

**POLICE BODY-WORN CAMERAS**  
PRACTICAL, POLICY, & LEGAL CHALLENGES

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**ABSTRACT**

Following the intense public scrutiny of law enforcement since the summer of 2014, activists, politicians, and police executives alike have called for greater police accountability and improvements in police/community relations. Body-worn cameras are widely seen as serving both ends, and with the potential for federal or private funding, thousands of police agencies have adopted or started exploring body-cams. As this technology becomes even more common, video recordings from police body-worn cameras will play an increasingly important role in defining the police role in society, but also in resolving a wide variety of legal disputes, not just in criminal cases, but also in civil suits against officers themselves as well as civil suits in which an officer was involved in some way. In light of the increasing importance of body-cam recordings, it is essential to understand the technology, its practical limitations, and its policy and legal implications.

**OUTLINE**

I. Potential Benefits of Body-Worn Camera Systems

- A. Signaling Benefit
- B. Behavioral Benefit
  - Civility
  - Use of Force
- C. Informational Benefit
  - Evidence
  - Accountability
  - Efficiency
  - Training

II. Practical Limitations

- A. Infrastructure
- B. Off-Camera Events
- C. Non-Visual / Non-Auditory Events
- D. Interpretative Confusion
  - Cognitive Bias
  - Camera Perspective Bias
  - Deceptive Intensity
  - Deceptive Deliberation
- E. Cognitive Illiberalism

III. Policy Considerations

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- A. Law Enforcement Agencies
    - Camera Selection
    - Testing & Deployment
    - Creation of Video
    - Transmission and Storage
    - Internal Use
    - Discretionary Release
    - Increased Visibility
  - B. Other Actors
    - Review & Use by Legal Actors
    - Review & Use by the Public
- IV. Legal Issues
- A. Labor/Employment
    - Collective Bargaining
  - B. Privacy
    - Individual Privacy
      - Officer Privacy
      - Civilian Privacy
    - Long-Term Storage
    - Accessibility
  - C. Public Records Laws
    - Retention
    - Provision
  - D. Criminal Procedure
    - Scope of Consent
    - Search Classification
  - E. Evidence
    - Video Enhancement
    - Expert Testimony

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**ADDITIONAL RESOURCES: BODY CAMERAS**

Seth W. Stoughton, *Police Body-Worn Cameras*, \_\_\_ N.C.L. Rev. \_\_\_ (forthcoming 2018), <https://bit.ly/2EjVjcG>

- This Article explores the limits of BWCs as a tool. It does so by first reviewing the historical justifications for, implementation of, and lessons learned from an earlier iteration of police video recording technology: in-car cameras. It then offers a simplified way of conceptualizing the multitudinous advantages that BWC proponents have identified, putting them into three categories: symbolic benefits, behavioral benefits, and informational benefits. This classification is a necessary first-step in police agencies and communities articulating what they hope to achieve with a BWC program. Whether body-cams will advance the desired goals depends on the practical limitations of the technology and our ability to interpret the resulting video footage as well as the policies and procedures that govern implementation. The latter half of the paper is dedicated to a critical examination of the practical limitations and policy considerations that will ultimately determine whether body-worn cameras can live up to the hype.

*Policy Resources*, United States Department of Justice, Bureau of Justice Assistance, <http://1.usa.gov/1OMb1zP>

- Includes a list, with links, of research, guidelines, recommendations, and policies.

Alexandra Claudia Mateescu et al, *Police Body Worn Cameras*, DATA & SOC’Y RESEARCH INST. (2015), <http://bit.ly/1jDbyHG>

- A general review of body-worn camera research that additionally identifies “what’s known—and not known—about the promises, perils, and potential best practices.”

Michael D. White, *Police Officer Body-Worn Cameras: Assessing the Evidence*, UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, <http://bit.ly/1p5exDw>

*Research on Body-Worn Cameras and Law Enforcement*, UNITED STATES DEPARTMENT OF JUSTICE, NATIONAL INSTITUTE OF JUSTICE, <http://bit.ly/1QUPxiV>

Greg Hurley, *Body-Worn Cameras and the Courts*, NATIONAL CENTER FOR STATE COURTS & THE STATE JUSTICE INSTITUTE, <http://bit.ly/1RjPsmV>

Anthony Braga et al., *The Benefits of Body-Worn Cameras: New Findings From a Randomized, Controlled Trial at the Las Vegas Metropolitan Police Department*, CNA, <http://bit.ly/2mU4YA2>

- Body-worn cameras were randomly assigned to officers. The study found that “BWC-wearing officers generated significantly fewer complaints and use of force reports

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relative to...officers without cameras. BWC-wearing officers also made more arrests and issued more citations than...non-BWC wearing [officers.]” The study also found significant savings related to a reduction in costs from the reduced complaints.

The Lab @ DC, *Randomized Controlled Trial of the Metropolitan Police Department Body-Worn Camera Program*, <http://bit.ly/2gUpUVi>

- Body-worn cameras were randomly assigned to officers in two of the seven Metropolitan Police Department (Washington, DC) patrol districts. The study found no statistically significant impact on use of force or on civilian complaints. Methodologically, the cameras were rolled out over a significant period of time and there was the potential for significant on-scene interactions between the officers with cameras and those without.

Charles M. Katz et al., *Evaluating the Impact of Officer Body Worn Cameras in the Phoenix Police Department*, CENTER FOR VIOLENCE PREVENTION & COMMUNITY SAFETY, ARIZONA STATE UNIVERSITY, <http://bit.ly/2eZfb8M> and Charles M. Katz et al., *Phoenix, AZ, Smart Policing Initiative*, UNITED STATES DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE, <http://bit.ly/1TXSUav>

- A 30-month body-worn camera study (15 months pre-deployment and 15 post-deployment) in Phoenix, AZ, found that officers had low rates of compliance with mandatory activation policies, that arrests increased, complaints against officers decreased, and civilian behavior did not appear to change.

Barak Ariel et al., *The Effect of Police Body-Worn Cameras on Use of Force and Citizens’ Complaints Against the Police: A Randomized Controlled Trial*, 31 J. QUANTITATIVE CRIM. 509 (2014), <http://bit.ly/1trHMcV>

- A randomized, 12-month study of the effects of body-worn cameras at a mid-sized police department in Rialto, California. The body cameras were correlated with an approximately 50% decrease in officers using force and an almost 90% decrease in the number of complaints filed against officers.

Edmonton Police Service, *Body Worn Video: Considering the Evidence, Final Report of the EPS Body Worn Video Pilot Project* (June 2015), <http://bit.ly/1PxntB6>

- Documenting the results of a 3-year body-worn camera pilot program at the Edmonton Police Department. Among other findings, the study found no statistically significant effect on the use of force or civilian complaints.

Barak Ariel et al., *Wearing Body Cameras Increases Assaults Against Officers & Does Not Reduce Police Use of Force: Results from a Global Multi-Site Experiment*, 1-12 EUROPEAN J. CRIM. 1 (2016) <http://bit.ly/24e0CAp>

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Min-Soek Pang & Paul A. Pavlou, *Armed with Technology: The Effects on Fatal Shootings of Civilians by Police*, unpublished research paper (2016), <http://bit.ly/2bggqBE>

- Researchers found that body-worn cameras were associated with a slight (3.64%) increase in fatal police shootings, and hypothesize that the cameras may increase officers' confidence that the evidence will support their version of events. That, in turn, may decrease officers' reluctance to shoot. Although there are methodological flaws with the research, the findings are notable.

Howard Wasserman, *Moral Panic & Body Cameras*, 92 WASH. U. L. REV. 831 (2015), <http://bit.ly/1QPb4IS>

- Professor Wasserman describes the strong and sudden push for police agencies to adopt body cameras as the result of "moral panic," which refers to a surge of intense public feeling about an issue that appears to threaten the social order in some way. He describes some of the limitations of body cameras.

Bryce Clayton Newell, *Crossing Lenses: Policing's New Visibility and the Role of 'Smartphone Journalism' as a Form of Freedom-Preserving Reciprocal Surveillance*, 2014 J. L. TECH. & POLICY 59 (2014), <http://bit.ly/1L8BxRA>

- Dr. Newell contrasts the use of civilian recording technology with body-worn cameras, discussing the costs and benefits of body-worn cameras as part of a theoretical examination of "the role that citizen mean should play as a liberty-preserving form of reciprocal transparency."

Dave McClure et al., *How Body Cameras Affect Community Members' Perception of Police*, URBAN INSTITUTE, <http://urbn.is/2tRIQIT>

- Finding that officer behavior affects civilian perceptions of policing more than the mere presence of a body-worn camera and that officers who are required to inform civilians that the interaction is being recorded are more likely to activate the cameras than officers who are not required to inform civilians about recording.

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**ADDITIONAL RESOURCES: COGNITIVE BIASES & VIDEO RECORDING**

Dan Kahan et al, *Whose Eyes Are You Going to Believe? Scott v. Harris and the Perils of Cognitive Illiberalism*, 122 HARV. L. REV. 837 (2009), <http://bit.ly/1Gomlu1>

- “Cognitive illiberalism” is the unconscious cognitive bias that leads us to believe that our own perception is fair and unbiased and that people who report conflicting perceptions of the same events are less accurate or less reasonable. In the judicial context, this is problematic because of “motivated cognition,” which leads us to perceive facts (and to resolve disputed facts) in accordance with our interests, values, and identities even when we believe we are entirely neutral. The authors had a diverse sample of 1,350 Americans view and evaluate the police pursuit video in *Scott v. Harris*, 550 U.S. 372 (2007). After watching the video, participants reported “sharp differences of opinion” about what they had seen, differences that fell “along cultural, ideological, and other lines.” The authors suggest that concluding that video evidence gives rise to only a single interpretation and that other interpretations are unreasonable is, in many cases, a factually inaccurate conclusion driven by cognitive illiberalism.

Roseanna Sommers, *Will Putting Cameras on Police Reduce Polarization?*, 125 YALE L. J. 1150 (2016), <http://bit.ly/1S4TIH7>

- For this article, the author provided four different groups of study participants with four different sources of information about an altercation between an officer and a civilian: a video recording, conflicting written accounts by the officer and civilian, a written account by a disinterested third part, and a written account by the officer. The study found that, for all four sources of information, participants’ prior attitudes toward the police “significantly affected their judgments of the officer’s conduct.” The study concludes that “despite the seeming objectivity of the camera, video footage remains susceptible to biased interpretation by observers.”

Kristyn Jones et al., *Believing is Seeing: Biased Viewing of Body-Worn Camera Footage*, 6 J. APPLIED RESEARCH MEMORY & COGNITION 460 (2017)

- In two experiments, researchers sought to answer two questions, “What do people remember about a police–citizen interaction when an officer’s report and BWC footage differ, and how do biases influence such memories and conclusions about the event?” They concluded that the BWC footage did not eliminate biases from reviewers’ interpretations of evidence; “evidence and biases that engender a favorable impression of the officer will lead people to rely on misinformation that supports that view. Conversely, evidence and biases that prompt the belief that the officer acted inappropriately will lead people to reject the misinformation.”

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Lezlee J. Ware *et al*, *Camera Perspective Bias in Videotaped Confessions: Evidence that Visual Attention is a Mediator*, 14 J. EXPERIMENTAL PSYCHOLOGY: APPLIED 192 (2008), <http://bit.ly/1RkGGXN>

- This article discusses and builds on earlier studies showing that an observer's visual perspective of an event (which camera angle was used to record the event) can change perceptions about the environment of the event. Specifically, observers' evaluations of whether a confession was voluntary or involuntary depend in part of whether they watch a video taken from the suspect's point-of-view, the investigator's point of view, or a "fly on the wall" point-of-view.

G. Daniel Lassiter *et al*, *Evaluating Videotaped Confessions: Expertise Provides No Defense Against the Camera-Perspective Effect*, 18 PSYCHOLOGICAL SCI. 224 (2007), <http://bit.ly/1O9dsuO>

- This article describes experimental research finding that even experienced subject-matter experts, such as judges and police interrogators, were influenced by the "camera perspective bias."

Eugene M. Caruso *et al*, *Slow Motion Increases Perceived Intent*, 133 PROCEEDINGS OF THE NAT'L ACAD. SCI. 9250 (2016), <http://bit.ly/2aW19cK>

- Researchers found that slow motion video systematically increased the likelihood that an individual watching the video would conclude that the actor (in the video) acted with intent by giving viewers the false perception that the actor had more time to premeditate their action.

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**ADDITIONAL RESOURCES: MODEL POLICIES & IMPLEMENTATION GUIDES**

*Key Trends in Body-Worn Camera Policy & Practice: A Policy Analysis of US Department of Justice-Funded Law Enforcement Agencies*, Bureau of Justice Assistance, <http://bit.ly/2fqBZIV>

*Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, United States Department of Justice, Community Oriented Policing Services & Police Executive Research Forum, <http://1.usa.gov/1s7UIxl>

*Draft Law Enforcement Standard for Body Worn Cameras and Recording Devices*, Commission for Accreditation of Law Enforcement Agencies, <http://bit.ly/1WL3x2R>

*Body-Worn Cameras: Model Policy*, The International Association of Chiefs of Police, <http://bit.ly/1KVXRdG>

- Including model guidelines and a discussion of how they were selected

*Body-Worn Cameras: Concepts and Issues Paper*, The International Association of Chiefs of Police, <http://bit.ly/23s6mpE>

*Body-Worn Cameras: Guidelines to Help Formulate Model Policy for an Evolving Technology*, Police Executive Research Foundation, <http://bit.ly/1rwuawS>

*Police Body-Mounted Cameras: With Right Policies in Place, a Win for All (version 2.0)*, American Civil Liberties Union, <http://bit.ly/1jc9xC1>

*A Model Act for Regulation the Use of Wearable Body Cameras by Law Enforcement*, International Municipal Lawyers Association, <http://bit.ly/1Lo8w6t>

*The Use of Body-Worn Cameras by Law Enforcement: Guidelines for Use & Background Paper*, THE CONSTITUTION PROJECT, <http://bit.ly/2gHgVR9>

*Civil Rights, Privacy, and Media Rights Groups Release Principles for Law Enforcement Body Worn Cameras*, The Leadership Conference on Civil and Human Rights, <http://bit.ly/1WBP8og>

- A short list of general principles endorsed by over thirty different organizations including the ACLU, Electronic Frontier Foundation, Free Press, the Lawyers' Committee for Civil Rights Under Law, and the NAACP.

*Body Worn Video Recording*, Kentucky League of Cities, <http://bit.ly/1QPsK79>

*Watching the Watchmen: Best Practices for Police Body Cameras*, The CATO Institute, <http://bit.ly/24uhzfi>

*Body-Worn Camera Policy*, Labor Relations Information Systems, <http://bit.ly/1QT0ZJ2>



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**ADDITIONAL RESOURCES: AGENCY POLICIES**

*Police Body Worn Cameras: A Policy Scorecard*, The Leadership Conference Union,  
<http://bit.ly/1MDrneR>

- Provides links to and evaluations of BWC policies adopted by 25 police agencies (mostly larger agencies), assessing multiple dimensions of each policy, including whether the policies are publically available, the level of officer discretion to record, et cetera.

New York (City) Police Department, *NYPD Response to Public and Officer Input on the Department's Proposed Body-Worn Camera Policy*, <http://bit.ly/2o5ezSR>

Chicago Police Department, Department NOTICE D15-01, *Body Worn Camera Pilot Program-Phase 1*, <http://bit.ly/1Loa5kR>

Los Angeles Police Department, Proposed Special Order, *Body Worn Video Procedures*,  
<http://bit.ly/1O9aBSC>

Metropolitan Police Department (Washington, D.C.), General Order SPT-302-13, *Body-Worn Camera Program*, <http://1.usa.gov/1OfFouB>

Philadelphia Police Department, Directive 4.21, *Body-Worn Cameras – Voluntary Pilot Program*, <http://bit.ly/1TpkkD3>

Seattle Police Department, 16.091 POL-1, *Body-Worn Video Pilot Program*,  
<http://bit.ly/1M6B3YL>

San Francisco Police Department, Draft Policy, *Body-Worn Camera Draft Policy*,  
<http://bit.ly/1TuG94v>

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**ADDITIONAL RESOURCES: STATE LAWS**

*Police Body-Worn Cameras: Where Your State Stands*, URBAN INSTITUTE,  
<http://urbn.is/1XfXYaP>

- Provides information about currently passed and proposed/pending legislation

Florida: Chapter 2016-76 (House Bill No. 93), <http://bit.ly/1SPfMtS>

Illinois: 50 ILL. COMP. STAT. 706/10-1 et seq. (2015), Law Enforcement Officer-Worn Body Camera Act, <http://bit.ly/1L1ndG9>

Connecticut: Senate Bill No. 1109 (2015), An Act Concerning Excessive Use of Force,  
<http://1.usa.gov/1O8XYH3>

South Carolina: S.C. CODE. ANN. § 23-1-240 et seq. (2015), <http://bit.ly/1L8RGX4>