

**ENHANCING POLICE ACCOUNTABILITY THROUGH  
AN EFFECTIVE ON-BODY CAMERA PROGRAM FOR  
MPD OFFICERS**



**REPORT AND RECOMMENDATIONS OF THE  
POLICE COMPLAINTS BOARD**

**TO**

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THE COUNCIL OF THE DISTRICT OF COLUMBIA, AND  
CHIEF OF POLICE CATHY L. LANIER**

**May 8, 2014**

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## I. INTRODUCTION AND OVERVIEW

Over the past few years, police departments across the country have begun equipping their officers with body-worn cameras.<sup>1</sup> The Metropolitan Police Department (MPD) has recently announced its plans to implement a body-worn camera program, citing it as one of the Department's "top five priorities."<sup>2</sup>

The footage that these cameras capture can be used to resolve citizen complaints and train officers on proper procedures, and even as evidence in criminal and civil litigation. In addition to these benefits, a recent study shows that the mere presence of body-worn cameras may even serve to prevent negative interactions by changing officer and citizen behavior.<sup>3</sup> As a result, the use of these devices can lead to enhanced police accountability as well as improved police-community relations.

While body-worn cameras have many possible benefits, their use also implicates some concerns for members of the public, government agencies, civil liberties advocates, and even the officers who wear the devices. In order to maximize the many advantages that the cameras can provide, it will be crucial for MPD to develop and implement clear policies governing video creation, access, usage, and retention. Police union representatives, policy experts, and civil liberties experts nationwide have expressed concern that deploying body-worn cameras with no official policy in place could undermine public confidence in the program, as well as jeopardize the privacy of officers and the public.<sup>4</sup>

Having a suitable policy in place is so critical to the deployment of a body-worn camera program that the Police Executive Research Forum (PERF), with support from the Justice Department's Office of Community Oriented Policing Services (COPS), is currently working on guidelines to help formulate model policies.<sup>5</sup> At a recent PERF Town Hall Meeting in Philadelphia, law enforcement executives from across the nation agreed that policies and procedures involve multi-faceted and complex issues.<sup>6</sup> According to PERF President Charles Ramsey, who also serves as the commissioner of Philadelphia's Police Department and was previously MPD's chief of police, "If you don't have a policy in place,

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<sup>1</sup> See, e.g., Joel Rubin, *LAPD Begins Testing On-Body Cameras on Officers*, LOS ANGELES TIMES, Jan. 15, 2014, <http://articles.latimes.com/2014/jan/15/local/la-me-ln-lapd-cameras-20140115>; Jessica Anderson, *More Police Now Sporting Cameras on Their Bodies*, THE BALTIMORE SUN, Jan. 4, 2014, [http://articles.baltimoresun.com/2014-01-04/news/bs-md-police-body-cameras-20140104\\_1\\_police-cameras-small-video-cameras-tyrone-west](http://articles.baltimoresun.com/2014-01-04/news/bs-md-police-body-cameras-20140104_1_police-cameras-small-video-cameras-tyrone-west); Nancy Dillon, *Police Body-Worn Cameras Stop-and-Frisk Judge Suggested Have Helped Rialto Police Department*, DAILY NEWS Aug. 13, 2013, 7:52 PM, <http://www.nydailynews.com/news/national/cameras-proposed-stop-frisk-judge-ca-police-article-1.1426025>.

<sup>2</sup> Letter from Cathy L. Lanier, Chief of Police, Metropolitan Police Department, to Tommy Wells, Chairperson, District Council Committee on the Judiciary and Public Safety, (Feb. 10, 2014) (available on-line at [http://dccouncil.us/files/performance\\_oversight/Resubmission\\_FINAL\\_MPD\\_Response\\_With\\_Attachments\\_Perf\\_Hrg\\_02\\_20\\_14.pdf](http://dccouncil.us/files/performance_oversight/Resubmission_FINAL_MPD_Response_With_Attachments_Perf_Hrg_02_20_14.pdf)).

<sup>3</sup> BARAK ARIEL AND TONY FARRAR, POLICE FOUNDATION, SELF-AWARENESS TO BEING WATCHED AND SOCIALLY DESIRABLE BEHAVIOR: A FIELD EXPERIMENT ON THE EFFECT OF BODY-WORN CAMERAS ON POLICE USE-OF-FORCE, [hereinafter RIALTO STUDY] available at <http://www.policefoundation.org/content/body-worn-camera>;

<sup>4</sup> See Tami Abdollah, *Officers' Body Cameras Raise Privacy Concerns*, ASSOCIATED PRESS, Mar. 15, 2014, 10:56 AM, available at <http://bigstory.ap.org/article/officers-body-cameras-raise-privacy-concerns>.

<sup>5</sup> See PowerPoint Presentation, Police Executive Research Forum, *Guidelines to Help Formulate Model Policy for An Evolving Technology: Body-Worn Cameras* (2013), available at <http://www.policeforum.org/free-online-documents>.

<sup>6</sup> *Police Leaders Explore Growing Use of Body Cameras at PERF Town Hall Meeting in Philadelphia*, SUBJECT TO DEBATE, (Police Executive Research Forum, Washington, D.C.), Sept./Oct. 2013., available at [http://www.policeforum.org/assets/docs/Subject\\_to\\_Debate/Debate2013/debate\\_2013\\_sepoct.pdf](http://www.policeforum.org/assets/docs/Subject_to_Debate/Debate2013/debate_2013_sepoct.pdf).

eventually you're going to have a problem," noting that such policies should also exist to cover officers who might use their own cameras.<sup>7</sup>

To ensure the most effective policy, the needs and concerns of the many stakeholders throughout the District should be assessed and incorporated to the maximum extent possible. This kind of participation will also build public support and buy-in for the camera program, which should help ensure successful implementation.

Therefore, the Police Complaints Board (PCB) recommends that MPD establish an advisory panel of District of Columbia stakeholders to assist in the development of a policy to govern a body-worn camera pilot program in the Metropolitan Police Department (MPD). This panel should, at a minimum, include representatives from: MPD; the Office of Police Complaints (OPC); the Fraternal Order of Police (FOP); the Office of the United States Attorney for the District of Columbia (USAO); the District's Office of the Attorney General (OAG); the criminal defense bar; the American Civil Liberties Union (ACLU); and the Fair and Inclusive Policing Task Force. The panel should also include members of MPD's Citizen Advisory Councils as well as representatives of groups from around the District who could provide insight into how a camera program would affect various segments of the public, including, among others, immigrants, non-English speakers, crime victims, and the LGBTQ population. PCB further recommends that the District provide MPD with the necessary funding to conduct a pilot program. Once a pilot program has been conducted, the advisory panel should review the program's efficacy, identify any concerns about processes or policies, and suggest changes and improvements. If the program is determined to be beneficial, the District government should then provide funding for wider implementation across MPD.<sup>8</sup>

In the event that MPD decides to launch a pilot program prior to convening the recommended panel, it should be allowed to do so, but should permit OPC to provide real-time input and feedback to MPD as the expedited pilot program takes shape and is implemented. Adopting this approach would allow MPD to avail itself of OPC's ties with community groups and District stakeholders, thereby incorporating useful external feedback until the panel could be established. As for the proposed panel, it should be convened as soon as practicable to help develop a final policy based on an assessment of the ongoing pilot program.

## **II. POTENTIAL BENEFITS**

There are several benefits to the District that could be derived from MPD instituting a body-worn camera program. The devices have the potential to enhance public safety and improve relations between police and members of the public by reducing misconduct, facilitating the resolution of incidents that arise, and improving officer training. Other potential advantages for the District government include enhancing public confidence in the criminal justice system and reducing the city's exposure to civil liability.

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<sup>7</sup> *Id.* at 2.

<sup>8</sup> The Office of Police Complaints is overseen by the Police Complaints Board (PCB). PCB issues this report and makes these recommendations pursuant to D.C. Code § 5-1104(d) (2013), which authorizes the Board to recommend to the Mayor, the Council of the District of Columbia, and the Chiefs of Police of MPD and the D.C. Housing Authority's Office of Public Safety, reforms that have the potential to reduce the incidence of police misconduct. PCB is grateful to the following persons who assisted in preparing the report and accompanying recommendations: OPC Executive Director Philip K. Eure; OPC Deputy Director Christian J. Klossner, who supervised the project; Special Assistant Nicole Porter; Daniel R. Reed, a former OPC legal assistant and 2013 graduate of the University of Iowa College of Law; and Marielle Moore, an OPC law clerk and third-year law student at the University of Miami School of Law.

## **A. Reducing Misconduct Complaints through Improved Police-Citizen Encounters**

A study of the effects of officers wearing on-body cameras in Rialto, California (“Rialto study”) reported that the devices appeared to cut down on the number of incidents involving the use of force while also reducing the number of complaints filed against officers. Specifically, the Rialto study showed that the devices brought down the rate at which police force was used during interactions with citizens. The Rialto Police Department assigned some of its officers to wear cameras that captured all of their encounters with citizens for the duration of each shift. The number of incidents in which these officers resorted to the use of physical force – including the use of OC spray (“pepper spray”), batons, Tasers, firearms, or canine bites – was compared against the number of incidents that arose during the shifts of their colleagues who were not wearing cameras. The shifts without cameras experienced twice as many incidents involving the use of force as the shifts with cameras.<sup>9</sup>

Based on the Rialto study, it appears that when officers and citizens are aware that their actions are being recorded, both are less likely to engage in the type of conduct that leads to complaints. According to the Rialto police chief, once members of the public were notified that they were being filmed, “even drunk or agitated people tended to become more polite.”<sup>10</sup> As a result of these behavioral changes, the Rialto Police Department saw a nearly 90 percent decrease in complaints against officers during the period studied as compared to the year preceding the study.<sup>11</sup>

The use of a body-worn camera system by MPD should be able to reduce the incidence of complaint-generating events and potentially help to foster a culture of more polite and respectful interactions between police and the public. This culture change could, in turn, be expected to lead to greater public engagement with police officers and ultimately to improved public safety.

## **B. Facilitating Citizen Complaint Resolution**

Video and audio recordings of police-citizen interactions would provide additional evidence for use in investigating and resolving complaints of police misconduct – evidence that would not only be objective and remain accurate over time, but could also speed the resolution of complaints.

Complaints of police misconduct often begin with a statement by a person alleging that one or more officers engaged in conduct that contravenes the law or MPD policy. Officers and other witnesses then give their own statements. Video footage, unlike the memory of a human being, does not become less accurate over time. In addition, many complaints are currently resolved only by making a credibility determination as between the complainant and one or more of the officers involved. By objectively recording events as they transpire, body-worn cameras could help investigators make even more accurate findings.

Moreover, by supplementing the evidence gathered during the complaint investigation process, body-worn camera footage will resolve a majority of the allegations that OPC receives more quickly and efficiently. Video of an incident could also be used to inform the questions that investigators ask during complainant and officer interviews. More objective evidence combined with enhanced interview

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<sup>9</sup> RIALTO STUDY at 8.

<sup>10</sup> Rory Carroll, *California Police Use of Body Cameras Cuts Violence and Complaints*, GUARDIAN, Nov. 4, 2013, <http://www.theguardian.com/world/2013/nov/04/california-police-body-cameras-cuts-violence-complaints-rialto>.

<sup>11</sup> RIALTO STUDY at 9.

questions will allow the District more quickly to hold accountable those officers who have violated District law or police department policy and also to exonerate officers who have not committed misconduct. A faster and more effective complaint process would increase satisfaction among citizens and officers alike.

Data regarding the kinds of allegations contained in OPC complaints suggest that cameras would be especially helpful in OPC's investigations. Appendix A shows five frequently alleged categories of misconduct for Fiscal Year 2011 through Fiscal Year 2013 that would be easier to resolve with the use of video footage. Each category involves language and actions that body-worn cameras would likely record. In addition, these five categories – use of demeanor or tone that is insulting, demeaning, or humiliating; issuing a bad ticket; using threats; using profanity; and unlawfully stopping a vehicle – annually account for over one third of all allegations that the agency must resolve. These recordings would therefore allow the agency to make rapid assessments as to the validity of an allegation of officer misconduct in a substantial percentage of all the cases OPC handles.

Other categories of frequently made allegations – such as using excessive or unnecessary force; unlawful stop, searches, and frisks; and unlawful arrests – involve not only what officers said and did but also what they observed prior to taking action. In some cases, these complaints would also be easier to prove or disprove with video evidence.

The failure of an officer to provide identification upon request is an additional category of allegations that would be resolved more effectively by body camera footage. The majority of complaints in this category involve an officer's refusal to verbally state his or her name and badge number upon request, and resolution of these allegations typically depends upon the credibility of the statements made to OPC. Complainants often allege that an officer refused a request, ignored a clearly audible request and walked away, or that an officer's response was mumbled and unintelligible. Body camera recordings would capture critical aspects of a number of these interactions and potentially provide valuable evidence relating to the clarity and volume of both a request that an officer provide a name or badge number and the officer's response to such a request.

Under District law, an individual may file a complaint of alleged misconduct with either OPC or MPD, or both. In addition to resolving complaints similar to those handled by OPC, MPD also resolves complaints in other categories based on its broader jurisdiction.<sup>12</sup> When OPC receives complaints with allegations not in its jurisdiction, the agency refers those matters to MPD for investigation. The Department also initiates its own investigations of officer misconduct, both at the command level and through its Internal Affairs Division. As a result, the evidence captured by body-worn cameras will yield benefits similar to those described above for MPD in its investigations of police officer conduct.

### **C. Officer Training**

MPD officer training could be improved in a number of ways through the use of footage captured by body-worn cameras. Body camera recordings could be used for remedial training or correcting the behavior of individual officers against whom misconduct allegations have been filed. When an officer engages in inappropriate conduct on camera, the recording can be replayed for that officer, with instruction as to what the officer did incorrectly, how the officer should have acted in the situation, and guidance on how he or she ought to handle similar situations in the future. Video from body-worn

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<sup>12</sup> For example, MPD notes in its annual reports the categories of "Fail to Take Police Action," "Fail to Take Police Report," and "Conduct Unbecoming." METROPOLITAN POLICE DEPARTMENT, ANNUAL REPORT 2012, 36, available at [http://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/2012\\_AR\\_1.pdf](http://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/2012_AR_1.pdf).

cameras may also help officers whose conduct, while in accordance with District law and MPD policy, still resulted in a complaint. Police supervisors will be able to use the footage to determine how officers could have fulfilled their duties without generating a complaint. By addressing the type of behavior that leads to complaints, regardless of their merit, MPD would over time likely improve the service it provides and further reduce the number of future complaints.

Video recordings of officer interactions could also serve as teaching tools in the training academy and continuing educational programs. Body-worn camera footage will capture real-life examples of both positive and negative interactions with citizens. Unlike simulations, which may be contrived and are viewed from a third-person perspective, recordings from on-body cameras will depict an actual incident as it unfolded largely from the perspective of an involved officer.

Recordings from these cameras could also be used to monitor new officers' performance in the field. By spot-checking a new officer's activities once the individual is assigned to patrol, the Department could proactively identify problem areas or training deficiencies and correct them. Similarly, reviewing footage from cameras worn by supervisors or field-training officers would allow MPD management to improve the field component of its training program.

#### **D. Reducing Civil Liability**

These three outcomes – decreased incidence of police misconduct, improved investigations, and more effective training – should eventually result in a decrease in the number of lawsuits filed against the District based on police officer actions. In addition, lawsuits could be more quickly resolved through settlements in cases where the video evidence eliminates disputes about the facts of a case. Furthermore, as pointed out above, video footage could deter the filing of some frivolous claims against the Department, since people who know that a claim is false will probably not expend the time and effort to pursue such allegations.

#### **E. Improving the Criminal Justice System**

The use of body cameras can be expected to promote more accountable policing in the District, leading to an improved criminal justice system. These devices should capture objective evidence relating to whether a confession was voluntary, a search was consented to or justified, or a physical description matched a "lookout," among other scenarios. With this improved evidence, in some cases, prosecutors will be able to assess more accurately which cases are not prosecutable due to a constitutionally defective search or seizure, defense attorneys will have stronger evidence to advocate for the rights of their clients, and courts will be able to make sounder rulings.

A body-worn camera program may also promote efficiency in the criminal justice system by advancing case resolution and reducing time spent in court. The International Association of Chiefs of Police (IACP), in partnership with the National District Attorneys Association and the American Prosecutors Research Institute, conducted a survey in 2004 regarding the use of in-car police camera footage in criminal prosecutions. The survey of prosecutors "examined the positive and negative aspects of acquiring and using video evidence."<sup>13</sup> Among the prosecutors surveyed, 96 percent said that the use

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<sup>13</sup> INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE & U.S. DEPARTMENT OF JUSTICE OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, *THE IMPACT OF VIDEO EVIDENCE ON MODERN POLICING: RESEARCH AND BEST PRACTICES FROM THE IACP STUDY ON IN-CAR CAMERAS*, ii-1, *available at* [http://www.cops.usdoj.gov/Publications/video\\_evidence.pdf](http://www.cops.usdoj.gov/Publications/video_evidence.pdf).

of video evidence improved their ability to prosecute cases.<sup>14</sup> Furthermore, the survey reported anecdotal evidence that cases involving video evidence were more rapidly resolved.<sup>15</sup> Perhaps most significantly, prosecutors told IACP that “the greatest value of video evidence is its ability to refresh the officer’s memory” and “to verify the accuracy of written reports and statements surrounding [an] incident.”<sup>16</sup>

### III. POLICY DECISIONS

In order for the District government, MPD, and the public to obtain all of the benefits discussed above, MPD must implement a policy that provides proper controls for the use of this new technology. Developing a thorough set of policies and procedures governing how the video is captured, stored, and accessed will ensure that the program has the support of the community while meeting the needs of other entities that will need to use the footage. Addressing these needs and the policy concerns of District stakeholders as early as possible will also ensure that the program pilot and the ensuing wider implementation are conducted appropriately and without delay, while minimizing unanticipated costs.

#### A. Equipment Considerations

One of the first steps in developing the body-worn camera pilot program will be to evaluate the products of various vendors. From OPC’s perspective, the audio component of the video recordings is critical to reaping the benefits identified above regarding complaint resolution. Without discernible audio of both the officer and the citizen complainant with whom the officer is interacting, body-worn camera recordings would also have limited evidentiary or training value. Another important consideration is camera placement. While cameras mounted on glasses would theoretically capture what an officer is actually looking at and focusing on, chest-mounted or lapel-mounted footage might be steadier and easier to follow. Different stakeholders can be expected to value the various technical options differently. By convening an advisory panel to help determine the range of issues, and by ensuring the panel’s access to vendor demonstrations (as well as technical experts on the equipment choices, if necessary), MPD can select the option that maximizes the benefits for the District as a whole.

#### B. Initiating Recording

A major concern is the degree to which officers have control over when the cameras record. The ideal system from an evidentiary standpoint would be one where an officer’s entire shift is recorded without interruption. Fully recording all of the events forms a more complete record of the shift and avoids instances of an officer simply forgetting to turn a camera on when engaging with the public. Recording an entire shift also ensures that the moments leading up to an encounter are recorded and that hostile encounters are fully documented. Reducing officer discretion with respect to what and when to record will not only ensure that relevant events are captured and prevent the loss of relevant evidence, it will also protect police officers from accusations of tampering with the videos.

On the other hand, fully recording an entire shift would increase storage costs, increase the amount of time it takes at the end of a shift to process and store the footage, and create records of unimportant events. In addition, a fully recorded shift may make officers uncomfortable, possibly affecting their morale. Perhaps most importantly, certain situations, such as breaks from duty or interactions with informants or victims of certain crimes, ought not to be recorded at all. Lastly, MPD may wish to allow people to request that their interactions with officers not be recorded in certain

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<sup>14</sup> *Id.* at ii-4.

<sup>15</sup> *Id.* at ii-3.

<sup>16</sup> *Id.* at ii-5.



situations. Consultation with stakeholders will help ensure that an appropriately balanced system is implemented.

### **C. Retention**

The length of time that video recordings are retained must be carefully considered. Video retention can have a significant impact on the privacy of officers and citizens alike. At the same time, for the recordings to provide the most value to the District, they must be kept until needed.

A recent ACLU report, entitled “Police Body-Mounted Cameras: With Right Policies in Place, a Win For All,” recommended that data retention be limited to the length of time necessary to conduct investigations. Specifically, the organization recommends that data be retained for “weeks not years” and be automatically deleted after a pre-determined period of time unless it has been “flagged” for further use.<sup>17</sup> One such use would be the investigation of citizen complaints. As this is one of the most significant possible uses of a body camera program, the retention period for unflagged recording should, at a minimum, account for the time a complainant has to file a complaint. For example, most complaints of misconduct that are filed with OPC must be received by the agency within 45 days of the incident.<sup>18</sup> To maximize the usefulness to OPC, the recordings would need to be preserved for a period that includes those 45 days as well as the additional time needed to identify the involved officers and to request that the footage be preserved. MPD has no such time restrictions on its jurisdiction to receive complaints, but is generally required to initiate disciplinary proceedings within 90 days of when the Department knows or should know of misconduct.<sup>19</sup> In addition, as MPD selects a video retention time period, it will need to take account of the District’s ability to use the video in connection with civil and criminal cases.

While exact retention times should be open for discussion, the panel can encourage MPD to choose a period that meets the needs of all parties while providing adequate privacy protections. In addition, the panel can make suggestions on how to minimize the potential loss of useful footage through educational efforts directed at publicizing the retention period that MPD adopts.<sup>20</sup>

### **D. Privacy**

As mentioned in the preceding section, privacy is an important consideration in the implementation of a body-worn camera program. Although cameras will provide invaluable evidence for complaint resolution and litigation, very sensitive information might be recorded during police-citizen interactions or as police respond to emergencies. For example, people who want to report information about crimes to police may be fearful to do so if they believe their identity will be preserved and possibly discoverable during civil or criminal litigation. Officers will also have privacy concerns. Even while on duty, officers can be expected to discuss personal matters when not taking police action, and may have legitimate concerns about the potential of reprisal for protected speech. The ACLU noted in its above-mentioned report, “[p]olice officers enter people’s homes and encounter bystanders, suspects, and victims in a wide variety of sometimes stressful and extreme situations,” further explaining that development of a

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<sup>17</sup> JAY STANLEY, AMERICAN CIVIL LIBERTIES UNION, POLICE BODY-MOUNTED CAMERAS: WITH RIGHT POLICIES IN PLACE, A WIN FOR ALL, 4 (Oct. 9, 2013), [hereinafter ACLU REPORT], *available at* [https://www.aclu.org/files/assets/police\\_body-mounted\\_cameras.pdf](https://www.aclu.org/files/assets/police_body-mounted_cameras.pdf).

<sup>18</sup> D.C. Code § 5-1107(d) (2014).

<sup>19</sup> D.C. Code § 5-1031 (2014).

<sup>20</sup> As an example of this kind of outreach, the ACLU recommends publishing the chosen retention scheme on the police department’s website to let members of the public know how long they have to file complaints or request access to footage. ACLU REPORT at 4.

comprehensive policy governing camera use would ensure that the benefits of the cameras outweighed the significant invasions of privacy.<sup>21</sup> By providing for broad and diverse participation on the advisory panel, MPD can expect these stakeholders to identify key privacy issues and develop the appropriate safeguards to address these concerns.

### **E. Notice of Recording**

MPD and the stakeholder advisory panel will need to consider whether and how to notify members of the public that officers are recording interactions. Because the laws in some states require that both parties consent to being recorded, some police departments must give notice that cameras are recording. The District, however, has a one-party consent law that permits individuals to record phone calls and conversations, either when they are a party to the communication or when one party to the communication consents.<sup>22</sup> Notifying people of the use of these body cameras may nonetheless be beneficial since, as discussed above, some may change their behavior in a positive manner when they know they are being recorded.

MPD, along with the advisory panel, should therefore come up with its own notice requirements before implementing a body-worn camera program in the District. As a starting point, the panel may wish to consider the ACLU's proposals regarding notice: "1) Recording should be limited to uniformed officers and marked vehicles, so people know what to expect. An exception should be made for SWAT raids and similar planned uses of force when they involve non-uniformed officers, and 2) Officers should be required, wherever practicable, to notify people that they are being recorded . . . One possibility departments might consider is for officers to wear an easily visible pin or sticker saying 'lapel camera in operation' or words to that effect."<sup>23</sup>

The panel could also consider what other kinds of public education efforts are possible and would provide the most benefit in building public support for the program.

### **F. Access to the Recordings**

The District stakeholder advisory panel should provide advice to MPD on what entities will have access to body-worn camera data and for what reasons, as well as guidance on how to provide access to the records. In addition to internal MPD use, outside agencies, including OPC, the D.C. Office of the Inspector General, and the D.C. Board of Ethics and Government Accountability, will be entitled to obtain the recordings in much the same way that they are currently given access to law enforcement documents and materials.<sup>24</sup> Access to body-worn camera footage for these agencies should be streamlined and simplified to ensure that delays or cumbersome requests do not needlessly increase the costs of administering the program or undermine its value to the District. OPC has in the past called for direct computerized access to all electronically stored MPD records, and this would certainly be ideal for OPC's needs in the case of body camera footage.

The advisory panel can also help identify who will need the recordings and consider how the data can be shared for official purposes while minimizing invasions of privacy. The ACLU, for example, has

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<sup>21</sup> ACLU REPORT at 1-2.

<sup>22</sup> D.C. Code § 23-542 (2013).

<sup>23</sup> ACLU REPORT at 4.

<sup>24</sup> See D.C. Code § 5-1111(c) (2014); D.C. Code § 1-301.115a(c)(1,2A) (2014); D.C. Code § 1-1162.11(3) (2014)

several suggestions for how to regulate access to video camera footage, including redaction of video records when feasible and a system designed to prevent unauthorized viewing.<sup>25</sup>

The advisory panel must also consider whether officers should be able to access stored video recordings. It may be valuable to have an officer review video footage to recall an incident or to make sure that police paperwork or testimony is thorough and accurate. On the other hand, watching a video prior to providing a statement during a misconduct investigation would give the officer an advantage not available to a citizen complainant, while also depriving an investigator of the opportunity to assess the accuracy and thoroughness of an officer's recollection.

There is also a clear need for MPD, as well as others, to be able to determine whether footage has been viewed or altered, when it was accessed, and by whom. This "chain of custody" information will serve many purposes, including: protecting the integrity of recordings for their use in investigations and court proceedings; guaranteeing that the footage is not being used inappropriately, such as for commercial or entertainment purposes; laying a foundation for court admissibility; and establishing whether witnesses have viewed the video before providing a statement or testifying in court.

#### **IV. MORE ACCURATE COST PROJECTIONS**

Many of the costs of a body camera program are obvious, such as the actual equipment, data storage, and staff time spent both on training officers in the use of the devices and transferring data at the end of a shift. Other costs may be harder to identify, such as the cost of processing Freedom of Information Act (FOIA) requests for the videos or what equipment and staff resources will be needed for the District's investigative and other agencies to obtain the recordings in an efficient manner. Using an advisory panel of stakeholders to help craft a policy should also provide MPD with the ability to more fully identify and estimate a wider spectrum of potential costs.

For example, the discussion of how recordings are initiated and how long footage is stored will have a bearing on how much material is potentially subject to a FOIA request. Because disclosure under FOIA of certain public records may be exempt if it causes an invasion of privacy, the panel's consideration of privacy issues will also help MPD determine the extent to which records will be exempt from disclosure. Thorough consultation will therefore aid MPD in developing a more accurate sense of what additional resources will be needed to process FOIA requests for material generated under a body camera program.

In addition, the Department's purchases of body cameras and data storage equipment or services are likely to be subject to some form of competitive bidding. Obtaining the panel's feedback may be helpful in identifying more accurate cost estimates. By determining precisely what the District's needs are in advance, the panel can come up with a better initial cost estimate for the body camera program. The more accurate the initial estimates are, the more likely that the program will avoid unanticipated costs at later stages of implementation.

To further enhance the panel's consideration of these issues, MPD could provide details regarding the basic costs of purchasing cameras as well as the estimated cost impact under various proposals

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<sup>25</sup> ACLU REPORT at 5, 6.

developed by panel members. Making the information available may aid the panel in determining which policy choices would be impractical from a cost perspective.<sup>26</sup>

## V. PRACTICES OF OTHER JURISDICTIONS IN DEVELOPING POLICIES

There is no one-size-fits-all solution when it comes to body cameras for police departments. Because of the varying technologies involved, different levels of funding, and the policy concerns addressed above, each police department has to make its own assessment of the video system, policies, and procedures that will best meet the needs of the community it serves.

Looking at how other jurisdictions have implemented body camera programs can be instructive nonetheless. For instance, the Los Angeles Police Department (LAPD) has purchased 30 cameras from three different vendors for testing.<sup>27</sup> The city ultimately plans to buy a set of 600 cameras using private funds that have already been raised, and then request that the city provide public funding so that the devices can be distributed to the entire force. The Department has not yet developed a policy for the cameras' use, but the president of the Police Commission that oversees LAPD has called for a "wide array of groups, including the union representing officers" and "civil rights advocates" to be involved in the discussions.<sup>28</sup> Such an approach was also proposed in a report recently issued by the IACP National Law Enforcement Policy Center, which noted that when developing a policy, a police department must consider, among other factors: community perspectives and customs; law enforcement strategies and philosophies; and agency resources.<sup>29</sup>

Here in the District, MPD and the proposed stakeholder advisory panel should take a similar approach in deciding what will best serve the public. Through a collaborative process such as this, MPD and the panel can ensure that all relevant perspectives have been considered. This, in turn, will not only lay the foundation for a more effective body camera on-body camera system for the District, but will also help earn critical support from affected parties and increase the program's chances for success.

## VI. RECOMMENDATIONS

In order to ensure that the Metropolitan Police Department deploys an effective officer-worn video camera system with proper capture, storage, access, and privacy controls that generally meets the needs of stakeholders and has the broadest support possible, the Police Complaints Board makes the following recommendations:

1. MPD should establish an advisory panel of District of Columbia stakeholders to assist in developing a policy for a body-worn camera pilot program. The panel should, at a minimum, include representatives from: MPD; the Office of Police Complaints (OPC); the Fraternal Order of Police (FOP); the Office of the United States Attorney for the District of Columbia (USAO); the District's Office of the Attorney General (OAG); the criminal defense bar; the American Civil Liberties Union (ACLU); and the Fair and Inclusive Policing Task Force;

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<sup>26</sup> In particular, having access to cost information up front will help avoid a situation where the panel develops a cohesive set of proposals that rely on one significant element, only to have the cohesiveness undermined by the rejection of the significant element as excessively costly.

<sup>27</sup> Rubin, *supra* note 1.

<sup>28</sup> *Id.*

<sup>29</sup> IACP NATIONAL LAW ENFORCEMENT POLICY CENTER, BODY-WORN CAMERAS: CONCEPTS AND ISSUES PAPER, 5 (April 2014).

2. The panel should also include members of MPD's Citizen Advisory Councils as well as representatives of groups from around the District who could provide insight into how a camera program would affect various segments of the public, including, among others, immigrants, non-English speakers, crime victims, and the LGBTQ population;
3. With guidance from the advisory panel, MPD should develop a policy to govern a pilot program for body-worn cameras;
4. The District government should provide MPD with the funding necessary to conduct the pilot program;
5. Once the pilot program has been conducted, the advisory panel should review the program's efficacy, identify any concerns about processes or policies, and suggest changes and improvements;
6. If the panel and MPD determine that the program is beneficial, the District government should provide the necessary funding for more widespread implementation across MPD; and
7. In the event that MPD decides to launch a pilot program prior to convening the recommended panel, it should be allowed to do so, but should permit OPC to provide real-time input and feedback to MPD as the expedited pilot program takes shape and is implemented. MPD should then convene the proposed panel as soon as practicable to help develop a final policy based on an assessment of the ongoing pilot program.

## Appendix A

| <b>FY11</b>              | <b>Number of Allegations</b> | <b>Percentage of all Allegations</b> | <b>FY12</b>              | <b>Number of Allegations</b> | <b>Percentage of all Allegations</b> | <b>FY13</b>              | <b>Number of Allegations</b> | <b>Percentage of all Allegations</b> |
|--------------------------|------------------------------|--------------------------------------|--------------------------|------------------------------|--------------------------------------|--------------------------|------------------------------|--------------------------------------|
| Demeanor or tone         | 203                          | 12.4%                                | Demeanor or tone         | 198                          | 13.1%                                | Demeanor or tone         | 126                          | 11.1%                                |
| Bad ticket               | 96                           | 5.9%                                 | Threat                   | 110                          | 7.3%                                 | Bad ticket               | 85                           | 7.5%                                 |
| Threat                   | 84                           | 5.2%                                 | Bad ticket               | 99                           | 6.5%                                 | Stop:<br>vehicle/traffic | 77                           | 6.8%                                 |
| Stop:<br>vehicle/traffic | 78                           | 4.8%                                 | Stop:<br>vehicle/traffic | 76                           | 5.0%                                 | Threat                   | 74                           | 6.5%                                 |
| Profanity                | 77                           | 4.7%                                 | Profanity                | 67                           | 4.4%                                 | Profanity                | 49                           | 4.3%                                 |
| <b>Total</b>             | <b>538</b>                   | <b>33.0%</b>                         | <b>Total</b>             | <b>550</b>                   | <b>36.3%</b>                         | <b>Total</b>             | <b>411</b>                   | <b>36.1%</b>                         |