NEW ERA OF PUBLIC SAFETY

A GUIDE TO FAIR, SAFE, AND EFFECTIVE COMMUNITY POLICING

8

DATA, INFORMATION, AND VIDEO FOOTAGE

Transparency — like procedural justice and collaborative change — is a value that departments should accept and embrace. This chapter focuses on two primary topics related to transparency: data collection and body-worn cameras (BWCs). Both allow people in and outside of police departments to evaluate police activity and hold officers and departments accountable for their actions. Data collection allows communities and departments to analyze the effects of policies and practices, and to change them if they are ineffective or disproportionately affect particular communities. Video footage can increase transparency by providing first-hand evidence of interactions with members of the public.[1]

Indeed, without video footage, communities would never have known that, contrary to police reports, Laquan McDonald was walking away from officers when he was shot 16 times.[2] But accountability is not automatic without policies to ensure officers follow the proper protocols for data collection and BWC use; without safeguards in place, BWCs threaten constitutional rights and could intensify surveillance of communities of color, certain religious communities, or immigrant groups. (Please note: While this chapter refers mostly to BWCs, the recommendations below also apply to "dashcams" and other recording devices.)

Robust data collection and reporting allow communities and department leaders to evaluate policies and practices and to modify or eliminate those that are ineffective or have unintended negative consequences.[3] Departments should not share sensitive information, such as plans to respond to an active shooter. But sharing nonsensitive information, such as policies, procedures, and statistics about police activity, enables community members to examine police operations and evaluate departmental practices and policies,[4] which increases accountability, legitimacy, and trust.

Video footage, whether from BWCs or dashcams, can potentially play a valuable role in policing by providing direct evidence of police-community interactions, but departments should implement fair and transparent standards for its use.[5] BWC policies, in particular, should be written with input from the community to ensure they are carefully regulated to minimize their potential use as tools to surveil communities of color.[6]


BIG DATA IS
ATCHING YOU

RECOMMENDED BEST PRACTICES

With community input, departments can develop robust policies and practices around data, information, and video footage.[7] To foster transparency and accountability and protect privacy, departments should work with communities to:

8.1

Collect and publish demographic and enforcement data.

8.2

Make data and information publicly available in accessible and alternative formats.

8.3

Procure adequate systems to collect and store data.

8.4

Release information about critical events in a timely manner.

8.5

Develop clear body-worn camera policies with community input.

8.6

Implement storage practices and systems to preserve the integrity of video footage.

COLLECTING AND SHARING DATA AND INFORMATION

New technology allows police departments to easily retrieve, analyze, report, share, and store data and information about enforcement activity, such as stops, searches, citations (i.e., tickets), and arrests. Yet many police departments still rely on paper-driven methods to document and store data and information. This leaves departments (and the communities they serve) in the dark about operations and needs. For example, if leaders of a paper-driven department need to know how often officers used pepper spray against juvenile suspects, they have to search for this information manually — a task so burdensome they may not attempt it.

Electronic methods vastly simplify these tasks — but can nonetheless be improved. Some departments use separate database programs that don't capture information consistently or integrate it with other data. They may, for example, use one database to record arrests and searches and another to record uses of force or misconduct complaints. Separate databases can make it difficult for officers to gather information, such as how often arrests or stops involve the use of force. If database systems aren't or can't be integrated, officers may have to collect this type of basic — and often essential — information by hand.

Several states mandate the release of data and information upon request.[8] Public disclosure laws are evolving to require police to release increasing amounts of information to the public (but usually only upon request). To obtain information, members of the public and news media often must go through a cumbersome and time-consuming process that can also be cost prohibitive (if departments charge for staff time to search for, review, and redact information).

Inefficient and burdensome processes can breed distrust among those who question police activity and have difficulty accessing information. New and emerging technologies allow for the collection and storage of vast amounts of information. Police should not use these technologies to collect and store large amounts of data about members of the public. Gathering "big data" about "criminal" intelligence raises questions about lawful police and government surveillance, especially of communities of color and religious communities. Gang databases are especially concerning because police officers can enter people's names into them (without notification) based on "gang identifiers" such as wearing a particular baseball hat, having a certain tattoo, or being seen with a known gang member.[9]

In essence, there is a significant risk that people will wrongly end up in these databases, based on innocuous signifiers or conduct, and face negative consequences (e.g., wrongful arrest or deportation). Indeed, a 2016 audit of California's gang database found the names of more than 40 infants who had been designated as gang members.[10] Communities should advocate for legislation that mandates notification when people are included in a gang database so they can challenge it. California has such a law, and it provides processes for challenging inclusion.[11]

Predictive policing technologies purport to allow departments to "forecast crime" before it occurs and identify "future criminals"[12] via algorithms that analyze data. However, the very data used to "predict crime" is often biased because officers themselves may have biases that manifest in the data they collect.[13] (For more detail, see Chapter 2.) What's more, departments sometimes obtain these technologies without notifying the public or developing policies to regulate their use, which is in contravention with the best practice of seeking community input before adopting new technologies.[14]

Police departments can strengthen relationships with communities and with the broader public by making information about police activity easily accessible.[15] Data paint a full picture of department practices and challenges, which enables officers and community members to better understand police activity and to have collaborative, informed conversations about it.

BEST PRACTICES IN DATA, INFORMATION, AND VIDEO FOOTAGE

Transparency is a critical component of trust. Collecting and sharing data improves transparency by allowing communities to see what officers and departments are doing, which enables community members to hold them accountable. When collecting and sharing data, departments should not collect private information (such as personal characteristics, associations, or activities)[16] or use technologies that risk infringing on civil and human rights.

To play a valuable role in policing, as dashcams do, BWCs should have strict policies in place regulating their use.[17] As more departments adopt BWCs to increase accountability and transparency, they should implement policies to ensure they achieve those goals.[18] Doing so may enable departments to use BWCs in a manner that respects and protects civil and human rights by increasing transparency. Indeed, some departments report that BWCs "have made their operations more transparent to the public and have helped resolve questions following an encounter between officers and members of the public."[19] They also have the potential to increase officer professionalism, allow departments to evaluate officer performance, and reduce the number of complaints from the public.[20]

That said, BWCs increase accountability only when properly used. If policies regulating how and when to use them aren't in place, BWCs can result in disproportionate surveillance and enforcement of heavily policed communities of color, or religious or immigrant groups, raising significant privacy concerns.

Communities and departments should also consider the costs involved in the purchase and maintenance of BWCs. In assessing the

COLLECTING AND SHARING DATA IMPROVES TRANSPARENCY BY ALLOWING COMMUNITIES TO SEE WHAT OFFICERS AND DEPARTMENTS ARE DOING.

overall cost of a BWC program, communities should take into account not only the cost of the hardware but also the cost of maintaining the footage and data, such as by cloud-based storage services. Thus, even if a department receives the hardware by grant or other means (e.g., some equipment manufacturers provide the equipment free if departments "rent" their cloud storage space), additional costs remain.[21] To foster transparency and accountability and protect privacy, departments should work with communities to:

RECOMMENDATION 8.1 COLLECT AND PUBLISH DEMOGRAPHIC AND ENFORCEMENT DATA.

The Final Report of the President's Task Force on 21st Century Policing (the President's Task Force Report) recommends that departments collect demographic and enforcement information about all law enforcement activities.[22] This includes data about stops, searches, summonses, arrests, and uses of force.[23]

When publishing data, each officer should be assigned a unique identifier so departments can link officer-involved incidents to other data, such as misconduct complaints, while concealing officers' identities (for privacy and due process concerns). Departments should also analyze and maintain demographic and enforcement data to identify possible patterns of biased policing, misallocation of resources, or inadequate training.

Notably, departments should accurately capture demographic data, especially for Latinxs. The lack of law enforcement about Latinxs is alarming; a survey found that 40 states report data on race (e.g., Black, White, Asian) but that only 15 collect data on ethnicity (e.g., Latinx).[24] This is problematic not only because Latinx people are disproportionately impacted by police practices but also because the lack of Latinx data skews racial disparities between Black and White people.[25]

Specifically, classifying Latinx as "White" artificially inflates enforcement data about White people, which reduces actual disparities between Black people and White

Demographic and enforcement data collected should include:

- Date, time, and location of the incident.
- Actual or perceived race, ethnicity, age, and gender of people involved.
- Reason for enforcement action.
- Search conducted (if any) and whether it was consensual.
- Evidence located (if any).
- Name of officer(s) involved.

people.[26] State agencies that collect law enforcement data should set guidelines for collecting Latinx ethnicity data to report the full nature of disparities and to ensure consistency across departments.[27] Departments, too, should record information related to ethnicity when collecting demographic data, and should analyze and report data through the lens of race and ethnicity.

Some jurisdictions have passed laws mandating data collection, and communities can advocate for similar legislation at the state or local levels. Several states (e.g., California, Connecticut, Maryland, Missouri, Nebraska, North Carolina, Rhode Island, Vermont, and the District of Columbia) require officers to record race and other demographic data regarding enforcement activities, including traffic stops, citations, and arrests.[28]

Data analysis and "feedback loops" enable communities and departments to develop evidence-based policies to address problems with existing practices. Some departments have taken on projects to collect and analyze data. In California, the Sacramento Police Department undertook a study to examine racial profiling in its enforcement practices in an effort to increase accountability and transparency.[29] The department released several reports and continues to collect and publish vehicle stop data.[30] The city of Philadelphia, meanwhile, requires its department to collect demographic data as part of a settlement agreement in a case challenging its stop-and-frisk practices.[31]

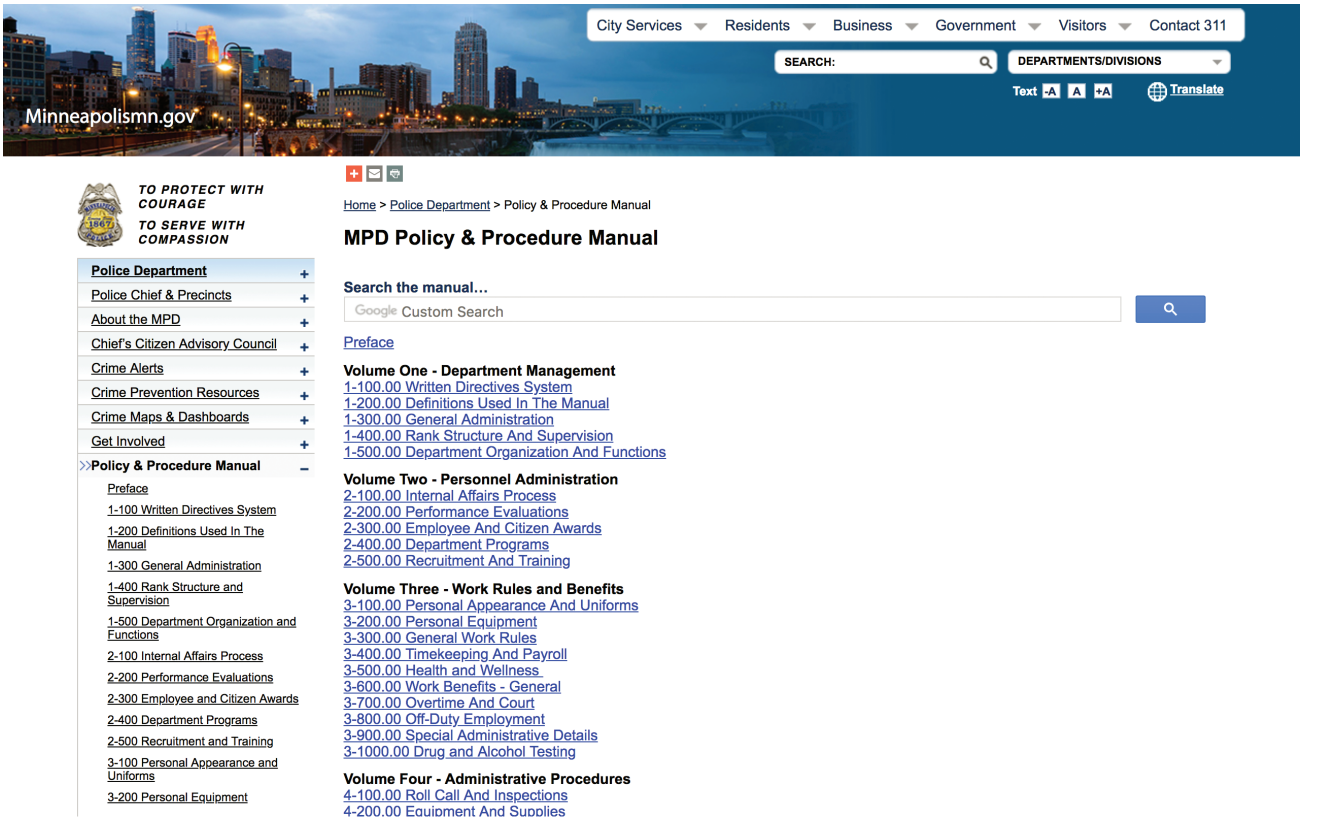
Departments should also provide data about the volume and nature of complaints. This information helps departments and communities identify patterns of misconduct, hold officers and departments accountable for their actions, and ascertain possible problems with training. The Citizens Police Data Project in Chicago makes public records requests to collect and share complaint data, but this process is costly and time-intensive.[32]

RECOMMENDATION 8.2
MAKE DATA AND INFORMATION PUBLICLY AVAILABLE IN ACCESSIBLE AND ALTERNATIVE FORMATS.

Collecting quality data is the first step toward transparency. Making data publicly available in accessible and alternative formats improves transparency. Communities and departments alike benefit from sharing data and information. Communities are able to scrutinize and understand what their local departments are doing and identify potential problems. Departments, meanwhile, foster discussion and community trust by making data public and easily accessible to all. Specifically, departments should:

Publish policies online in alternative and accessible formats. As the President's Task Force Report notes, making information about how officers do their jobs electronically available improves transparency and demonstrates a commitment to community collaboration.[33] It also allows community members to scrutinize policies and recommend changes, and it enables departments to reach people who otherwise would not know — or have an opportunity to know — how departments operate. All public information should also be available in alternative and accessible formats.

Because policy manuals are sometimes hundreds of pages long, online versions should contain searchable tables of contents. See, for example, the Minneapolis Police Department's online Policy & Procedure Manual:



Publish aggregate enforcement data online. Aggregate data let the public know what officers do on the job and what departments prioritize. Data should be aggregated by location, actual or perceived race, gender, and other factors so communities and departments can better understand whether enforcement decisions and strategies disproportionately affect specific groups.[34] This allows communities to analyze the data and recommend evidence-based policy changes.

No uniform standards currently exist for collecting or reporting basic information or data about police activity, such as officer-involved shootings.[35] Crime statistics are not always reliable sources of data, nor do they address what officers do in the office and in the field. Reliable enforcement data are even harder to come by; aggregate information about uses of force, stops, searches, summonses, and arrests is not typically readily available. Few departments, meanwhile, publish comprehensive information about complaints, officer misconduct, and discipline.[36]

Still, some departments and communities have made strides toward providing up-to-date data on areas of community interest and concern. In early 2018, departments in San Jose, California, and Minneapolis began posting use-of-force data online.[37] The Seattle Police Department, meanwhile, publishes online a substantial amount of enforcement data, including contacts with people in mental health crisis, uses of force, hate/bias crimes, and "Terry stops" (i.e., when officers stop people and "frisk" their outer clothing).[38]

Importantly, the public should be able to interpret and use data and information. Communities and police departments should explore how to present aggregate data in a way that promotes true transparency through information dashboards, maps, graphical interfaces that use icons, menus, and other visual graphics, and the like. They should also make raw data available for download so researchers, academics, and other interested parties can access and analyze it.

Collect and publish data on hate crimes and incidents. To protect marginalized groups, departments should collect, track, map, and publish data about hate crimes and incidents, especially in light of the increases in hate crimes since 2016.[39] Without these data, it is difficult — if not impossible — to track patterns of bias against people based on race, ethnicity, national origin, gender, gender identity, sexual orientation, religion, or other characteristics.

If departments don't track patterns of bias, they will be less able to identify and address them. In 2008, for example, four teens murdered Lucero Marcelo, an Ecuadorian immigrant in New York. A federal investigation found that the Suffolk County (New York) Police Department had done little to address or investigate a pattern of similar attacks that had taken place against Latinxs in the previous year.[40] In a settlement, the department agreed to collect and analyze hate crime data.[41]

Share data with allied organizations and maintain public databases. The Police Data Initiative — a partnership of the National Police Foundation, the U.S. Department of Justice Office on Community Oriented Policing Services (COPS), and other nonprofit organizations — illustrates how data collection sheds light on police operations.[42] Launched in 2015, the initiative collects a variety of data and provides it to communities and researchers in user-friendly formats. Currently, 130 police departments voluntarily participate because "they have committed to working closely with their communities to leverage open data for purposes of enhancing trust, understanding, innovation, and the co-production of public safety."[43]

RECOMMENDATION 8.3
PROCURE ADEQUATE SYSTEMS TO COLLECT AND STORE DATA.

To make data useful, departments need adequate data collection systems and technologies. When deciding which databases and systems to use, police leaders should assess data collection and information technology (IT) needs to ensure information can be synthesized. Unfortunately, many departments use different databases for different types of data, which makes it difficult — if not impossible — to aggregate and analyze. Some store data about arrests in one database and data about force incidents in another, and often, these databases can't "speak" to each other. If a report about an arrest is not linked to a report about a complaint about the arrest, then department leaders may miss critical information.

"Siloed" databases make it difficult to identify patterns of behavior by officers and departments, which undermines accountability and increases the likelihood that opportunities to improve training, policies, and practice will be missed. If databases aren't linked, departments may not be able to discern that a high percentage of on-the-job injuries arise from foot pursuits or that particular units or officers generate a disproportionate number of public complaints or lawsuits.

Departments should also track information about officer performance through computer-aided dispatch (CAD) systems, record management systems (RMS), or other performance databases. These systems can be used to track uses of force, stop reports, complaints from community members, and internal misconduct investigations, as well as compliments, diversions, positive community interactions, commendations, and awards. In addition, these systems help manage officer performance, misconduct, and exemplary conduct.

RECOMMENDATION 8.4
RELEASE INFORMATION ABOUT CRITICAL EVENTS IN A TIMELY MANNER.

In the wake of officer-involved shootings or other critical incidents, a lack of transparency compounds trauma and heightens distrust. Withholding information obscures facts and breeds anger and resentment. As such, department leaders should work with community members, elected officials, local prosecutors, officer organizations, crime victims' representatives, and others to develop policies around the release of information about critical incidents.

After an officer-involved shooting, the Las Vegas Metropolitan Police Department (LVMPD) worked with community partners, representatives of police unions, and a local prosecutor to establish a protocol for the release of information.[44] Under the arrangement, the LVMPD releases information within 48 hours of an officer-involved shooting. This information includes the involved officer's name, rank, tenure, and age. Within 72 hours, after department leaders have been briefed, the LVMPD arranges and holds a press conference to release key facts about the incident to the news media and the public.[45] During the conference, leaders explain what transpired and provide detailed information, such as aerial maps, surveillance video, evidentiary pictures, identification of officers and individuals involved, and information about weapons used.[46]

When possible, leaders should also release existing BWC and dashboard camera (a.k.a. "dashcam") footage. In July 2018, the Chicago Police Department released BWC footage the day after a fatal shooting, in part to calm community tensions.[47] This marked a dramatic departure from 2014, when the department waited more than a year to release dashcam footage of the shooting of Laquan McDonald, which deepened distrust and sparked protests about his killing and the city's delay in releasing it.[48]

Increasingly, departments are establishing clear guidelines for the release of critical incident information. In April 2018, the Los Angeles Police Commission shared its criteria for publicly disclosing and releasing information about police activity and providing department leaders with clear guidance on how to improve transparency and accountability during criminal investigations.[49]

RECOMMENDATION 8.5
DEVELOP CLEAR BODY-WORN CAMERA POLICIES WITH COMMUNITY INPUT.

BWCs bring about accountability only if departments have policies to ensure officers use the technology when required, as required, and without infringing on privacy interests. Community members should help develop BWC policies and training, and departments that haven't yet adopted BWCs should engage the public when first considering using them in order to understand and address concerns about their use — and possible misuse. Communities can also urge city officials to pass legislation that requires public notice and gives community members the opportunity to provide input before the adoption of BWCs (or other technologies).[50]

The Los Angeles Police Department's Video Release Policy for Critical Incidents:

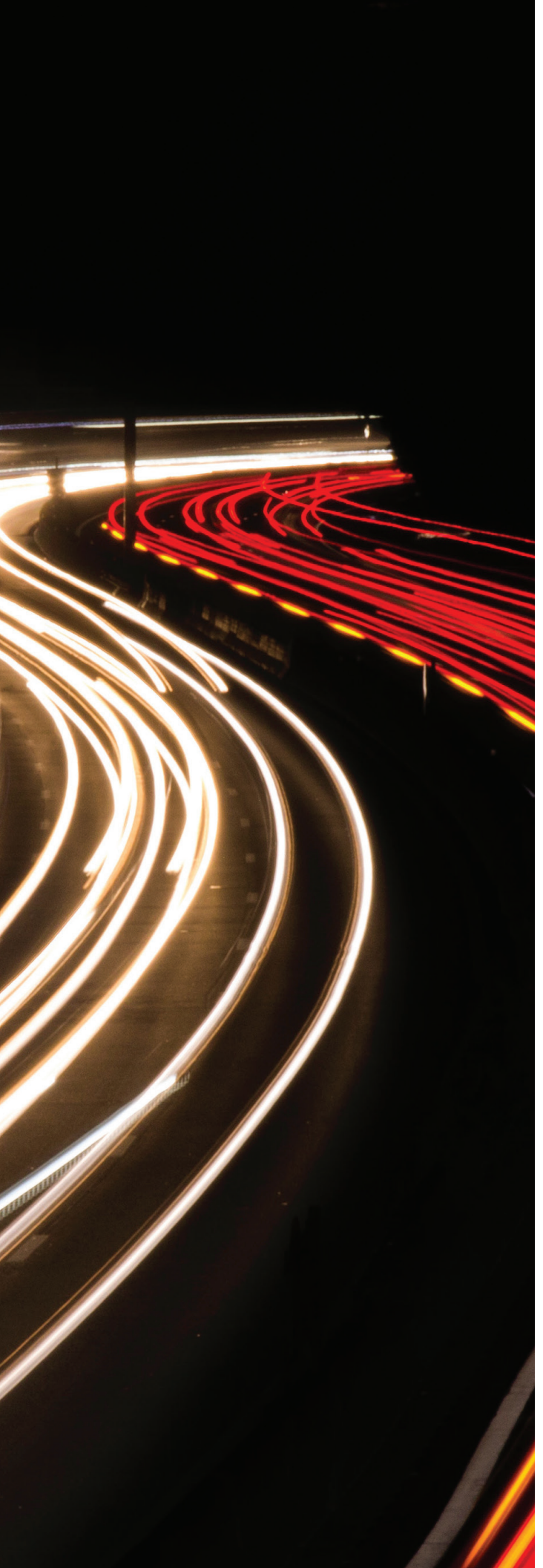
Critical Incidents: This policy applies to video imagery concerning the following types of incidents:

- Officer-involved shootings, regardless of whether a person was hit by gunfire (this does not include unintentional discharges or officer-involved animal shootings);
- A use of force resulting in death or serious bodily injury requiring hospitalization;
- All deaths while an arrestee/detainee is in the custodial care of the Department unless there is no preliminary evidence of any of the following: misconduct, a use of force, or an act committed by an arrestee/detainee that appears intended to cause injury or death; or,
- Any other police encounter where the Commission or the Chief of Police determines release of video is in the public's interest.

Video Sources: The sources of video that may be released pursuant to this policy include, but are not limited to, body-worn camera video, digital in-car video, police facility surveillance video captured by the Department's use of a small Unmanned Aerial System, and video captured by third parties that is in the Department's possession.

Privacy Protections. Video shall not be released where prohibited by law and court order. Further, consistent with the protections afforded juveniles and the victims of certain crimes, video imagery shall be redacted or edited to the extent necessary to ensure that the identity of such individual(s) is protected. Where the video cannot be sufficiently redacted or edited to protect the person's identity, It shall be withheld. In addition, video may also be redacted or edited to protect the privacy interests of other individuals who appear in the video. In each instance, such redaction may include removing sound or blurring of faces and other images that would specifically identify involved individuals, sensitive locations, or reveal legally protected information. Further, where possible, such redaction or editing shall not compromise the depiction of what occurred during the incident.

Source: Office of the Chief of Police, L.A. Police Dep't, Administrative Order No. 6: Critical Incident Video Release Policy - Established (Apr. 13, 2018), http://assets.lapdonline.org/assets/pdf/Administrative%20Order%20No.%206.pdf.



Clearly state when officers are required to activate BWCs. BWCs can potentially resolve conflicts about police encounters and shed light on decisions leading up to critical incidents. For this reason, departments should work with communities to develop clear policies about when officers are required to activate them.[51] Some departments require officers to activate BWCs when they leave the station and deactivate them when they return at the end of their shifts. Others require officers to record law enforcement activities and encounters with the public, including informal conversations with community members.

Critics argue that these approaches are too broad because they "undermine community members' privacy rights and damage important police-community relationships."[52] A narrower approach requires officers to activate cameras when responding to service calls and during law enforcement-related activities, such as stops, arrests, searches, and pursuits — but not during informal encounters.[53] Some argue that this approach is not broad enough because it gives officers too much discretion over which situations to record, which may result in the failure to record important encounters. An interaction intended as a welfare check, for example, could escalate quickly, and officers may not have enough time to turn on their cameras.

This report recommends a balanced approach: Departments should require officers to record all encounters with safeguards to protect privacy and preserve community relationships.[54] This approach

requires officers to inform individuals that they are being recorded if possible[55] (unless, for example, they are pursuing someone). This way, officers notify people that they are being recorded and protect youth, victims of sex crimes, and other vulnerable people from being recorded without consent.[56]

BWC policies should also define what is meant by "encounters," provide examples of them, and clearly state exceptions, such as recording lawful behavior (e.g., political or religious activity and conversations with confidential informants or child victims). This will help officers understand the policy and reduce ad hoc, discretionary approaches to recording.

Some states require departments to develop written policies regarding BWCs. Washington state requires departments to articulate when officers should activate and deactivate cameras, how they should respond when someone does not want to communicate on camera, and when to inform the public that they are being recorded.[57] Maryland, meanwhile, created a commission to issue recommendations regarding best practices for BWCs.[58]

To increase accountability and adherence to BWC policies, department leaders should detail consequences for noncompliance and require officers to provide written justifications when they violate BWC policies. As discussed below, department leaders should also prohibit editing, erasing, copying, sharing, altering, or distributing BWC recordings.

Train officers to use and maintain BWCs. To ensure that BWC policies are properly implemented, officers should be properly trained to use and maintain them. Officers should, for example, be trained to immediately activate BWCs at the beginning of encounters unless otherwise directed (e.g., when in contact with a child victim). BWCs should record 30 seconds of video (though typically not audio) prior to activation.[59] Timely activation ensures that entire events are recorded, including the moments leading up to them. Training should also cover the responsibilities for and restrictions on using BWCs, such as informing people that they are being recorded (again, when possible).

Officers should also be taught how to maintain BWC equipment to ensure that it functions properly. They should be trained to check BWCs at the beginning of every shift and to notify supervisors immediately if they are not working properly or are damaged. Training should also include practices to ensure (1) the integrity of recordings; (2) that the footage "chain of custody" is documented (i.e., who has possessed the footage and whom they have passed it along to and when); and (3) disciplinary action for improperly editing, erasing, copying, sharing, altering, or distributing camera footage.

Develop policies around the release of video footage. In general, departments should release video footage to those seeking to file a complaint[60] and to next of kin in police-caused fatalities.[61] Privacy concerns should be addressed before footage is released to broad, public audiences. To

protect privacy, departments can blur bystanders, mute audio containing personal information, and ensure that public statements do not reveal private personal information such as gender identity, sexual orientation, immigration status, or place of birth.

Community and department leaders should mandate the public release of BWC, dashcam, or other footage of critical force incidents within a reasonable time (so long as policies don't violate state or local law). And department leaders should work with community members to determine reasonable periods for release that consider both departmental concerns about investigations and community interests in information and transparency. In general, though, departments should release footage as soon as possible, especially after officer-involved shootings, to ease community tensions, address community concerns, and improve transparency.

Some state and local "open records" laws restrict whether and when departments can release BWC footage. For this reason, community members should research laws and policies and advocate for change if necessary. Some argue that releasing footage prejudices witnesses and/or potential jurors and interferes with investigations.[62] The criminal justice system has mechanisms in place that address these concerns, including voir dire (the process through which attorneys identify bias among potential jurors) and witness cross-examination.

Prohibit officers from watching video footage before filing reports for incidents under investigation. Department policy should prohibit officers from viewing footage before filing a report, providing a statement, or being interviewed about an officer-involved shooting, death in custody, criminal matter, or incident in which they have been accused of misconduct.[63] In such cases, officers should be allowed to view footage after writing reports and/or providing accounts and to edit initial reports after viewing them and explaining discrepancies.[64] In 2015, the attorney general of New Jersey implemented a strong policy regarding potential criminal conduct (as opposed to administrative investigations); it prohibits officers from viewing video footage in all officer-involved shootings or use-of-force investigations under review by a prosecutor without express permission from the prosecutor.[65]

Require supervisory review of BWC footage. BWCs provide documentary evidence of police encounters and thus serve as an important tool for accountability and transparency. To this end, departments should implement policies for supervisory review and periodic audits of BWC footage. Specifically, supervisors should routinely — and, ideally, monthly — review footage of stops, searches, arrests, and force incidents to ensure that they comport with officer accounts and that actions taken align with department policy and local, state, and federal laws.

Supervisors should also conduct periodic audits of officers' video footage to ensure that officers are performing according to department standards, and misconduct should be addressed by intervention and/or disciplinary processes. (For more detail, see Chapter 7.) For example, the Maplewood (Minnesota) Police Department spells out its review requirements accordingly:

> At least two times per month, supervisors will randomly review BWC recordings made by each officer they supervise to ensure the equipment is operating properly and officers are using the devices appropriately in accordance with policy, and to identify any performance areas in which additional training or guidance is required.[66]

The Greensboro (North Carolina) Police Department underscores the need to review video for training and accountability purposes:

> All supervisors are expected to routinely review BWC recordings created by their direct subordinates. … [D]uring this review supervisors shall be viewing multiple videos from each officer under their supervision, looking at the content of the video. While viewing these videos supervisors should be looking for any videos that would be beneficial to other officers in terms of training videos.
>
> Monthly, the Body Worn Camera Administrator will audit randomly selected squads. The number of squads selected for auditing, and the frequency of the selection process, will be determined by the Professional Standards Division to ensure that the number of employees audited each month represents a minimum of ten (10) percent of the total number of employees eligible for auditing.[67]

To ensure accountability, department policies should include discipline and other interventions (e.g., additional training) for BWC violations. (For more detail, see Chapter 7.)

Prohibit the use of facial recognition software with BWC footage. In 2016, a Georgetown Law report found that nearly half of U.S. adults' photos (48 percent) had been entered into some type of facial recognition network.[68] These networks use facial recognition software to analyze high-resolution images. Specifically, they use biometrics from BWC footage (or other footage or photos) to map out people's facial features.[69] They then compare that information with other images in a database to find matches.

Leading civil rights organizations oppose the use of facial recognition technology because they fear it will turn BWCs into a pervasive surveillance tool that will disproportionately impact communities of color.[70] The software, in fact, generates a higher rate of false matches for people of color, and especially women of color.[71] The technology can also disproportionately impact people of color

because of discriminatory policing practices: Black people tend to be arrested at disproportionate rates and thus are overrepresented in systems that rely on mug shot databases.[72] Because of the potential for misuse and false positives, departments should not use facial recognition software to scan video footage.[73]

Another concern (yet to be resolved in law) is whether facial recognition scanning constitutes a "search" under the Fourth Amendment (which protects people from unlawful searches and seizures). Recent court decisions reflect judicial wariness about warrantless use of technologies that enable surveillance of individuals — even if they are on public property. As the U.S. Supreme Court has recently observed, "A person does not surrender all Fourth Amendment protection by venturing into the public sphere."[74]

RECOMMENDATION 8.6
IMPLEMENT STORAGE PRACTICES AND SYSTEMS TO PRESERVE THE INTEGRITY OF VIDEO FOOTAGE.

Departments should develop video retention policies with community input. These policies should address the format and location of video storage (e.g., cloud storage) and storage length. Storage can be expensive, especially for large amounts of data. And archiving footage for long periods undermines privacy rights of people who may not want video of themselves in police databases. Policies that require storage for only a few months, in contrast, risk erasing information that could be used as evidence — a potential problem in cases where complainants do not come forward for long periods.

In general, departments should delete footage that hasn't been flagged (e.g., footage that's related to an investigation) after six months.[75] Policies should also include provisions to preserve data related to criminal investigations until cases are closed. Once footage is stored, departments should have a cybersecurity plan in place to protect it.

Some states regulate camera footage retention policies. Oregon, for example, requires police departments to retain data that do not relate to criminal investigations for at least six months but not more than 30 months.[76] California requires police departments to develop best practices for downloading and storing BWC data, including storage requirements and measures to prevent tampering with data.[77]

Because BWC and other camera footage is critical evidence in some criminal and civil cases, "chain of custody" policies regarding the handling of footage are essential. Departments should develop policies to ensure footage is not altered or tampered with during this process so it is admissible as evidence in court, and they should lay out specific storage procedures to ensure the evidentiary chain of custody is preserved.[78]

Chapter 8

[1] Leadership Conf. on Civil and Human Rights, Civil Rights Principles on Body Worn Cameras (May 2015) [hereinafter Leadership Conf. Principles], https://civilrights.org/civil-rights-privacy-and-media-rights-groups-release-principles-for-law-enforcement-body-worn-cameras/.

[2] Neill Franklin, The Marshall Project, The Video Doesn't Lie — Even if the Officer Did (Oct. 16, 2018), https://www.themarshallproject.org/2018/10/16/the-video-doesn-t-lie-even-if-the-officer-did.

[3] The President's Task Force on 21st Century Policing, Final Report of the President's Task Force on 21st Century Policing 19–20 (2015) [hereinafter President's Task Force Report], https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

[4] U.N. Office on Drugs and Crime, Handbook on Police Accountability, Oversight and Integrity 9 (2011) (noting that "transparency, openness to scrutiny, integrity and legitimacy are also mutually reinforcing" and "enhancing accountability can improve police legitimacy and increase public confidence"), https://www.unodc.org/pdf/criminal_justice/Handbook_on_police_Accountability_Oversight_and_Integrity.pdf.

[5] Leadership Conf. Principles, *supra* note 1.

[6] *Id.*

[7] *Id.*

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