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ACLU

Mississippi

STRIKING THE RIGHT BALANCE



An Analysis of Body-worn Camera Policies in Mississippi



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.

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:

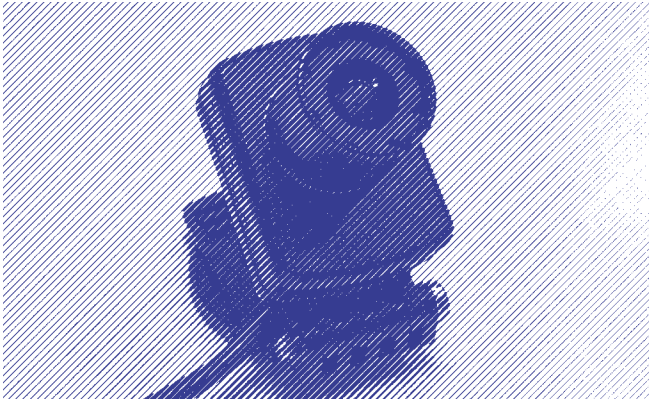
- Zero policies require LEOs notify individuals that they are being recorded.
- Less than 20% of policies require LEOs deactivate BWCs if a resident requested deactivation as a condition of consenting to the LEOs’ entry into a residence.
- Zero of the 65 policies give apparent victims of domestic violence 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.

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

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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



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.

Find the full report at www.aclu-ms.org

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