




TOWN OF FAIRFAX

STAFF REPORT

July 18, 2018

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager 
Christopher Morin, Chief of Police

SUBJECT: Approve the response to the Marin County Grand Jury Report: *Body-worn Cameras and Marin Law Enforcement Follow Up Report*

RECOMMENDATION

Approve the response to the Marin County Civil Grand Jury Report: *Body-worn Cameras and Marin Law Enforcement Follow Up Report*.

DISCUSSION

The 2017-2018 Marin County Civil Grand Jury issued the attached report, *Body-worn Cameras and Marin Law Enforcement Follow-Up Report*, dated May 24, 2018. It is a follow-up to their report published in February 2014, when their main recommendation was that Marin County Law Enforcement agencies should implement this technology. The Grand Jury has requested a response from the Fairfax Town Council to three of the five recommendations: R3, R4, and R5. The Fairfax Police Chief has been invited to respond to the same three recommendations.

Chief Morin developed the attached response. In June 2018, the Fairfax Police Department entered into a new 5-year agreement with their vendor for updated cameras and technology which address the recommendations in the report, as summarized in the attached response.

The Town Council is required to respond in writing to Findings and Recommendations contained in the Marin County Civil Grand Jury Report, pursuant to Penal Code § 933.05.

FISCAL IMPACT

N/a

ATTACHMENTS

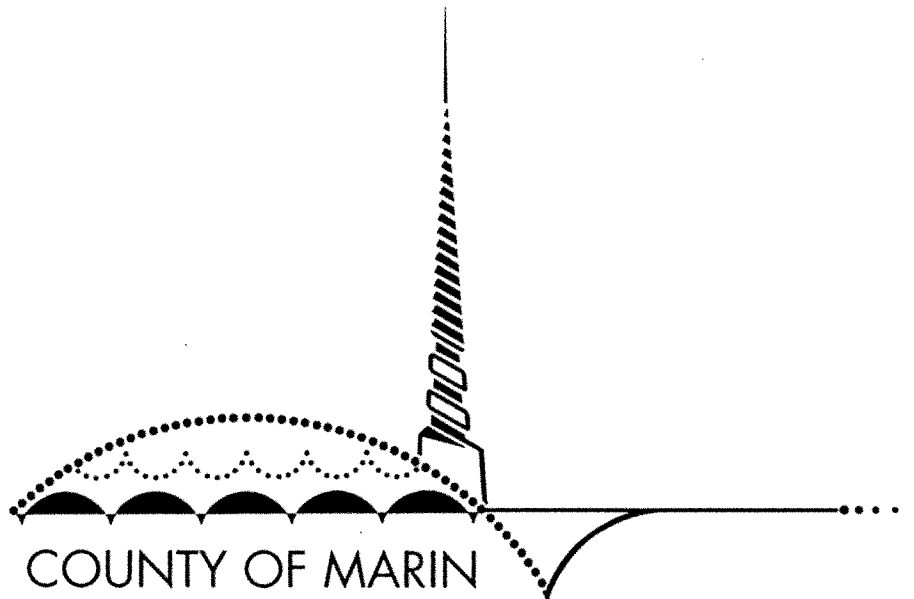
- A. Grand Jury Report: *Body-worn Cameras and Marin Law Enforcement Follow Up Report*
- B. Town of Fairfax and Police Chief Response to Grand Jury Report

2017-2018 MARIN COUNTY CIVIL GRAND JURY

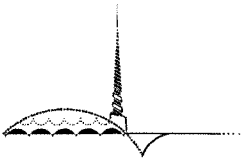
Body-worn Cameras and Marin Law Enforcement *Follow Up Report*

Report Date: May 24, 2018

Public Release Date: June 1, 2018



ATTACHMENT A



Body-worn Cameras and Marin Law Enforcement: Follow Up Report

SUMMARY

The 2013-14 Marin County Civil Grand Jury's report on Marin law enforcement's use of audiovisual technology, published in February 2014, recommended that all Marin law enforcement agencies acquire and use body-worn cameras (BWC).¹ Since that report was published all Marin law enforcement agencies, with the exception of Sausalito, are now using this technology. The Grand Jury continues to recommend that Sausalito acquire and use body-worn cameras.

To enhance public trust and transparency, body-worn camera policies should be available to the public, which may be accomplished by posting them on the agency's website. Fairfax, Novato, and Central Marin Police Authority have done this already. The Grand Jury recommends that all other agencies do this as well.

Cameras can only record when they are turned on, and there have been problems associated with manual activation.^{2,3} Much of the adverse publicity about body-worn cameras stems from the consequences that result from the failure to activate cameras during critical interactions, especially those involving use of force. Because many of the new camera systems feature automatic activation, the Grand Jury recommends that all Marin police agencies acquire camera systems with this capability.

Law enforcement agencies are under increasing pressure by community groups and legislative bodies to promptly release video images of enforcement actions to the public. Before public release, images must be "redacted" — edited to hide or blur images to protect the privacy of people peripheral to the action, or to prevent identification of victims, witnesses, and minors. Editing capability of the simpler systems, particularly redaction, is largely manual and requires substantial manpower and expertise to accomplish.

The inexorable trend is toward liberalization of public release criteria of police video. To accommodate the increased demand for editing that this would bring, the Grand Jury recommends acquisition of advanced camera systems that have semi-automated editing features to simplify and speed up redaction and indexing to events.

Local government will need to provide financial support to their law enforcement agencies for these technology upgrades, as well as for the costs of increased video file storage. To address the substantial cost of acquisition, maintenance, storage and processing of video data, the Grand Jury recommends that Marin agencies investigate sharing of resources. A county-wide purchasing group might allow smaller jurisdictions to employ more advanced technology than they could afford on their own.

¹ "Get The Picture? Audiovisual Technology and Marin Law Enforcement." *2013-14 Marin Civil Grand Jury Report*, 18 Feb. 2014.

² Pasternak, Alex, "Police Forget To Turn On Body Cameras. Can Taser's Connected Holster Fix That?" *Future of Policing*. 02.28.17 Accessed 27 Mar. 2018.

³ Ariel, B., "Sutherland, A., Henstock, D. et al. Report: increases in police use of force in the presence of body-worn cameras are driven by officer discretion: a protocol-based subgroup analysis of ten randomized experiments." *J Exp Criminol* (2016) 12: 453.

BACKGROUND

The issue of police-community relations has always been important to public safety. In this age of real-time news and nearly universal possession of video technology by the public, the issue has been brought to the forefront of public perception in an unprecedented way. Many instances of officer-involved use of force have been the subject of widely publicized news stories in recent years.

With the goal of increasing transparency and trust, the 2013-14 Marin County Civil Grand Jury recommended the use of body-worn video cameras for all Marin law enforcement agencies. Given the sensational reports from around the country on the use and misuse of police video, the current Grand Jury wanted to assess how Marin police agencies have responded to the 2013-14 Grand Jury recommendation to implement county-wide use of body-worn cameras.

APPROACH

The Grand Jury surveyed Marin law enforcement agencies to determine:

- What brand of body-worn camera is currently being used.
- If there are plans to acquire new or updated equipment.
- The costs of a body-worn camera system.
- Whether or not the use of body-worn cameras has resulted in a decrease in citizen complaints.

This survey was augmented by interviews with law enforcement officers and general research conducted on the subject.

DISCUSSION

Although body-worn cameras are widely promoted as enhancing the law enforcement mission and improving the public interface, acquisition or updating of BWC equipment is not as simple as buying cameras and storage. The policies that guide the use of this technology are vitally important. Without well thought-out policies that are publicly available, and adhered to, the perception of transparency can be undermined.

Most Marin police departments use pre-formatted policy templates available through Lexipol,⁴ which offers vetted policy elements and options that departments can select from a menu. While the Lexipol policies have been analyzed to provide legal protection and wide applicability, they allow the chief executive officer (normally the Chief of Police) considerable latitude in the handling of public release and disposition. Legislation being considered (SB 1186, see Appendix A for details) will make law enforcement surveillance policies (including body-worn camera policies) subject to review and approval in a public hearing by the responsible elected body.

⁴ "Lexipol." *Lexipol*. Last Accessed on May 2, 2018

Whether or not this proposal becomes law, the desire for public input to law enforcement surveillance policies is robust and not likely to abate.

The Grand Jury surveyed all of Marin's law enforcement agencies and found that, with the exception of Sausalito, all now employ body-worn cameras as recommended in the 2013-14 Grand Jury report. All the agencies using body-worn cameras have reported either a decrease or no change (about 50% in each category) in complaints against officers. Only three of the ten agencies have posted BWC policies on their websites.

The cost for Marin agencies' camera systems vary considerably, from negligible to \$1,927 per unit per year.^{5,6} The costs noted as negligible (some listed the cost as unknown) represented small departments that acquired first-generation cameras and accessories featuring manual on-site storage. The highest figures reported were, not unsurprisingly, for the largest departments with the latest-generation camera systems and their associated storage cost. Five agencies are exploring acquisition of new cameras at the present time. The substantial cost of body-worn camera systems remains a barrier to both acquisition and upgrades.

A Primer on Body-worn Cameras



Figure 1. Front-mounted body-worn camera

⁵ Johnson, Nels. "Budget provides Marin sheriff with body cameras." *Marin Independent Journal*. 25 Mar. 2016.

⁶ Halstead, Richard. "Marin sheriff's deputies will soon begin wearing body cameras." *Marin Independent Journal*. 14 May 2016.



Figure 2. Body-worn camera mounted on uniform epaulet

The sophistication of the camera systems varies considerably. They range from basic devices with manual activation and output manually transferred onto local storage media (i.e., CDs or DVDs), to the latest in camera systems with advanced features and editing capability. Such advanced systems not only allow automatic activation of recording and better image quality, they also support more convenient processing of video images, such as tagging a video to a particular event, automatic uploading to storage media, and more convenient editing.

Components of a BWC System

BWC systems typically include several elements:

- Cameras
- Video data storage
- Image processing software (including redaction and tagging)
- Chargers
- Database management programs
- Officer training

The simplest systems have low-cost cameras that are similar to those found in an older smartphone. These have video storage and battery capability of 8-10 hours (a shift's worth). The data can be unloaded at the station onto storage media or placed on compact disks. The definition is usually medium at best. Docking stations for recharging batteries are typically included. With these simple systems, minimal data storage costs are offset by time spent preparing video for court proceedings and possible public release. (See Appendix C, Public Release for more detail.) Manual redaction (blurring) of images for required privacy mandates is difficult and time-consuming, usually requiring expert assistance. Public release that is mandated by state laws

currently being considered (AB 748) would place additional pressure on agencies that use less sophisticated systems. (See Appendix A, Current and Proposed California State Laws, AB 748, for further details.)

In more advanced systems, the camera is only part of the cost. Video data storage and processing systems are substantial additional costs. Sophisticated cameras are now available that feature HD (High Definition), ultra HD and automatic transmittal to remote secure data storage platforms (such as iCloud). These newer camera systems offer a host of features such as:

- Advanced security and audit logs
- Automatic activation
- Advanced editing software that tags data to a specific event
- More convenient editing (redaction and other advanced post-processing)
- Longer running times due to more efficient batteries
- Image stabilization
- Video buffering that records and saves a portion of video prior to activation (selectable by the department—usually 30 seconds to 2 minutes)

Systems featuring automatic activation are capable of being switched on by a number of preset law enforcement activities rather than having to be manually started by the officer. These activities include turning on the vehicle light bar, opening the patrol car door, unholstering a weapon, concurrent activation of nearby cameras, and officer position. They can even be set to activate with accelerometer readings from physical struggles or foot pursuits.

Body-worn cameras themselves vary considerably in cost, ranging anywhere from \$50 to well over \$500. The storage cost associated with the dramatically increased data can be many times higher than the cameras themselves.⁷

What About Marin?

Most of Marin's law enforcement agencies (7 out of 10) use the VieVu camera systems, which might be considered first-generation technology. They have the advantage of low initial and maintenance cost. Storage costs are minimal since the video data is transferred to CD manually. Aside from the obvious lower quality images, one big drawback of these systems is the difficulty of processing the video for public release and/or court use. As mentioned above, the manual post-processing would require a considerable amount of employee time and likely expert assistance, and if proposed legislation requiring public release with extensive redaction becomes law, this is sure to become a major issue. Although this legislation is still in committee, the national trend has been to call for more liberal public release of police video. Three agencies use the more advanced Axon/Taser camera systems.

⁷ Bakst, Brian and Foley, Ryan J. "For Police Body Cameras, Big Cost Loom in Storage," *Associated Press*, 6 Feb. 2015.



Figure 3. Example of Image Redaction

Another drawback to the older systems is that they do not allow for automatic activation and there have been problems with manual activation that jeopardize the usefulness of video evidence. (See Appendix C, Camera Activation and Public Release for further discussion of the topic.)

Impact of Body-Worn Cameras

Beneficial Impacts

Better Behavior by All: During a 12-month study by the Rialto, California police department, use-of-force by officers wearing cameras fell by 59% and reports against officers dropped by 87% compared to the previous year's figures.⁸ These researchers say the knowledge that events are being recorded creates self-awareness in all participants during police interactions. Individuals, both police and citizens, tend to modify their behavior when aware of "third-party" surveillance by cameras. The employment of any technology that reduces use-of-force and improves citizen behavior can pay big dividends in officer safety by reducing incidents that might incur liability. Body-worn cameras, while not guaranteed to lower liability exposure, have been demonstrated to reduce use of force by officers against members of the public as well as assaults upon officers,⁹ especially if the discretion to record is removed from the officer's control.¹⁰

Better Use of Time: Video evidence, especially from body-worn cameras, can be a great time-saver for law enforcement. The presence of a video record saves significant officer time in report-writing, case evaluation and preparation for court testimony. Prosecution time is also saved in preparation of cases for court. Police departments also note significant time savings in resolving complaints against officers.¹¹

⁸ Ariel, B., Farrar, W.A., and Sutherland, A., "The effect of police body-worn cameras on use of force and citizens' complaints against the police: A randomized controlled trial." *Journal of Quantitative Criminology*. Volume 31, Issue 3, 2015, pp. 509-535.

⁹ Ariel, B., Farrar, W.A. & Sutherland, A. "The Effect of Police Body-Worn Cameras on Use of Force and Citizens' Complaints Against the Police: A Randomized Controlled Trial." *J Quant Criminol* (2015) 31: 509.

¹⁰ Ariel, B. et al, "Report: increases in police use of force in the presence of body-worn cameras are driven by officer discretion: a protocol-based subgroup analysis of ten randomized experiments." *J Exp Criminol* DOI 10.1007/s11292-016-9261-3 (2016).

¹¹ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. "Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned." *Washington, DC: Office of Community Oriented Policing Services*. 2014.

Better Training and Evaluation: Video recordings of officer interactions have obvious value in training and employee evaluation for department supervisors. Improvement can be directly observed as well as demonstrated by the decrease in citizen complaints and use of force mentioned above.

Potential Negative Impacts

Costs: Law enforcement agencies must balance the cost of body-worn camera systems with the likelihood that public/police relations will improve and liability risk will be reduced. As mentioned above, the purchase of the cameras and the associated hardware and software is only part of the financial outlay. The cost of storage is typically many times the equipment cost.¹² There are also costs of training, maintenance, officer time in managing access, ensuring appropriate distribution and maintaining documentation. In addition, there is a high likelihood that outside (and expensive) expertise will be required to prepare unredacted material for public release with older systems, as previously mentioned. Since many of the large judgments seen in the last few years have involved use of force and officer misconduct,¹³ acquisition of technology that can mitigate these elements would seem to be a sound investment.

Effects on Initiation/Evaluation of Activity: There are suggestions that some officers may be reluctant to engage in a law enforcement activity if they feel that the camera's video will not be supportive, or conversely, that the presence of the camera might lead to a lower threshold for use of force if the officer feels that the camera will vindicate the activity.¹⁴ Also exerting an effect on evaluation is camera perspective bias. Camera perspective bias is a feature of video viewing wherein the viewer identifies with the point of view of the camera wearer (typically a law enforcement officer), and tends to subconsciously discount those of video subjects. (See Appendix B, Camera Perspective Bias, for further discussion of this phenomenon.)

Altered Community Dynamics: The nature of the law enforcement mission in a particular community may bear on the decision to use video as well. In small communities where the crime rate is low and the relationship between citizens and law enforcement has historically been close and more informal, the employment of video might result in formerly relaxed interactions becoming uncomfortably officious.¹⁵ However, regardless of the size of the department, the widespread use of body-worn cameras creates an expectation that video of police/public interactions would be available in case of litigation. The absence of such video would make it more difficult to refute assertions of misconduct on the part of an officer if the matter were to come before a jury or disciplinary board.

¹² Kotowski, Jason. "Money, Storage Primary Obstacles in Police Body Camera Implementation," *The Bakersfield Californian*, 8 Mar. 2015.

¹³ Wing, Nick. "We Pay A Shocking Amount For Police Misconduct, And Cops Want Us Just To Accept It. We Shouldn't," *Huffington Post*, 29 May 2015. Accessed 18 Apr. 2018.

¹⁴ Doleac, Jennifer. "Do Body-worn Cameras Improve Police Behavior?" *Brookings Institute website*, 25 Oct. 2017. Accessed 15 Dec. 2017.

¹⁵ Miller, Lindsay, Toliver, Jessica, and Police Executive Research Forum. "Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned," *Washington, DC: Office of Community Oriented Policing Services*, 2014.

While there are some conflicting opinions about the effectiveness of body-worn cameras in promoting improved rapport between law enforcement and the community,¹⁶ body-worn cameras are generally seen by the public to be a good thing. In one survey, 93% of respondents felt that police officers should be equipped with body cameras.¹⁷ Similar results can be found in almost every public survey on the subject.

Body-worn Camera Policies

The use of video (especially BWCs) in law enforcement must be supported by clear, publicly-available policies to be an effective tool. As mentioned above, it is widely believed by the public that body-worn cameras enhance the transparency and accountability of law enforcement. However, this belief can be undermined by policies that are seen to be either not available to the public or not perceived to be aligned with community expectations if they are available.¹⁸

At the heart of the body-worn camera policy debate is whether cameras are law enforcement tools that enhance the officer's ability to perform his or her mission in an efficient and accountable manner (policy groups referred to below as "law enforcement"), or are public tools to assure police exert their authority consistent with community ideals (these groups are referred to as "community-centered"). Until these two views can be reconciled, resolution of this debate seems unlikely.

A number of policy recommendations have been generated by various groups in recent years. There are law enforcement groups such as:

- PERF/COPS¹⁹
- IACP²⁰

There are also groups that promote community-centered policies, such as:

- The Constitution Project²¹
- The Brennan Center²²
- Upturn²³

¹⁶ Yokum, David, Ravishankar, Anita and Coppock, Alexander, "Evaluating the Effects of Police Body-Worn Cameras: A Randomized Controlled Trial." *The Lab @ DC, Office of the City Administrator, Executive Office of the Mayor, Washington, DC*, 9 Oct. 2017.

¹⁷ "Sharp Racial Divisions in Reactions to Brown, Garner Decisions." *Pew Research Center*. December 8, 2014. Accessed 6 Oct. 2017.

¹⁸ White, Michael D., "Police Officer Body-Worn Cameras: Assessing the Evidence." *Washington, DC: Office of Community Oriented Policing Services*. 2014.

¹⁹ Miller, Lindsay, Toliver, Jessica and Police Executive Research Forum. "Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned." *Washington, DC: Office of Community Oriented Policing Services*. 2014.

²⁰ "Body-Worn Cameras Concepts and Issues Paper." *IACP National Law Enforcement Policy Center*. April 2014.

²¹ "Guidelines for the Use of Body-worn Cameras by Law Enforcement: A Guide to Protecting Communities and Preserving Civil Liberties." *The Constitution Project*. December 2016.

²² "Accountability." *Brennan Center for Justice at NYU School of Law*. 8 Jul. 2016.

²³ "Police Body Worn Cameras: A Policy Scorecard." *The Leadership Conference on Civil and Human Rights & Upturn*. Nov. 2017. Accessed 15 Apr. 2018.

In addition, the American Civil Liberties Union (ACLU) has proposed a model law for state legislatures to use to put body-worn camera policies on a statutory footing.²⁴ This model features many of the elements espoused in the community-centered policy groups.

Other than the recommendation to phase in auto-activation technology, the Grand Jury is not making specific policy recommendations. The individual police agencies that possess BWCs already have policies in place. These policies would be amended as new equipment is acquired or if there are changes in departmental philosophy or state/federal law. A proposed law actually codifies this notion of amending departmental policies and making them subject to civilian review. (See Appendix A, Current and Proposed California State Laws, SB 1186, for more detail.)

Policy Elements — A Brief Overview

Policies generally contain the following elements:

- Camera activation criteria
- Protection of privacy guidelines
- Policies regarding pre-report viewing by officers
- Requirements for retention of video files
- Policies for protection of video from tampering or misuse
- Public release criteria

(See Appendix C for a detailed discussion of these policy elements.)

While the groups studying policies (Constitution Project, Brennan Center, Upturn PERF/COPS IACP and ACLU) differ in detail, their recommendations are broadly similar. All support the use of police video technology and the importance of clear policies. While the actual policies used by law enforcement agencies around the country vary considerably in how closely they conform to model guidelines presented by policy analysts, it is likely that these policies will be amended, either voluntarily or as a result of statutory requirements, to more closely resemble the ideals presented by policy models.

The technology component of modern law enforcement has grown from two-way radios to complex data systems that provide real-time information on a scale undreamed of just a couple of decades ago. While this augmented capability may be a concern to civil libertarians, it is unlikely that there will be any rollback of technology in the foreseeable future. Despite its potential downside, new technology is helping to raise public safety standards. Marin County has the responsibility, as well as the wherewithal, to keep our law enforcement agencies up to date.

²⁴ “A Model Act for Regulating The Use of Wearable Body Cameras by Law Enforcement.” *American Civil Liberties Union*. Accessed 6 Aug. 2017.

FINDINGS

- F1. With the exception of Sausalito, all Marin County law enforcement agencies are now following the 2013-14 Marin Civil Grand Jury's recommendation that body-worn cameras be used.
- F2. Video camera policies published on law enforcement agency websites enhance transparency and help gain public trust.
- F3. Although all agencies have policies regarding police video technology, not all agencies have posted policies on a public website.
- F4. Automatically activated body-worn cameras reduce the occurrence of failure to capture critical events when compared with manually activated cameras.
- F5. Data storage and data management costs are often many times the cost of the cameras themselves with the newer camera systems.
- F6. Platforms that allow sharing of information technology resources exist and can lower individual agencies' costs.
- F7. Half of the reporting agencies in Marin have experienced a decrease in citizen complaints against officers since deploying body-worn cameras.
- F8. No Marin agency has reported an increase in citizen complaints.
- F9. Agencies have reported that the time required to investigate citizen complaints has decreased with the use of BWCs.

RECOMMENDATIONS

- R1. Sausalito should implement body-worn cameras as recommended by the 2013-14 Marin County Civil Grand Jury and by this Grand Jury.
- R2. Marin law enforcement agencies that have not posted their body-worn camera policies to their websites should do so by October 1, 2018.
- R3. All Marin law enforcement agencies should seek to employ automated activation of body-worn cameras based on that agency's choice of activation modes.
- R4. All Marin law enforcement agencies pursuing new or improved video technology should explore cooperative negotiating and resource sharing with other agencies to reduce costs.
- R5. The County of Marin should work with the law enforcement agencies to form a county-wide buying group to reduce the costs of video technology.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the grand jury requests responses as follows:

From the following governing bodies:

- Central Marin Police Authority (R3, R4, R5)
- City of Belvedere (R2, R3, R4, R5)
- City of Mill Valley (R2, R3, R4, R5)
- City of Novato (R4, R5)
- City of San Rafael (R2, R3, R4, R5)
- City of Sausalito (R1, R2, R3, R4, R5)
- County of Marin (R3, R4, R5)
- Town of Fairfax (R3, R4, R5)
- Town of Ross (R2, R3, R4, R5)
- Town of Tiburon (R2, R3, R4, R5)

The governing bodies indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code section 933 (c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

From the following individual:

- The Marin County Sheriff (R2, R3, R4, R5)

The following individuals are invited to respond:

- Chief of Belvedere Police Department (R2, R3, R4, R5)
- Chief of Fairfax Police Department (R3, R4, R5)
- Chief of Mill Valley Police Department (R2, R3, R4, R5)
- Chief of Novato Police Department (R3, R4, R5)
- Chief of Ross Police Department (R2, R3, R4, R5)
- Chief of San Rafael Police Department (R2, R3, R4, R5)
- Chief of Sausalito Police Department (R1, R3, R4, R5)
- Chief of Tiburon Police Department (R2, R3, R4, R5)

Note: At the time this report was prepared information was available at the websites listed.
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Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury <u>not</u> contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.
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GLOSSARY

Evidentiary: describing that which is capable of being used as evidence, especially in court proceedings.

Exculpatory: that which tends to show innocence or a lesser degree of guilt.

Redaction: the process of making video elements unreadable or unidentifiable. This would include the blurring of facial images and other identifying features of a video.

Probative value: the value of evidence in proving or demonstrating an element of an investigation or court case

Exigent: requiring immediate attention; pressing. Often used as a softer word connoting an emergency.

Transparency: in the context of institutions, openness to public scrutiny.

Vetted: selected for specific desirable characteristics.

Tainted evidence: evidence that may not be admissible or the jury can be instructed to devalue in their deliberations because issues with the manner in which it was obtained (i.e., an illegal search).

APPENDIX A: Current and Proposed California State Laws

California law AB 69 (2015) requires police agencies to consider best practices when developing policies for downloading and storing body-worn camera data. A list of best practice elements is presented without requiring that they be actually put into practice. These refer to such matters as developing standards for downloading, categorizing, storing, and preventing misuse. The law does require that police departments retain ownership of the cameras and explicitly forbids uploading camera data to social media.

California law AB 93 (2015) appropriates \$10M for police-community relations improvement projects including one-time costs associated with body-worn camera acquisition.

California law SB 424 (2015) exempts body-worn camera use by law enforcement from prohibitions on eavesdropping, recording, or intercepting certain communications.

California law SB 85 (2015) requires the California Highway Patrol to develop a plan for implementing body-worn cameras by January 1, 2016. This plan includes many of the recommendations outlined in AB 69.

California law AB 1953 (2016) makes specific the best practices referred in AB 69. The law does not require adoption of body-worn cameras but presents a number of considerations police agencies should keep in mind when developing body-worn camera policies. Points presented in the measure include:

- specifying practices for downloading and safeguarding data from body-worn cameras (BWC)
- recommending retention times (from 60 days to permanent) for various categories of video data
- specifying practices for the storage and access to BWC data, and providing sanctions for violation of policy

Proposed - California law AB 748 (2017-2017) proposes that the policies for BWC data regarding release to the public be liberalized such that release is assumed if the video depicted use of force or possible violation of law or policy (presumably on the part of the police officer), subject to privacy and safety caveats, instead of being the sole purview of the chief executive of the agency. The released video may be withheld for up to 120 days if release would substantially hinder an ongoing investigation or be withheld permanently if such release is deemed (by whom is left unstated) not to be in the public interest. Most real-world policies leave decisions about public release to the chief executive. This law would prohibit the application of biometric scanning/identification routines except in “exigent” circumstances (these are not defined in the proposed law). With the enhanced public release characteristics of the proposal there are numerous conditions placed on the non-law enforcement contents of video that would preclude unedited release, such as financial information, results of engineering studies, bidding information, etc.—anything that may give someone a financial advantage if viewed. There are numerous restrictions on release for video subject’s information such as address, phone numbers and other personal details. Essentially, by mandating release of video data, most other types of information revealed by the video are subject to redaction or outright withholding and only the officer’s conduct is to be widely available. The law is in committee (Judicial) currently.

California law AB 459 (2017) prohibits the public release of video depictions of victims of rape, sexual assault, child abuse, incest, or domestic violence.

Proposed - California law SB 1186 (2017-2018) requires that police agencies submit Surveillance Use Policies to the responsible elected bodies in a formal hearing, subject to the Brown Act public notice, for approval. This would occur whenever the agency acquires new technology or anticipates a new use. If the policy is disapproved, the police agency has 30 days to cease using the technology until approval is obtained. There are other provisions of the bill which reflect existing and proposed limits on use (see AB 748). This bill has been reported out of committee.

APPENDIX B : Camera Perspective Bias

Video technology is everywhere. The prevalence of smartphones with video uploading capability make video of even mundane nature available to almost anyone via Facebook, YouTube, and other social media platforms. With the emergence of law enforcement video as well as the ubiquity of personalized video content from civilian sources, a phenomenon known as camera perspective bias has been widely recognized.²⁵ Camera perspective bias arises from the tendency to regard video as an objective (therefore unbiased and presumably unassailable) record of an event. The fact is that video only presents one view of the situation -- that of the camera holder/wearer. That view is constrained by the scope of the camera and is necessarily incapable of depicting the entire event in all its complexity.

Another characteristic of camera perspective bias is that the viewer of a piece of video tends to identify with the individual on the camera side. It is as if the viewer is seeing with the eyes of the camera operator. This is especially true of body-worn camera video (as opposed to dash-mounted cameras) because of the personalization effect of having the camera reflect the movements and audiovisual orientation of the wearer. This has the effect of subconsciously rendering the accounts of video subjects as less objective.

Underlying all of this are inherent biases which operate subconsciously when viewing video. So, while the use of video technology in law enforcement has the well-demonstrated potential to improve the relationship with the public through accountability and transparency on both sides, camera perspective bias must be taken into consideration when camera data (especially body-worn camera data) is evaluated.

²⁵ Sankin, Aaron. "How Police Body Cameras Change Our Perception of Right and Wrong." *The Daily Dot website*. 29 June, 2016. Accessed 16 November, 2017.

APPENDIX C: Policy Elements — An Overview

The following broad categories outline areas of policy recommendations offered by groups studying the implementation of body-worn cameras. These recommendations differ in details but are broadly similar. The utility and desirability of body-worn cameras is acknowledged by all of the policy groups. Substantial areas of disagreement are pointed out in the discussion of individual categories where appropriate.

The policy proposals assume that issuance of cameras is to duly sworn or authorized peace officers with the authority to make arrests and conduct searches and that proper training in the use and maintenance has been provided and documented. All the recommendations stipulate that security and accountability for data must be of the highest order.

The details of mounting location, camera type, issuance and maintenance, data security, location of data processing equipment, and other matters that would be specific to individual departments are left out of recommendations other than to say these things should be attended to with utmost diligence.

Most groups studying best practices for body-worn camera policies agree that the following practice categories are the most important.

Camera Activation

Ideally, the best policy would be to record all enforcement interactions with the public except those that present a clear privacy or victim protection concern. Recording would start upon the beginning of the encounter and continue until the encounter is complete. As discussed above, leaving activation and cessation of recording entirely up to the individual officer can lead to problems. Results from eight UK and US police forces in 2016 reveal rates of assault against officers are 15% higher when officers choose when to activate cameras, perhaps because officers begin recording when the situation becomes confrontational and the subject may view the activation as a provocation. This finding illustrates the need for cameras to be recording at all stages of the encounter.²⁶ Most real-world policies list situations that require activation of body-worn cameras specifically, with the provision that other situations may arise that are not listed. Automatic activation removes the concern that an officer will forget to turn on the camera in any situation.

Recording would not cease until the end of the encounter or at the request of witnesses, victims, or incidental participants, provided that the initial encounter is complete. Officers are usually allowed some discretion in deciding when to cease recording, but these instances are to be documented either on the recording or in the official report. Officers would be required to inform anyone involved that they are being recorded, provided such notification is consistent with officer safety. Interaction with victims, witnesses, minors, or confidential informants generally requires advance consent.

Protection of Privacy

The widespread use of video technology has raised privacy concerns. Subjects who are victims, witnesses, minors, informants, and bystanders may not want to be recorded. Any good policy would allow the officer to cease recording where there is an identifiable privacy issue. Some policies would have the officer cease recording upon request of the subject, as long as its value

²⁶ “Body-worn cameras associated with increased assaults against police, and increase in use-of-force if officers choose when to activate cameras.” *University of Cambridge Research*. 17 May 2016.

as evidence would not be compromised. There is disagreement among policy analysts regarding this issue with some advocating mandatory cessation of recording on demand or requiring advance consent (The Constitution Project) and others leaving it up to the officer (most real-world policies, PERF/COPS).

In non-exigent circumstances or routine entry into a private home (or any area where there is an expectation of privacy, such as a restroom), policy analysts would typically require the consent of the subject before recording. All policies prohibit surreptitious recording both of non-involved subjects and other departmental employees without judicial permission in the form of a court order.

The use of facial recognition is also a concern. Most policy analysts would prefer to limit use of advanced analytical techniques on police videos, requiring it to be subject to a judicial review. A major concern is that law enforcement not compile databases based on video of protected activities such as protests or simple unrelated proximity to law enforcement activity that may lead to a guilt-by-association presumption. The capability of video databases to be enhanced with artificial intelligence software is a matter of concern for civil libertarians.^{27,28} The Constitution Project, seeking to speak for communities of color who already feel they are experiencing an oppressive police presence, is particularly concerned about the use of advanced recognition technology.

Most real-world policies do not prohibit such use; indeed one would imagine that most law enforcement agencies would be reluctant to give up such a potentially powerful tool. The issue of whether the probative value of advanced recognition technology outweighs the privacy concerns is a matter of debate. Although increased surveillance of public spaces is a fact of life that has been redefining the very meaning of privacy, the application of this type of technology to relatively ordinary public interactions may well represent a significant erosion of privacy.

Pre-Report Viewing by Officers

The majority of policy analysts would prefer that officers not be able to refer to video recordings to make an initial report. After the initial report, an officer could review recording for accuracy before filing an official report. The access to the recordings would be subject to custodial procedures that would vary by department but would be carefully controlled and documented. Most actual policies allow review of the video if the use of force is involved or if the officer is required to make an official statement. PERF guidelines (and most actual policies) specify that, in the interest of accuracy, the officer should be allowed to view video prior to composing a written report. The assumption that video of a particular event constitutes an unbiased record may be overly simplistic according to studies conducted to evaluate this question (See Appendix B, Video Bias for more detail on this subject.)

Biases are always present in the evaluation of video evidence. Policy recommendations that advocate against officer pre-viewing (Constitution Project, Upturn) are concerned with both personal biases and biases inherent to video (as discussed in Appendix B) that would affect conclusions after reviewing the video. On the other hand, personal biases, as well as inaccuracies in human memory in general, are also present in written reports from memory, providing justification for allowing pre-report viewing.

²⁷ Fussel, Sidney. "The New Tech That Can Turn Police Body Cams Into Nightmare Surveillance Tools." *Gizmodo*. 9 Mar. 2017.

²⁸ Brey, Philip. "Ethical aspects of facial recognition systems in public places." *Journal of Information, Communication and Ethics in Society*. Vol. 2 Issue: 2, pp. 97-109, (2004).

Retention of Video

Policies generally define retention times for video depending on circumstances. At the end of the retention time the video would be permanently deleted. Recordings that depict use of force, have evidentiary value in ongoing investigations (including allegations of police misconduct), or in trials that may result in appeals require longer retention times. Recordings of traffic stops and other routine interactions would generally be retained for a minimal specified time, such as 45 or 60 days. Below is a sample of retention times for the Novato Police Department.²⁹

450.4.5 VIDEO FILE RETENTION

Digital video recordings shall be downloaded and stored within the Department's video retention system. The use, duplication and/or distribution of video/audio files for anything other than booking a physical copy of a video into evidence for the use in a criminal case requires prior authorization from the system administrator.

It shall be the responsibility of the individual officer to download all files that are evidentiary to the assigned server prior to the end of their shift. Video/Audio files which are not of evidentiary value shall be downloaded to the server as soon as practical. The officer is responsible for filling in and completing the category and comment section for each evidentiary video recorded.

- (a) Any video/audio files downloaded to physical media, including but not limited to CD-ROM, DVD, and or thumb drives, shall be booked into evidence prior to the end of the shift.
- (b) Employees are prohibited from attaching video/audio files to email.
- (c) Employees shall not post video/audio videos to the internet (i.e. YouTube or another website or social media)
- (d) Employees shall not electronically forward or physically remove any video/audio video from the police department, unless a video is being signed out from the evidence section for use in a criminal court case or downloaded for use in traffic Court.
- (e) Digital video files not associated with an investigation are automatically deleted after one year

There is general agreement among policy analysts that the shorter the retention time for ordinary interactions, the better. This would also assist in managing storage costs.

Protection of Video Against Tampering or Misuse

Policies should be structured to carefully safeguard data from video technology with appropriate data security protocols. Access and editing capability should be strictly defined so as to prevent misuse. Chain of custody (including viewing) should be documented carefully.

Third-party contractors (i.e. those managing storage or maintenance) must adhere to the same procedures. All of the policy recommendations prohibit sale or use of video for private purposes or entertainment. All agree there should be penalties for violations of safeguards.

Public Release

Some policy analysts (ACLU, Upturn, The Constitution Project) feel that video should be available, more or less without restriction, to subjects depicted in the videos, interested parties (counsel, parents/guardians of minors, interested family, subjects recorded, interested press, etc.), and to persons alleging misconduct on the part of the police. Some (PERF/COPS, IACP) say only that video should be subject to a "broad disclosure policy" to promote transparency.

Laws on the books that deal with disclosure of public records (the Freedom of Information Act and many similar state laws) that were enacted before the widespread use of video technology are quoted in policies that advocate less restrictive availability. The actual laws that address

²⁹ "Novato Police Portable Audio/Video Recorders." *Novato Police Department*. Accessed 25 Apr. 2018.

video technology often exempt them from such laws, however. If video is to be released, and if release is considered to be in the public interest, it should be edited so that incidental subjects, victims, minors or confidential informants depicted are not identifiable.

If the video is used in trials, the defense must have access to it, just as it would have access to any evidence possessed by the prosecution under the rules of discovery, but the original, unedited video would remain the property of the originating law enforcement agency.

In addition to broadening the accessibility, the ACLU policy guidelines assert that exculpatory video that a defendant can reasonably claim was not recorded could be considered tainted evidence even if circumstances can be reasonably shown to account for the failure to record.³⁰ This can be rebutted by the prosecution, so it does not necessarily result in inadmissibility as would be evidence obtained from, say, a patently illegal search. The jury would have to decide on the question.

If a policy similar to the ACLU model becomes law, it puts additional pressure on the initiation of recording to assure successful prosecutions. This considerably enhances the value of automatic activation of recording. The ACLU guidelines are presented as a model statute however, and there are specificities in detail that exceed most policy guidelines. There is a substantial likelihood that something resembling the ACLU guidelines will be enacted in time. Some states (Washington and Minnesota, among others) have already enacted such laws. The implications of broader public release on the process of editing are substantial and are discussed in the body of the report.

³⁰ ["A Model Act for Regulating the Use of Wearable Body Cameras by Law Enforcement."](#) *ACLU*. Accessed on 25 Apr 2018.

RESPONSE TO GRAND JURY REPORT

Report Title: **Body-worn Cameras and Marin Law Enforcement *Follow Up Report***

Report Date: **May 24, 2018**

Response Due Date: **August 24, 2018**

Agency Name: Town of Fairfax

Agenda Date: **July 18, 2018**

Response by: **Fairfax Town Council & Fairfax Police Chief**

RECOMMENDATIONS

- Recommendations numbered **R3 and R4** have been implemented (Please see attached summary describing implemented actions.)
- Recommendation numbered **R5** has not yet been implemented, but will be implemented in the future. (Please see attached summary describing implementation timeframe.)
- Recommendation numbered n/a requires further analysis.
- Recommendations numbered n/a will not be implemented because it is not warranted or are not reasonable.

Date: _____

Signed: _____ Signed: _____

Number of pages attached: **1**

ATTACHMENT B

Town of Fairfax Responses: Summary of Implemented Actions
Marin County Civil Grand Jury Report: *Body-worn Cameras and Marin Law Enforcement Follow Up Report*

Recommendation 3. *All Marin law enforcement agencies should seek to employ automated activation of body-worn cameras based on that agency's choice of activation modes.*

Response: The new body worn cameras incorporate a feature over our prior cameras that capture video up to two minutes prior to its manual activation. Future upgrades will incorporate other forms of automatic activation as technology continues to advance and prices come down. The next date for upgrades would be in FY22-23.

Recommendation 4. *All Marin law enforcement agencies pursuing new or improved video technology should explore cooperative negotiating and resource sharing with other agencies to reduce costs.*

Response: The new body-worn cameras have features that allow for the District Attorney to have direct access to data and the ability to retrieve and redact for criminal cases eliminating the need for police personnel to handle this task which greatly reduces cost. Conversely the new system works with our current RMS / CAD product as well as that used by San Rafael Police for future cross over needs and cost savings. The next date for upgrades would be FY22-23.

Recommendation 5. *The County of Marin should work with the law enforcement agencies to form a countywide buying group to reduce the costs of video technology.*

Response: We agree that a countywide buying group could reduce costs and are willing to explore that option as we move forward with future upgrades. This will require coordination with all agencies in the county. It is difficult at this time to put a time-frame on when that could occur.