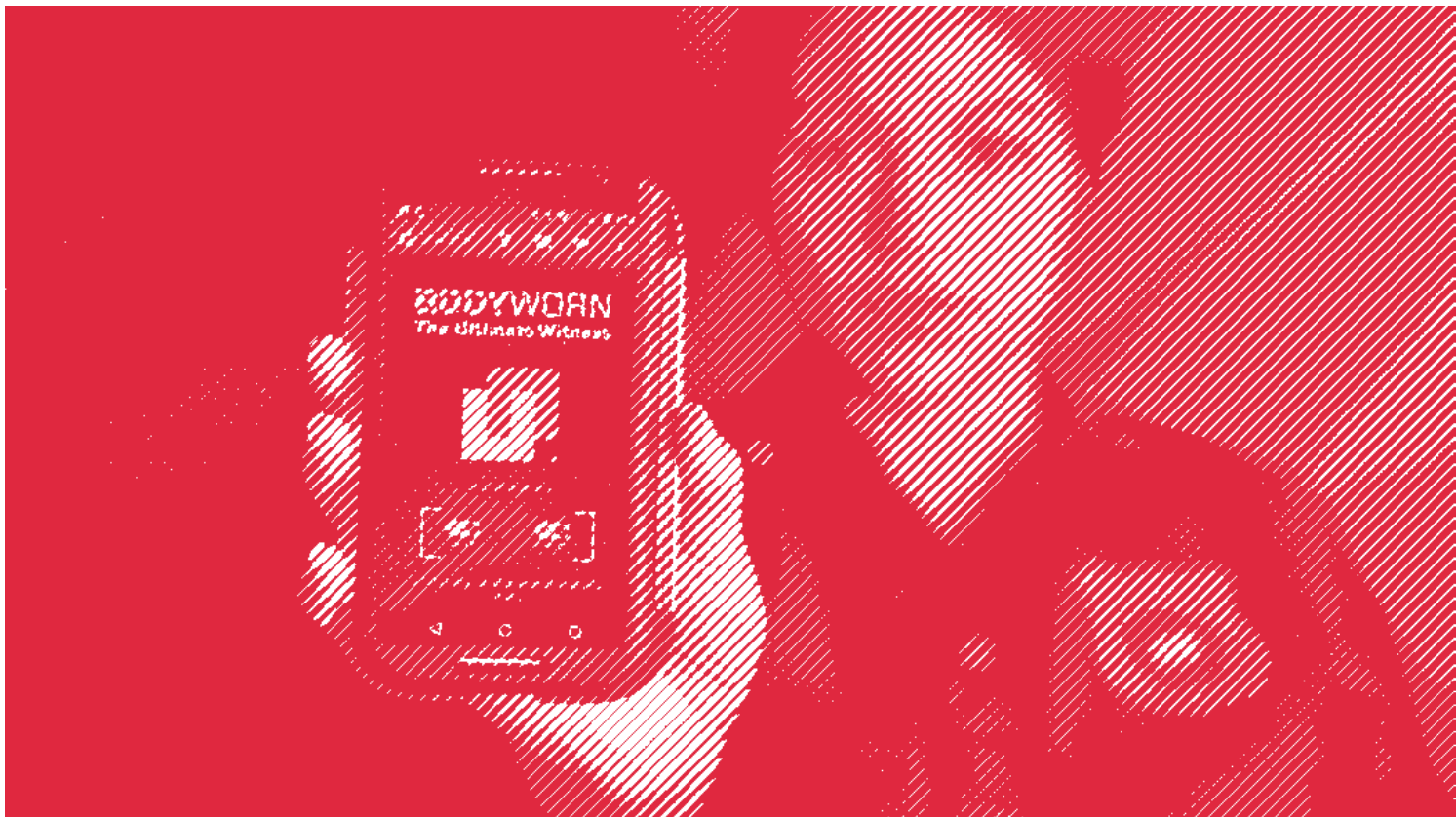
As the Police Executive Research Forum noted, “[a] police department that deploys BWCs is making a statement that it believes the actions of its officers are a matter of public record.”²⁷ Thus, unless prohibited by the Public Records Act, law enforcement should err on the side of disclosure.

While law enforcement agencies should embrace disclosure, they should do so in a way that minimizes invasiveness. Any video not part of an active investigation should be made available for public disclosure if consent of subjects involved is granted. Law enforcement agencies should redact, when feasible, the identity of subjects recorded. Unflagged and unredacted data should not be publicly disclosed unless consent of all subjects involved is granted. State law and local policies should prohibit the disclosure of data for any commercial purpose.

Local elected officials should ensure that agencies adopt policies that they will not invoke the “investigatory records” exception to the Public Records Act for videos where officer misconduct is involved, as the general principles behind that exception do not apply in such instances.²⁸

“...ACCESS TO DATA SHOULD BE DEFINED IN STATE LAW SO THAT POLICIES ARE UNIFORM ACROSS THE STATE.”

As discussed in the Executive Summary Policy Guidelines 1-3, access to data should be defined in state law so that policies are uniform across the state. The right to see personally identifiable data maintained by government should not vary jurisdiction by jurisdiction. The law should compel disclosure rather than allow it.²⁹



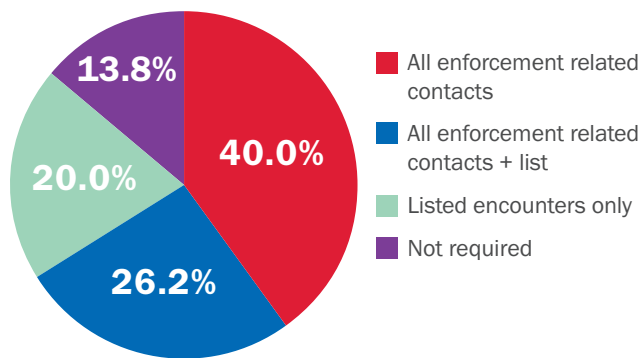


ENSURE ACCOUNTABILITY

The purpose of BWCs is to promote accountability. As such, it is necessary that law enforcement policies include mechanisms that ensure sufficient discipline or other actions when an officer fails to follow the department's policy. These accountability policies should be uniform across the state for the protection of both officers and the public alike.

Key Finding No. 7: Local policies do not provide clear expectations for when BWCs must be activated.

When are body cameras activated?



- Twenty-six policies succinctly require activation for all enforcement related contacts.³⁰
- Thirteen policies offer a laundry list of situations in which officers are expected to turn on their cameras.³¹
- Seventeen policies require activation for all enforcement related contacts, but go on to list specific encounters that require BWC activation.³²
- Nine policies appear only to suggest activation.³³

Recommendation No. 7 – BWC policies must be explicit and mandatory regarding activation of BWCs by individual officers at the inception of every law enforcement encounter with a civilian.

A basic principle of any effective BWC policy is the assurance that officers cannot conduct “field edits” of the recordings.



The public should be confident that video and audio collected via BWCs present the entire interaction between law enforcement and the civilian, and not just the part that law enforcement want you to see. The best way to ensure this is to provide LEOs with clear directives regarding who must wear BWCs, when they must activate the BWC, and for what duration must the BWC stay activated.

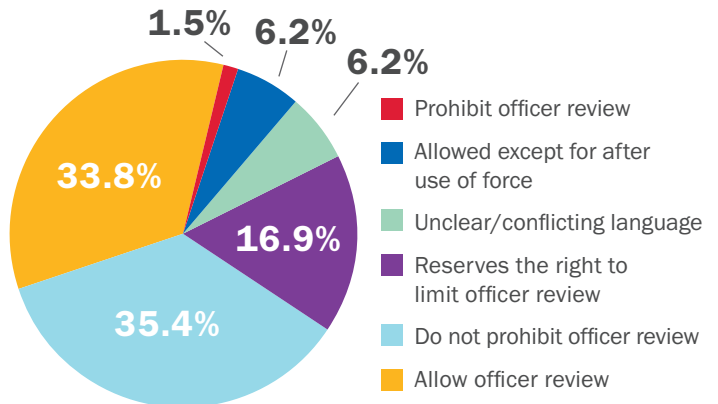
To ensure public trust and an accurate depiction of events, BWC policies must ensure that LEOs cannot determine which encounters to record and which to not record. Allowing law enforcement to “edit on the fly” by turning the BWCs on and off at will would remove the utility of BWCs as an accountability mechanism.³⁴

Providing a laundry list of situations leaves out or is ambiguous with regard to many circumstances where the cameras should be turned on. The laundry list approach is one we advise agencies to avoid.³⁵ The policy should simply and definitively require activation whenever a law enforcement officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a law enforcement officer and a member of the public.



Key Finding No. 8: By not limiting officers' access to recordings, current policies adopted by a number of local law enforcement agencies risk undermining the law enforcement-community trust that BWCs are supposed to create.

Are officers allowed to review the video before writing their reports?



Policies should mandate the activation of BWCs whenever a law enforcement officer is responding to a call for service or at the initiation of any other law enforcement or investigative interaction between a law enforcement officer and a member of the public. It should also be mandated that the BWC remain active until the interaction has concluded and the law enforcement officer has left the scene. The only exception to this mandate should be instances when an immediate threat to the law enforcement officer's life or safety makes activating the camera impossible or dangerous. When this exception arises, the law enforcement officer should activate the camera as soon as reasonably possible.

For BWCs to function as a tool to enhance transparency, accountability, and public trust in law enforcement, community members must be assured that the BWCs provide an honest, unedited picture of law enforcement-community encounters. As the ACLU of Mississippi found, most local agencies cannot offer that assurance. Accordingly, this issue should be resolved by enacting a state statute that applies the same rule across all agencies that choose to deploy BWCs.

- Only one policy prohibits officers from reviewing their recordings before completing an incident report.³⁶
- Twenty-three agencies utilize a policy that provides no clarity on whether officers can view BWC data prior to submitting their report.³⁷
- Eleven agencies reserve the right to limit or restrict an officer from viewing the video file if the officer is suspected of wrongdoing or involved in an officer-involved shooting or other serious use of force.³⁸
- Four other agencies' policies contain conflicting or ambiguous language, making it impossible to determine whether pre-report review is allowed.³⁹
- Twenty-six agencies include a clear, special right for officers to view BWC data prior to the completion of their report.
 - » Four policies prohibit officer review in limited circumstance.⁴⁰
 - » The remaining 22 policies provide an unfettered special right to officers.⁴¹

Recommendation No. 8 – BWC policies must prohibit officers from reviewing BWC video before writing their reports of incidents in which they are involved that involve use of force or alleged misconduct.

Allowing LEOs to view their BWC data prior to submitting their report regarding a use of force or other misconduct incident risks undermining fairness of the review or investigatory process and harms law-enforcement-community trust. Enabling officers to review the video data before submitting their report would provide them with an opportunity to amend their story to fit the facts as witnessed on the BWC, including the ability to omit facts that were not caught on the BWC.

There is no room for special treatment when we are talking about justice and accountability.

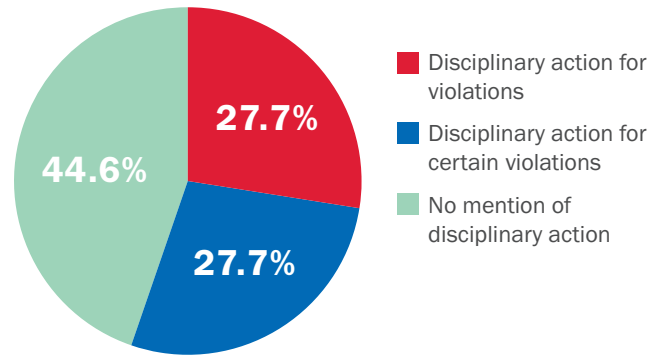
Not only would providing officers with a special right to view the BWC data undermine the basic trust and accountability values that argue for introduction of BWCs, but it also creates an opportunity for an unintentional shifting of one’s memory.

This system of special rights – rights not afforded to other witnesses – has no place in Mississippi’s justice system.



Key Finding No. 9: More than half of the local agencies studied do not provide any mechanism for holding officers who violate BWC policies accountable.

Are there disciplinary measures for failing to adhere to BWC policy?



- Twenty-nine policies lack any mention of accountability mechanism for officers who fail to comply with the BWC policy.⁴²
- Three policies distinguish minor violations and allow supervisors to treat such minor infractions as training opportunities rather than grounds for disciplinary action.⁴³
- Fifteen policies provide that there may be consequences for specific policy violations.⁴⁴

Recommendation No. 9 – BWC policies must provide that the failure of an officer to comply with policies regarding the use of BWCs will result in appropriate discipline, up to and including termination.

Officers who fail to follow established policies should not benefit because they work in a jurisdiction that lacks an accountability mechanism. BWC policies must include disciplinary mechanisms that deter noncompliance. For example, LEOs who fail to activate their BWCs must be held accountable for their failure.⁴⁵

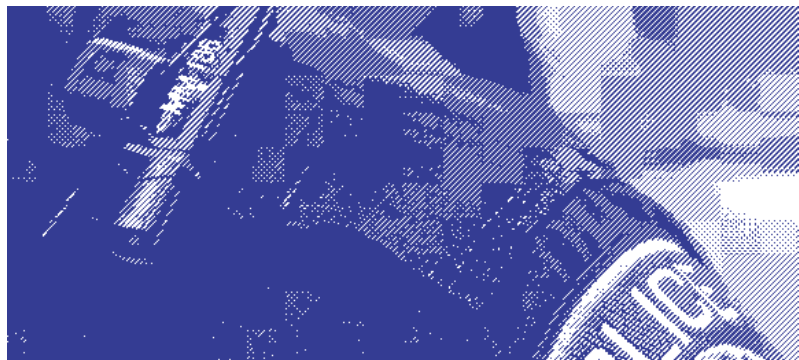


CONCLUSION

The deployment of body-worn cameras can be a “win-win” for both the public and police if there is a balance between transparency, accountability, and privacy protections. As with many technological advances in policing, the deployment of this technology without proper safeguards and the right policies in place can turn a tool meant to promote police accountability into a tool that expands the surveillance state, violates individual privacy rights, and further erodes trust between law enforcement and the community.

“ HAVING UNIFORMED GUIDELINES IN PLACE BEFORE AN EMOTIONALLY-CHARGED, HIGH-PROFILE EVENT OCCURS WILL ALLOW LAW ENFORCEMENT, THE PUBLIC, AND THE MEDIA TO KNOW IN ADVANCE HOW ANY RECORDING FROM A BWC WILL BE HANDLED. ”

As a whole, the 65 BWC policies that the ACLU of Mississippi analyzed fail to ensure that BWCs are deployed in a way that promotes transparency, accountability, and trust. The policies often do not articulate clearly what actions and events should be filmed, and they miss the mark when it comes to protecting the privacy of individuals in sensitive situations. They do not properly safeguard footage from inappropriate sharing. They fail to provide ordinary citizens access to their own data to which they are entitled. Finally, they lack mechanisms to hold officers accountable for intentionally or unintentionally violating policy.



Agencies offer a diverse set of policies leaving Mississippians without a clear understanding of when and how their interactions with law enforcement may be recorded or their data disclosed. Without the establishment of minimum standards uniformly applied across the state, Mississippians cannot be assured that the deployment of body-worn cameras by state or local agencies is truly a win-win for the police and the public alike. Unfortunately, the local policies currently in place are insufficient to get Mississippi to “win-win” status. Uniform standards for policies are critical to ensuring accountability, improving policing, and building trust.

Having uniformed guidelines in place before an emotionally-charged, high-profile event occurs will allow law enforcement, the public, and the media to know in advance how any recording from a BWC will be handled. Following pre-set procedures will avoid allegations that law enforcement officials are inappropriately withholding information and will increase public trust in law enforcement in a time of potential crisis. Additionally, procedures regarding the use of BWCs by law enforcement will allow members of the public to understand what their rights are regarding a recording in which they are a subject.

There is little doubt that BWCs can be used effectively as a tool of community policing, but only if we pass laws that balance police protection and citizen privacy, and promotes transparency and accountability.

To access body-worn camera policies by locality, please visit www.aclu-ms.org.

APPENDIX A: METHODOLOGY

Between October 2016 and March 2017, the ACLU of Mississippi sent requests under the Public Records Act to 146 law enforcement agencies asking about current deployment of BWCs and requesting any policies or regulations in place to guide their use. We received responses from 147 agencies, which were comprised of all 82 sheriff's departments and 65 police departments. Because there are nearly 300 municipalities in the state, we limited the records requests to police departments serving jurisdictions with a population of more than 5,000 residents.⁴⁶

The ACLU of Mississippi analyzed policies from 65 local agencies in Mississippi (Appendix C). Many agencies reported they had acquired BWCs, but had no policies in place.⁴⁷ At least ten agencies have not only acquired but have deployed BWCs without a written policy in place.⁴⁸ Others said they had no BWCs and no plans to deploy them. Some agencies initially provided no response to our PRA request. After filing complaints with the Mississippi Ethics Commission against 27 local governments, we received responses and voluntarily withdrew the complaints. This report undoubtedly represents the most complete and reliable picture of what policies are like throughout the state.

To ensure an accurate and consistent review of the BWC policies, the ACLU of Mississippi developed the following twelve questions, which served as the baseline for reviewing each policy:

1. Does an officer have to give notice of recording?
2. Does the policy prohibit use of BWCs in a private residence if the resident objects?
3. Does a crime victim have the right to decline recording?
4. Does an anonymous witness have the right to decline recording?
5. Does the policy prohibit surreptitious recording?
6. Does the policy prohibit recording of First Amendment protected activities?
7. Are individuals afforded the right to review recordings in which they appear?
8. Does the policy cover recording on school grounds?
9. When is data available to the public?
10. When are body cameras activated?
11. Are officers allowed to review the video before writing their reports?
12. Are there disciplinary measures in response to officer/agent/employee failing to adhere to BWC policy? Any other measures?

In its review, the ACLU of Mississippi only considered policies that were in effect at the time they were submitted to the ACLU of Mississippi. On information and belief, there are several agencies throughout the state that either have BWCs or are in the process of acquiring them but have not promulgated policy governing their use.

APPENDIX B: ACLU OF MISSISSIPPI MODEL BODY-WORN CAMERA POLICY

Law Enforcement Agency (LEA) Standard Operating Procedures

Policy Number 1.0

Issue Date: _____

The following Policy shall govern the use of body-worn cameras by the [LEA].

1.02 Purpose

(a) The [LEA] shall adopt the use of body cameras by police officers to: improve community relations; foster better accountability for the actions of its personnel; deter inappropriate conduct by police officers and by members of the public; capture digital audio-video evidence for criminal, civil, and traffic-related court cases; be used as a training tool for officer safety and best practices; and assist in the assessment of contacts between officers and the public by reviewing procedures and interpersonal actions. All provisions laid out in this rule shall be reflected in all related rules and procedures of the Department. This [Policy/Procedure] is issued to provide officers and supervisors with guidelines for the use of body cameras; the management, retention, storage and retrieval of, and access to, recorded media captured by body cameras; the handling of evidence derived from body cameras; as well as sanctions for failing to abide by these procedures.

(b) Any future policy or other guidance regarding body cameras, their use, or the video footage therefrom that is adopted by [this LEA] shall be made publicly available on the [city/county/LEA] website.

1.03 Use of Authorized Equipment by Authorized Personnel

Only [LEOs] with the authority to conduct searches and make arrests shall be permitted to wear a body camera. Such body cameras shall be worn in a location and manner that maximizes the camera's ability to capture video footage of the officer's activities.

1.04 Mandated Recordings

(a) Both the video and audio recording functions of the body camera shall be activated whenever a [LEO] is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between a [LEO] and a member of the public, except that when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity to do so. The body camera shall not be deactivated until the encounter has fully concluded and the [LEO] leaves the scene.

(b) A [LEO] who is wearing a body camera shall notify the subject(s) of the recording that they are being recorded by a body camera as close to the inception of the encounter as is reasonably possible.

1.05 Consensual Recordings

(a) Notwithstanding the requirements of § 1.04(a):

(1) Prior to entering a private residence without a warrant or in non-exigent circumstances, a [LEO] shall ask the occupant if the occupant wants the officer to discontinue use of the officer's body camera. If the occupant responds affirmatively, the [LEO] shall immediately discontinue use of the body camera;

(2) When interacting with an apparent crime victim, a [LEO] shall, as soon as practicable, ask the apparent crime victim, if the apparent crime victim wants the officer to discontinue use of the officer's body camera. If the apparent crime victim responds affirmatively, the [LEO] shall immediately discontinue use of the body camera; and

(3) When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, a [LEO] shall, as soon as practicable, ask the person seeking to remain anonymous, if the person seeking to remain anonymous wants the officer to discontinue use of the officer's body camera. If the person seeking to remain anonymous responds affirmatively, the [LEO] shall immediately discontinue use of the body camera.

(e) All [LEOs] offers to discontinue the use of a body camera made pursuant to § 1.05(a), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.

1.05 Prohibited Recordings

(a) Body cameras shall not be used surreptitiously.

(b) Body cameras shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a [LEO] and a member of the public.

(c) [LEO]s shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, except when responding to an imminent threat to life or health.

1.06 Use, Processing, Review, Retention and Release of Digital Data

(a) Body camera video footage shall be retained by the [LEA] agency that employs the officer whose camera captured the footage, or an authorized agent thereof, for six (6) months from the date it was recorded, after which time such footage shall be permanently deleted.

(1) During the six (6) month retention period, the following persons shall have the right to inspect the body camera footage:

(A) Any person who is a subject of body camera video footage, and/or their designated legal counsel;

(B) A parent of a minor subject of body camera video footage, and/or their designated legal counsel;

- (C) The spouse, next of kin or legally authorized designee of a deceased subject of body camera video footage, and/or their designated legal counsel;
- (D) A [LEO] whose body camera recorded the video footage, and/or their designated legal counsel, subject to the limitations and restrictions in this Act;
- (E) The superior officer of a [LEO] whose body camera recorded the video footage, subject to the limitations and restrictions in this Act; and
- (F) Any defense counsel who claims, pursuant to a written affidavit, to have a reasonable basis for believing a video may contain evidence that exculpates a client.

(2) The right to inspect subject to § 1.06(a)(1) shall not include the right to possess a copy of the body camera video footage, unless the release of the body camera footage is otherwise authorized by this Act or by another applicable law.

(3) When a body camera fails to capture some or all of the audio or video of an incident due to malfunction, displacement of camera, or any other cause, any audio or video footage that is captured shall be treated the same as any other body camera audio or video footage under the law.

(b) Notwithstanding the retention and deletion requirements in § 1.06(a):

(1) Video footage shall be automatically retained for no less than three (3) years if the video footage captures an interaction or event involving:

(A) Any use of force; or

(B) An encounter about which a complaint has been registered by a subject of the video footage.

(2) Body camera video footage shall also be retained for no less than three (3) years if a longer retention period is voluntarily requested by:

(A) The [LEO] whose body camera recorded the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;

(B) Any [LEO] who is a subject of the video footage, if that officer reasonably asserts the video footage has evidentiary or exculpatory value;

(C) Any superior officer of a [LEO] whose body camera recorded the video footage or who is a subject of the video footage, if that superior officer reasonably asserts the video footage has evidentiary or exculpatory value;

(D) Any [LEO], if the video footage is being retained solely and exclusively for police training purposes;

(E) Any member of the public who is a subject of the video footage;

(F) Any parent or legal guardian of a minor who is a subject of the video footage; or

(G) A deceased subject's spouse, next of kin, or legally authorized designee.

(c) To effectuate subsections (b)(2)(E), (b)(2)(F) and (b)(2)(G), any member of the public who is a subject of video footage, the parent or legal guardian of a minor who is a subject of the video footage, or a deceased subject's next of kin or legally authorized designee, shall be permitted to review the specific video footage in question in order to make a determination as to whether they will voluntarily request it be subjected to a three (3) year retention period.

(d) All video footage of an interaction or event captured by a body camera, if that interaction or event is identified with reasonable specificity and requested by a member of the public, shall be provided to the person or entity making the request in accordance with the procedures for requesting and providing government records set forth in the Mississippi Public Records Act.

(1) Notwithstanding the public release requirements in §1.06(d), the following categories of video footage shall not be released to the public in the absence of express written permission from the non-[LEO] subject(s) of the video footage:

(A) Video footage not subject to a minimum three (3) year retention period pursuant to subsection (j); and

(B) Video footage that is subject to a minimum three (3) year retention period solely and exclusively pursuant to subsection §1.06(b)(1)(B) or (b)(2).

(2) Notwithstanding any time periods established for acknowledging and responding to records requests in the Miss. Public Records Act, responses to requests for video footage that is subject to a minimum three (3) year retention period pursuant to subsection §1.06 (b)(1)(A), where a subject of the video footage is recorded being killed, shot by a firearm, or grievously injured, shall be prioritized and the requested video footage shall be provided as expeditiously as possible, but in no circumstances later than five (5) days following receipt of the request.

(3) Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person, including the tone of the person's voice, provided the redaction does not interfere with a viewer's ability to fully, completely, and accurately comprehend the events captured on the video footage.

(A) When redaction is performed on video footage pursuant to subsection §1.06(d) (3), an unedited, original version of the video footage shall be retained pursuant to the requirements of subsection§1.06(a) and §1.06(b).

(B) Except pursuant to the rules for the redaction of video footage set forth in subsection §1.06(d)(3) or where it is otherwise expressly authorized by this policy, no other editing or alteration of video footage, including a reduction of the video footage's resolution, shall be permitted.

(4) The provisions governing the production of body camera video footage to the public in this Act shall take precedence over all other state and local laws, rules, and regulations to the contrary.

(e) Body camera video footage will not be withheld from the public on the basis that it is an investigatory record where any person under investigation or whose conduct is under review is an officer or employee of [LEA] and the video footage relates to that person's on-the-job conduct.

(f) [LEA] shall not publicly disclose, release, or share body camera video footage unless:

(1) Doing so is expressly authorized pursuant to this policy or another applicable law; or

(2) The video footage is subject to public release pursuant to subsection §1.06(d), and not exempted from public release pursuant to subsection §1.06(d)(1).

(g) No [LEO] shall review or receive an accounting of any body camera video footage that is subject to a minimum three (3) year retention period pursuant to subsection §1.06(b)(1) prior to completing any required initial reports, statements, and interviews regarding the recorded event, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.

(h) Video footage that is not subject to a minimum three (3) year retention period shall not be:

(1) Viewed by any superior officer of a [LEO] whose body camera recorded the footage absent a specific allegation of misconduct; or

(2) Subjected to facial recognition or any other form of automated analysis or analytics of any kind, unless:

(A) A judicial warrant providing authorization is obtained;

(B) The judicial warrant specifies the precise video recording to which the authorization applies; and

(C) The authorizing court finds there is probable cause to believe the video footage contains evidence that is relevant to an ongoing criminal investigation.

(i) Video footage shall not be divulged or used for any commercial or other non-law enforcement purpose.

(r) Should this [LEA] authorize a third-party to act as its agent in maintaining body camera footage, the agent shall not be permitted to independently access, view, or alter any video footage, except to delete videos as required by law or agency retention policies.

1.07 Disciplinary Action

(a) Should any officer, employee, or agent fail to adhere to the recording or retention requirements contained in this chapter, intentionally interfere with a body camera's ability to accurately capture video footage, or otherwise manipulate the video footage captured by a body camera during or after its operation, appropriate disciplinary action shall be taken against the individual officer, employee or agent;

(b) The disciplinary action requirement in subsection (s) may be overcome by contrary evidence or proof of exigent circumstances that made compliance impossible.

(c) Officers of this [LEA] will not facilitate or support the use of any body camera video footage recorded in contravention of this policy or any other applicable law as evidence by any government entity, agency, department, prosecutorial office, or any other subdivision thereof in any criminal or civil action or proceeding against any member of the public.

1.08 Definitions

(a) As used in this Act:

- (1) “[LEO]” shall mean any person authorized by law to conduct searches and effectuate arrests and who is employed by the state, by a state subsidiary, or by a county, municipal, or metropolitan form of government.
- (2) “Subject of the video footage” shall mean any identifiable [LEO] or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body camera recording, and shall not include people who only incidentally appear on the recording.
- (3) “Use of force” shall mean any action by a [LEO] that (A) results in death, injury, complaint of injury, or complaint of pain that persists beyond the use of a physical control hold, or (B) involves the use of a weapon, including a personal body weapon, chemical agent, impact weapon, extended range impact weapon, sonic weapon, sensory weapon, conducted energy device, or firearm, against a member of the public, or (C) involves any intentional pointing of a firearm at a member of the public.
- (4) “Video footage” shall mean any images or audio recorded by a body camera.

This Policy and the procedures herein shall take effect [DATE]

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APPENDIX C: LOCAL LAW ENFORCEMENT AGENCIES' BWC POLICIES ANALYZED BY ACLU OF MISSISSIPPI

Aberdeen Police Department
Adams County Sheriff's Department
Batesville Police Department
Bay Saint Louis Police Department
Biloxi Police Department
Booneville Police Department
Brookhaven Police Department
Byram Police Department
Calhoun County Sheriff's Department
Chickasaw County Sheriff's Department
Choctaw County Sheriff's Department
Claiborne County Sheriff's Department
Clarksdale Police Department
Clay County Sheriff's Department
Cleveland Police Department
Columbus Police Department
Crystal Springs Police Department
D'Iberville Police Department
Forest Police Department
Gautier Police Department
George County Sheriff's Department
Greenwood Police Department
Grenada Police Department
Gulfport Police Department
Hattiesburg Police Department
Holly Springs Police Department
Indianola Police Department
Jasper County Sheriff's Department
Kemper County Sheriff's Department
Kosciusko Police Department
Lauderdale County Sheriff's Department
Laurel Police Department
Lawrence County Sheriff's Department
Leake County Sheriff's Department
Long Beach Police Department
Louisville Police Department
Meridian Police Department
Moss Point Police Department
Nettleton Police Department
Ocean Springs Police Department
Oxford Police Department
Pearl Police Department
Pearl River County Sheriff's Department
Philadelphia Police Department
Picayune Police Department
Pike County Sheriff's Department
Pontotoc Police Department
Poplarville Police Department
Prentiss County Sheriff's Department
Scott County Sheriff's Department
Senatobia Police Department
Starkville Police Department
Stone County Sheriff's Department
Tate County Sheriff's Department
Tunica County Sheriff's Department
Tupelo Police Department
Vicksburg Police Department
Warren County Sheriff's Department
Waveland Police Department
Waynesboro Police Department
Webster County Sheriff's Department
West Point Police Department
Winona Police Department
Winston County Sheriff's Department
Yalobusha County Sheriff's Department

ENDNOTES

- 1 See responses provided to the ACLU of Mississippi by the Aberdeen Police Department, Booneville Police Department, Brookhaven Police Department, Byram Police Department, Forest Police Department, Greenwood Police Department, Holly Springs Police Department, Nettleton Police Department, Philadelphia Police Department, Pontotoc Police Department, Vicksburg Police Department, and West Point Police Department; Claiborne County Sheriffs' Department, Clay County Sheriffs' Department, Pike County Sheriffs' Department, Scott County Sheriffs' Department, and Stone County Sheriffs' Department.
- 2 See response provided to the ACLU of Mississippi by the George County Sheriff's Department.
- 3 See response provided to the ACLU of Mississippi by the Biloxi Police Department.
- 4 Supra, notes 1-3.
- 5 See e.g., The Batesville Police Department's policy provides that officers may provide notice. See also, responses provided to the ACLU of Mississippi by Adams County Sheriff's Department, Bay Saint Louis Police Department, available at and Gulfport Police Department.
- 6 Police Executive Research Forum, Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned, 40 (2014), available at <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.
- 7 Ten of the twelve policies provide, "In locations where individuals have a reasonable expectation of privacy, they may decline to be recorded unless the recording is being made in pursuant to an arrest or search of the residence or the individuals." See responses provided to the ACLU of Mississippi by the Nettleton Police Department, Batesville Police Department, Brookhaven Police Department, Greenwood Police Department, West Point Police Department, Waynesboro Police Department, available at and Pontotoc Police Department; Pike County Sheriff's Department, Stone County Sheriff's Department, and Clay County Sheriff's Department.

Tupelo's policy appears to provide this right unless the officer is responding to a call for service. Hattiesburg Police Department's policy appears to allow officers to deactivate BWCs even if the resident would otherwise prefer the interaction be recorded. ("In a residence, there is a heighten (sic) degree and expectation of privacy. If the resident wishes not to be recorded or discretion is being utilized by the officer, this request/discretion will be documented before the Body Worn Camera is deactivated")
- 8 The Bay Saint Louis and Crystal Springs Police Departments' policies provide that LEOs "shall take into account the overall circumstances, and what is the most beneficial to all involved, before deciding to honor the request."

The Columbus Police Department's and Chickasaw County Sheriff's Department's policies provide that LEOs "may deactivate in places where there is reasonable expectation of privacy or in circumstances where the [BWC] may prevent them from obtaining information in relation to an investigation."

The Aberdeen, Forest, and Philadelphia Police Departments' policies and the Yalobusha and Scott County Sheriffs' Departments' policies provide that LEOs "may evaluate the situation and when appropriate, honor the citizen's request."

- 9** See Biloxi Police Department's policy. The policy actually prohibits recording unless the officer is there in response to a call for service – a caveat that should be removed. If the call is about an emergency, that requirement allows lawful entry. If the caller is not calling about an emergency and the officer lacks lawful basis to enter the home other than consent, the officer should be required to honor a request not to record.
- 10** The Tupelo Police Department's policy provides that BWCs "shall not be used during Sex Crimes or Child Abuse investigations to include statements of victims, witnesses, and interactions with parents of victims," but it also provides that "[o]fficers responding to initial domestic violence calls will treat same as a mandated recording until the contact is concluded."

The Adams County Sheriff's Department's policy provides that "BWCs shall not be used during Sex Crimes or Child Abuse investigations to include statements of victims, witnesses, and interactions with parents," but it also provides that "domestic violence victims with serious injuries, such as strangulation injuries or injuries requiring hospitalization, are exceptions and their statements should be recorded if the victim is willing. Officers should also record the statements of children of domestic violence victims who are witnesses in these types of cases if the children are willing."

- 11** The Claiborne County Sheriff's Department's policy and the Holly Springs and Vicksburg Police Departments' policies provide that LEOs "should request on-camera consent from victims or witnesses prior to being interviewed on video. If the victim or witness refuses to give consent to video recording, and the visual appearance of the victim or witness is not required for evidence, the officer should position the victim or witness in such a way relative to the camera that the camera captures only audio, not video, recordings of the person making the statement."
- 12** See responses provided to the ACLU of Mississippi by the Aberdeen Police Department, Bay St. Louis Police Department, Biloxi Police Department, Chickasaw County Sheriff's Department, Columbus Police Department, Crystal Springs Police Department, Forest Police Department, George County Sheriff's Department, Hattiesburg Police Department, Philadelphia Police Department, Scott County Sheriff's Department, and the Yalobusha County Sheriff's Department
- 13** Although the Chickasaw County Sheriff's Department's policy provides that "personnel may deactivate [...] [d]uring interviews involving sexual assault victims," it also provides that BWCs shall be activated during "[a]ll domestic violence calls including suspect/victim interviews."
- 14** See response provided to the ACLU of Mississippi by the Hattiesburg Police Department ("Privileged conversations shall not be recorded when it is necessary to provide anonymity of a confidential source, during administrative conversations, or those involving law enforcement sensitive information.")

- 15** *Supra*, n. 13.

- 16** *Supra*, n. 12.
- 17** The Tupelo Police Department’s policy provides that “[a]s a general policy, BWC’s shall not be used to gather intelligence information. When there is reason to believe that a planned event has the potential for unlawful activity, the BWC shall be used to record and document evidence for prosecution.”
- The Adams County Sheriff’s Department’s policy provides that “[a]s a general policy, Department personnel should refrain from video recording or photographing peaceful demonstrations. When there is reason to believe that a planned event has the potential for unlawful activity, Commanding Officers should make the determination whether visual recording or photographing is appropriate. During demonstrations, officers should operate cameras in the buffering mode. If officers witness crimes occurring among the demonstrators and/or believe an arrest is likely, they should begin recording in the event mode.”
- 18** The Moss Point Police Department’s policy provides that “[d]uring crowd control, protest or mass arrest incidents Officers shall use their PDRD consistent with this policy unless otherwise directed by the Incident Commander. The Incident Commander shall document his/her orders in an appropriate report and provide the orders to all personnel.”
- 19** *National Association for the Advancement of Colored People v. Alabama*, 357 U.S. 449 (1958).
- 20** Tupelo Police Department’s policy provides that “BWC Event Mode should not be activated while on the grounds of any public, private or parochial elementary or secondary school, except for the following exceptions: (a) during times when all parties being visibly or audibly recorded are in a private room with consent for such recording; (b) while effecting an arrest; (c) while controlling a person through response to resistance techniques; or any other circumstances that are extraordinary.”
- 21** The policy provides that “Students are protected from release of records by the Family Educational Rights and Privacy Act. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the US. Department of Education.”
- 22** See response provided to the ACLU of Mississippi by the Tupelo Police Department (“If any member of the public, parent or legal guardian of a minor, or a deceased subject’s next of kin or legally authorized designee who is a subject of video footage files a formal complaint, such person shall thereafter be permitted to review that specific video footage in order to make a determination as to whether they will voluntarily request it to be subject to a three (3) year retention period.”).
- 23** See responses provided to the ACLU of Mississippi by the Starkville Police Department and Leake County Sheriff’s Department (both of which provide that “[c]itizens are not allowed to view video unless there is an investigative reason to do so.”) and the response provided by the Byram Police Department (“Officers will NOT allow citizens to review video unless there is an articulable investigative reason to do so”)(emphasis in original).

- 24** See response provided to the ACLU of Mississippi by the George County Sheriff's Department. See also, responses provided to the ACLU of Mississippi by the Aberdeen Police Department, Adams County Sheriff's Department, Batesville Police Department, Booneville Police Department, Brookhaven Police Department, Byram Police Department, Chickasaw County Sheriff's Department, Claiborne County Sheriff's Department, Clay County Sheriff's Department, Cleveland Police Department, Columbus Police Department, Crystal Springs Police Department, D'Iberville Police Department, Forest Police Department, Gautier Police Department, Hattiesburg Police Department, Holly Springs Police Department, Jasper County Sheriff's Department, Kemper County Sheriff's Department, Kosciusko Police Department, Lauderdale County Sheriff's Department, Leake County Sheriff's Department, Nettleton Police Department, Pearl Police Department, Pearl River County Sheriff's Department, Philadelphia Police Department, Pike County Sheriff's Department, Pontotoc Police Department, Prentiss County Sheriff's Department, Scott County Sheriff's Department, Stone County Sheriff's Department, Vicksburg Police Department, Waveland Police Department, Waynesboro Police Department, West Point Police Department, and the Yalobusha County Sheriff's Department.
- 25** See response provided to the ACLU of Mississippi by the Biloxi Police Department (“[p]ersons not pre-authorized to access department recordings may request to obtain the recorded data by submitting a Public Records Request to the Municipal Clerk”).
- 26** *Id.*
- 27** Police Executive Research Forum, Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned, v (2014), available at <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.
- 28** Jay Stanley, Why ‘Active Investigations’ Don’t Justify Keeping Police Video Secret, ACLU, Dec. 4, 2015, <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/why-active-investigations-dont-justify-keeping>
- 29** See also, Radley Balko, Police cameras without transparency, The Watch, Aug. 21, 2015, <https://www.washingtonpost.com/news/the-watch/wp/2015/08/21/police-cameras-without-transparency> (“Body cameras aren’t a panacea. They’re merely a tool. Unless elected officials impose the appropriate policies, any police culture determined to be opaque will figure out how to remain opaque, no matter what new technology is thrown its way. In a room with no light, even a thousand cameras can only record the dark.”)
- 30** See responses provided to the ACLU of Mississippi by the Laurel Police Department, Jasper County Sheriff's Department, Pontotoc Police Department, Byram Police Department, Nettleton Police Department, Batesville Police Department, Brookhaven Police Department, Kosciusko Police Department, Clay County Sheriff's Department, West Point Police Department, Pearl Police Department, Greenwood Police Department, Meridian Police Department, Ocean Springs Police Department, Philadelphia Police Department, Gulfport Police Department, Louisville Police Department, Winston County Sheriff's Department, Choctaw County Sheriff's Department,

Yalobusha County Sheriff's Department, Aberdeen Police Department, Forest Police Department, Booneville Police Department, Scott County Sheriff's Department, Biloxi Police Department, and the Grenada Police Department.

- 31** Long Beach Police Department, George County Sheriff Department, Crystal Springs Police Department, Bay Saint Louis Police Department, Prentiss County Sheriff Department, Clarksdale Police Department, Tunica County Sheriff Department, Waynesboro Police Department, Chickasaw County Sheriff Department, Columbus Police Department, Moss Point Police Department, Gautier Police Department, Starkville Police Department.
- 32** See responses provided to the ACLU of Mississippi by the Indianola Police Department, Picayune Police Department, Hattiesburg Police Department, Adams County Sheriff's Department, Oxford Police Department, Warren County Sheriff's Department, Waveland Police Department, Tupelo Police Department, Webster County Sheriff's Department, Lauderdale County Sheriff's Department, Holly Springs Police Department, Claiborne County Sheriff's Department, Vicksburg Police Department, Kemper County Sheriff's Department, Winona Police Department, D'Iberville Police Department, and the Cleveland Police Department.
- 33** See responses provided to the ACLU of Mississippi by the Calhoun County Sheriff's Department, Lawrence County Sheriff's Department, Leake County Sheriff's Department, Pearl River County Sheriff's Department, Pike County Sheriff's Department, Poplarville Police Department, Stone County Sheriff's Department, and the Tate County Sheriff's Department.
- 34** Michael White, Office of Justice Programs Diagnostic Center, Police Officer Body-Worn Cameras: Assessing the Evidence, 8-9 (2014), *available at* <https://www.ojpdiaagnosticcenter.org/engagements/publications/police-officer-body-worn-cameras-assessing-evidence> ("Moreover, the Mesa (Arizona) Police Department's evaluation, which focused on the cameras' impact on reducing civil liability, addressing departmental complaints, and enhancing criminal prosecution, clearly demonstrates that administrative policy influences camera usage (MPD 2013). During the one-year evaluation, Mesa employed two different policies governing use of the camera: one that was restrictive (implemented the first six months) and one that gave officers much more discretion in determining when to record events (implemented the last six months). Camera use declined by 42 percent when the discretionary policy was in effect.").
- 35** Lessons from the Minnesota Shooting Body Camera Activation Failure, ACLU (July 20, 2017), <https://www.aclu.org/blog/free-future/lessons-minnesota-shooting-body-camera-activation-failure>.
- 36** See response provided to the ACLU of Mississippi by the Tupelo Police Department.
- 37** See responses provided to the ACLU of Mississippi by the Calhoun County Sheriff's Department, Choctaw County Sheriff's Department, Claiborne County Sheriff's Department, Clarksdale Police Department, Gautier Police Department, Gulfport Police Department, Holly Springs Police Department, Jasper County Sheriff's Department, Laurel Police Department, Lawrence County Sheriff's Department, Long Beach Police Department, Louisville Police Department, Ocean Springs Police Department, Pearl Police Department, Picayune Police Department, Poplarville

Police Department, Prentiss County Sheriff's Department, Tunica County Sheriff's Department, Vicksburg Police Department, Warren County Sheriff's Department, Webster County Sheriff's Department, Winona Police Department, and the Winston County Sheriff's Department.

- 38** See responses provided to the ACLU of Mississippi by the Clay County Sheriff's Department, Grenada Police Department, Waynesboro Police Department, Batesville Police Department, Brookhaven Police Department, and the Pontotoc Police Department, Kosciusko Police Department, Nettleton Police Department, Pike County Sheriff's Department, Stone County Sheriff's Department, and the West Point Police Department.
- 39** See responses provided to the ACLU of Mississippi by the D'Iberville Police Department; the Cleveland Police Department (generally allowing pre-report review, but requiring LEOs involved in a "serious incident" to "refrain from viewing the recorded data until the investigator responsible for the investigation arrives on the scene and it can be done in conjunction with established policies already in place for such incidents"); Moss Point Police Department (which provides that officers under investigation may only review recordings at the discretion of internal affairs and/or the Chief, but also provides that "[i]n the event of a Response to Resistance, pursuit by foot, bicycle, or in-custody death, all PDRD recordings shall be uploaded as soon as possible. An Officer may view any audio/video recordings prior to completing and submitting the appropriate report(s) and being interviewed by the appropriate investigative unit."); and the Oxford Police Department.
- 40** See responses provided to the ACLU of Mississippi by the Biloxi Police Department (allowing pre-reporting review "except where a Response to Resistance measure is involved"); the Crystal Springs Police Department (providing an "exception to an officer reviewing a MAV recording for the purpose of completing a report is if the incident falls under the Officer-Involved Incident Protocol (OIIP) as developed in conjunction with the Office of the District Attorney"); the Bay St. Louis Police Department (providing an "exception to an officer reviewing a BWC recording for the purpose of completing a report [] if the incident falls under the Officer-Involved Incident as developed in conjunction with the Office of the District Attorney"); and the Byram Police Department (which provides that officers may review video prior to the preparation of written reports except in the case of Use of Force)
- 41** See responses provided to the ACLU of Mississippi by the Aberdeen Police Department, Adams County Sheriff's Department, Booneville Police Department, Chickasaw County Sheriff's Department, Columbus Police Department, Forest Police Department, George County Sheriff's Department, Greenwood Police Department, Hattiesburg Police Department, Indianola Police Department, Kemper County Sheriff's Department, Lauderdale County Sheriff's Department, Leake County Sheriff's Department, Meridian Police Department, Pearl River County Sheriff's Department, Philadelphia Police Department, Scott County Sheriff's Department, Starkville Police Department, Tate County Sheriff's Department, Waveland Police Department, and the Yalobusha County Sheriff's Department.
- 42** See responses provided to the ACLU of Mississippi by the Adams County Sheriff's Department, Batesville Police Department, Brookhaven Police Department, Calhoun County Sheriff's

Department, Choctaw County Sheriff's Department, Clay County Sheriff's Department, Crystal Springs Police Department, Forest Police Department, George County Sheriff's Department, Greenwood Police Department, Grenada Police Department, Hattiesburg Police Department, Kemper County Sheriff's Department, Kosciusko Police Department, Lauderdale County Sheriff's Department, Lawrence County Sheriff's Department, Nettleton Police Department, Ocean Springs Police Department, Pearl Police Department, Pearl River County Sheriff's Department, Philadelphia Police Department, Pike County Sheriff's Department, Pontotoc Police Department, Prentiss County Sheriff's Department, Scott County Sheriff's Department, Stone County Sheriff's Department, Tate County Sheriff's Department, and the Yalobusha County Sheriff's Department.

- 43** The Gulfport Police Department and Waynesboro Police Department each have a policy provision protecting LEOs from being over-scrutinized during random supervisor review of their BWC recordings. The Waynesboro Police Department's policy provides that "[m]inor infractions (not criminal in nature) discovered during the routine review of recorded material should be viewed as training opportunities and not as routine disciplinary actions," and the Gulfport Police Department's policy provides that "[m]inor infractions of policy or procedure will be handled as a training issue and supervisors should use the opportunity to counsel with employees to ensure no future violations occur."

The Moss Point Police Department's policy contains a similar provision to protect officers. The policy provided, "Supervisors and Administrative Staff who discover misconduct during the review of the PDRD video that does not indicate a pattern of misconduct, may address the misconduct through non-disciplinary corrective action."

- 44** The Aberdeen Police Department's policy provides graduated sanctions for erasing or altering BWC recordings.

The Warren County Sheriff's Department's policy provides that the "[u]nauthorized altering, erasing, or destroying any portion of the video tape or video cards" and the "[u]nauthorized duplication or provision of department MVR tapes or digital recording or any portion of a MVR tape or digital card" are each grounds for disciplinary action.

The Long Beach Police Department, Picayune Police Department, and Poplarville Police Department have policies that provide that "Intentional misuse or abuse of the units will result in disciplinary action."

The Columbus Police Department and Chickasaw County Sheriff's Department have policies that provide that supervisors shall report any officer's unjustifiable failure to activate the BWC to the head of the law enforcement agency to "determine what discipline might be required." Similarly, the Bay Saint Louis Police Department, provides that "[d]isciplinary action will result (as per in the Bay St Louis City Employee Handbook) in the event any officer fails to utilize recording devices."

The Biloxi Police Department's policy provides, "Failure to initiate a recording system may be considered grounds for disciplinary action."

Three agencies' policies include the provision: "Uploading digital media onto public and/or social media websites is strictly forbidden and persons who do so will be subject to disciplinary actions, up to and including termination." They are the Vicksburg Police Department, the Claiborne County Sheriff's Department, and the Holly Springs Police Department.

In the Cleveland Police Department's policy and the Leake County Sheriff's Department's, the only mention of disciplinary measures were limited to an LEO's violation of the prohibited recordings portion of the policy. The Leake County Sheriff's Department's policy provides that "[a]ny violation of the prohibited recording guidelines will result in disciplinary actions by the Sheriff." The Cleveland Police Department's policy, on the other hand, provides that any violation of the prohibited recording guidelines "will result in immediate termination."

The Waveland Police Department's only mention of discipline is in the provision that "[u]nauthorized duplication, copying or distribution is expressly prohibited, and personnel who do so may be subject to disciplinary action."

- 45** See also, Officers, turn on your body cameras, Editorial, Washington Post, July 22, 2017, available at https://www.washingtonpost.com/opinions/officers-turn-on-your-body-cameras/2017/07/22/41290ff0-6e3e-11e7-b9e2-2056e768a7e5_story.html?utm_term=.4d49957e90c6 (“[E]vidence suggests that body cameras can serve an important purpose, facilitating accountability and transparency. But unless there is greater enforcement, they will simply be expensive pieces of decoration.”).
- 46** The figures used for this determination were those of the 2010 U.S. Census. However, the report does include policies we received from the Nettleton Police Department and Poplarville Police Department--two agencies that serve jurisdictions with populations less than 5,000.
- 47** See responses provided to the ACLU of Mississippi by the Amite County Sheriff's Department, Attala County Sheriff's Department, Carthage Police Department, Diamondhead Police Department, Franklin County Sheriff's Department, Fulton Police Department, Greene County Sheriff's Department, Hancock County Sheriff's Department, Harrison County Sheriff's Department, Hinds County Sheriff's Department, Lowndes County Sheriff's Department, McComb Police Department, Monroe County Sheriff's Department, Perry County Sheriff's Department, Ripley Police Department, and the Wayne County Sheriff's Department.
- 48** See responses provided to the ACLU of Mississippi by the Attala County Sheriff's Department, Carthage Police Department, Fulton Police Department, Hinds County Sheriff's Department, Lowndes County Sheriff's Department, Monroe County Sheriff's Department, New Albany Police Department, Perry County Sheriff's Department, Ripley Police Department, and the Wayne County Sheriff's Department.



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