



DELIBERATIONS FROM THE IACP NATIONAL FORUM ON BODY-WORN CAMERAS AND VIOLENCE AGAINST WOMEN

Gathered from the National Forum held February 2016

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PREFACE

The impact of body-worn cameras touches on a range of outcomes that build upon efforts to mend the fabric of trust, respect and common purpose that all communities need to thrive.ⁱ

Loretta Lynch
U.S. Attorney General, 2015-2017

Today's law enforcement agencies face an ever-changing landscape of technological developments that can provide a wide-range of advances for improved and enhanced criminal justice administration. Law enforcement agencies of the 21st century possess remarkable abilities to gather digital information and store this information for future use in criminal investigations and prosecutions. With these abilities comes the tremendous responsibility to thoughtfully and respectfully balance the privacy rights of citizens and victim autonomy with the mission to serve and protect communities. The use of body-worn cameras by law enforcement presents both opportunities as well as many complex challenges that must be carefully considered as this technology continues to

evolve and their use becomes more adopted by agencies.

The use of recording equipment as part of routine interactions between law enforcement and community members has become an accepted law enforcement practice. Beginning in the 1980s, the use of in-car dashboard cameras emerged as a viable law enforcement tool, especially in cases of DUI.ⁱⁱ The use of in-car dashboard cameras has now become the norm, with well over half the local agencies utilizing in-car video.ⁱⁱⁱ The use of body-worn cameras by police officers is sparking similar discussions and policy debates as those raised decades ago regarding the use of in-car dashboard cameras. Such issues include the use of body-worn cameras to address officer safety

The concept of recording police-citizen encounters for law enforcement use first developed with the implementation of in-car cameras. Initially, these devices were installed to document interactions with individuals suspected of driving under the influence, with the recordings providing supporting evidence needed for conviction. Over time, agencies discovered that in-car cameras had numerous additional benefits, such as "increased officer safety; documentation of traffic violations, citizen behavior, and other events; reduced court time and prosecutor burden; video evidence for use in internal investigations; reduced frivolous lawsuits; and increased likelihood of successful prosecution."^{iv}

The International Association of Chiefs of Police

Victim autonomy is defined as an individual's ability to make informed, uncoerced choices about, or act for, herself or himself in order to reach a desired outcome.

and accountability, enhance the gathering of evidence, and improve the success rates for criminal prosecution.

High-profile incidents of officer-involved shootings have sparked a surge in the call for officer accountability. Increases in the use of body-worn cameras have, in part, been influenced by this call to action. In May 2015 the U.S. Department of Justice (DOJ) announced the creation of the Body-Worn Camera Pilot Program for the purposes of purchasing body-worn cameras by local police departments as well as supporting research regarding the impacts of these body-worn cameras. As a result, in September 2015 the Office of Justice Programs at DOJ announced the awarding of “more than \$23.3 million to 73 local and tribal agencies in 32 states to expand the use of body-worn cameras and explore their impact.”^v

Many national law enforcement organizations and police associations view the increasing use of body-worn cameras as a positive step forward in improving community relations and enhancing law enforcement’s ability to carry out day-to-day operations in a responsible and ethical manner. The use of body-worn cameras can increase accountability by providing evidence to disprove or prove allegations of misconduct and document the circumstances around use of force via electronic recording and documentation. Other benefits can include establishing a clear record of victims’, witnesses’, and offender’s statements as well as documenting on-scene evidence.

The utilization of body-worn cameras has been embraced by many individuals in the criminal justice field at the federal, state, and local levels as well as community members. Civil rights organizations are also calling for utilization of cameras, mostly as a means to promote police accountability and transparency.

However, the use of body-worn cameras also presents challenges to law enforcement agencies and department members. Questions that often arise include the following:

- ▶ What should be recorded and when should it be recorded? Should body-worn cameras always be turned on, or will officers be granted discretion for camera use?
- ▶ When should digital recordings be released, taking into account a community member’s right to privacy versus the public’s right to freedom of information and access? What do the public record laws and case law require regarding the release of footage?
- ▶ Within an agency, who can or should be allowed to view digital data and for how long? Should there be special consideration established for critical incidents or specific crimes?
- ▶ When do officers need to adhere to a citizen’s request to turn a body-worn camera off?
- ▶ What specific changes should be employed when victims are minors?

Although we at the ACLU generally take a dim view of the proliferation of surveillance cameras in American life, police on-body cameras are different because of their potential to serve as a check against the abuse of power by police officers. Historically, there was no documentary evidence of most encounters between police officers and the public, and due to the volatile nature of those encounters, this often resulted in radically divergent accounts of incidents. Cameras have the potential to be a win-win, helping protect the public against police misconduct, and at the same time helping protect police against false accusations of abuse.^{vi}

Body-worn cameras are designed to record a wide variety of law enforcement/citizen interactions. What is unique to the use of body-worn cameras by law enforcement is the potential for recordings to occur within environments where the expectation of privacy is high: a home, a school, a public restroom, or hospitals and medical facilities. Protection of victim and witness privacy should be one of the many considerations at the forefront of policy and program development. It is critical that agency body-worn camera adoption take place within the context of state public disclosure and case law. Third party access to footage, including the unintended consequences of release, and the public's right to freedom of information should be addressed at the outset of any policy development and program planning.

The creation of digital recordings can also potentially compromise the safety and security of victims and witnesses, especially in cases that involve the investigation of domestic violence, sexual assault, dating violence, and stalking. As law enforcement agencies continue to implement and utilize body-worn cameras, the complexities of victims' needs and concerns must be taken into consideration.

As part of the *Enhancing Law Enforcement Response to Victims: A 21st Century Strategy*, the IACP identified seven victims' needs that must be priorities for law enforcement.^{vii} These include:

1. **Safety:** Protection from perpetrators and assistance in avoiding re-victimization.
2. **Support:** Assistance to enable participation in justice system processes and repair of harm.
3. **Information:** Concise and useful information about justice system processes and victim services.
4. **Access:** Opportunity to participate in justice system processes and obtain information and services.
5. **Continuity:** Consistency in approaches and methods across agencies through all stages of the justice process.
6. **Voice:** Opportunities to speak out on specific case-processing issues and larger policy questions.
7. **Justice:** Receiving the support necessary to heal and seeing that perpetrators are held accountable for their actions.

It is imperative that departments keep these priority areas at the forefront when developing body-worn camera initiatives; however, they must also consider the additional complexities of the crimes of domestic violence, sexual assault, dating violence, and stalking. These are pattern/course-of-conduct crimes, most often committed by someone known to the victim. These interpersonal acts of violence are often emotionally charged and victims may have experienced psychological and/or physical trauma, threats and coercion, isolation, manipulation, and control, possibly for prolonged periods. These crimes often occur in personal or private spaces within ongoing relationships, where future safety may be at risk and the offender may have continued access to the victim.

Additionally complicating the use of body-worn cameras in instances of violence against women is that these crimes – sexual assault, domestic violence, dating violence, and stalking – are drastically underreported. According to the Bureau of Justice Statistics *Stalking Victimization in the United States* (2009), only 37 percent of male and 41 percent of female stalking victimizations were reported to law enforcement by the victim or by someone else^{viii} and in 2011, only 27 percent of sexual assaults were reported to law enforcement. There are numerous reasons why victims choose not to report these crimes to law enforcement including fear of retaliation by the offender, discounting the seriousness

of the incident, fear of not being believed, not understanding that a crime was committed, lack of evidence, and/or believing that police would not or could not do anything about it.^{ix} Some victims believe that it is not in their best interest to report to the police or go through the criminal justice system, and others consider these crimes private or personal matters. The impact of cameras on decisions to report these crimes is unknown.

According to a survey conducted by the National Domestic Violence Hotline, there were several barriers that respondents articulated for not interacting with or contacting police. Sixty percent of those surveyed specifically mentioned the desire for privacy.^x The use of body-worn cameras by police may exacerbate these strong, pre-existing fears and may create the potential for new privacy concerns.

Based on an informal review of agency body-worn camera policies, few make specific mention of interactions with victims and/or witnesses of sexual assault, domestic violence, dating violence, or stalking. A general lack of guidance and training for officers regarding how to approach these types of calls can lead to frustration at the

scene and an escalation of an already emotionally charged and difficult situation. Officers might not fully understand detrimental implications of body-worn cameras, such as harm that could be inflicted if a recording were to get into the wrong hands and utilized to further threaten or exploit the victim.

As new technologies are introduced into policing, there is a need to establish a balance between officer safety and accountability, and victim safety and autonomy. While welcoming new technology, we must carefully examine the benefits as well as potential impacts on victims. Throughout the forum, the safety and autonomy of victims were emphasized as primary considerations. Forum participants agreed that in many circumstances, state laws and statutes need to include more protections for victim privacy; current laws are not keeping up with the realities of the rapidly evolving technology of cameras and recordings.

Additionally, other complex challenges were presented at the forum that should be considered as body-worn camera programs are developed. At the heart of much of the dialogue were the following concerns and questions:

Ongoing discourse about body-worn cameras often fails to include the experience of domestic violence, sexual assault, and stalking victims, and the research on cameras and their use's impact on these individuals is exceptionally limited. The IACP forum aimed to explore the possible complexities and challenges of the introduction of cameras when responding to and investigating these cases, while at the same time considering the potential strengths the recordings may have for the parties involved and the case overall. To this end, in February 2016, the IACP gathered together a multidisciplinary group of subject matter experts to discuss the realities of body-worn cameras on victims of sexual assault, domestic violence, and stalking. Over the course of the day and a half forum, the group presented and discussed numerous challenges of body-worn cameras on victims of these crimes, while at the same time articulating support for cameras and recordings for officer safety and accountability as well as when precautions might be needed.

- ▶ How can individuals who develop agency policies and programs better understand the possible increased intrusiveness and compromise to privacy that body-worn cameras present?
- ▶ What becomes of the video once the footage is recorded?
- ▶ What can happen to the recording if the proper protections are not in place?
- ▶ Who has access to digital files and how are they accessed?
- ▶ How do agencies properly address conversations between victim and confidential advocates? How can agencies properly handle the possibility of body-worn cameras inadvertently recording portions of communication with victim advocates and/or during safety planning?
- ▶ How do agencies address when injuries and nudity are recorded?
- ▶ How can body-worn camera policies and programs effectively address the specific realities and needs of communities such as immigrants; non-English-speaking individuals; people who identify as lesbian, gay, bisexual, transgender, or gender nonconforming; minors; sex workers; and groups that may have a history of distrust of the police?
- ▶ What training needs to be developed and/or implemented in order for officers to employ body-worn cameras and properly and effectively respond to sexual assault, domestic violence, dating violence, and stalking victims and witnesses?
- ▶ How may recordings contribute to intimidation of victims and witnesses (by abusers, prosecutors, law enforcement, or others) and what can be implemented to ensure protections are in place?

- ▶ What are the evidentiary challenges when using body-worn camera footage in trial and the precedent now set when there is no footage available?
- ▶ What are the risks regarding a police body camera capturing information that would be considered protected by a medical privilege? How can such risks be mitigated?
- ▶ What accountability procedures need to be implemented, agency-wide or in policy, to ensure that recordings from cameras are not replacing the need for comprehensive and thorough victim-centered responses, investigations, and reports?

Paramount to any decisions regarding the use of body-worn cameras is the provision of effective training for officers. Without comprehensive training programs and support regarding domestic violence, sexual assault, dating violence, and stalking, officers may lack a basic and necessary understanding of these crimes, misinterpret the actions and presentation of victims, and neglect to capture the history and context of the relationship and the actions of the offender. Misperceptions and misunderstandings might negatively impact how law enforcement interact with victims of these crimes and/or how victims are interviewed about the incident that occurred.

Forum participants also discussed officer safety and discretion. Effective use of body-worn cameras may enhance officer well-being and safety, as well as promote officer accountability. Many forum participants emphasized that officer discretion regarding the use of a camera, especially in circumstances of domestic violence, sexual assault, dating violence, and stalking, is absolutely necessary in order to protect the safety of the victim.

At the conclusion of the forum, it was established that no one-size-fits-all policy or program for

the use of body-worn cameras exists. The need for department leaders to engage all community stakeholders and representatives of various populations when developing initiatives was presented as a priority. With community engagement, the voices of diverse communities and the victims of interpersonal crimes within these communities can be effectively addressed.

The IACP recognizes that the use of body-worn cameras and their impact on victims of domestic violence, sexual assault, dating violence, and stalking presents a particularly unique set of policy and protocol challenges. As nationwide support for the implementation of body-worn cameras in law enforcement agencies grows, and high-profile events prompt an increased scrutiny of police work and policies, there is a call for and commitment to promoting

greater officer accountability. The advent of the use of body-worn cameras is a response to this call for transparency and accountability. Unfortunately, there has been a lack of dialogue about the impact of cameras on victims of interpersonal crimes such as domestic violence, sexual assault, dating violence, and stalking. The use of cameras in these cases needs to be thoroughly examined as do considerations of unintended consequences in the development of policies and programs.

EXECUTIVE SUMMARY

The International Association of Chiefs of Police (IACP), *National Forum on Body-Worn Cameras and Violence Against Women Victim Impact*, convened in February 2016 with the support of the Department of Justice, Office on Violence Against Women, was designed to identify the considerations law enforcement agencies should take into account specifically regarding domestic violence, sexual assault, dating violence, and stalking as they develop body-worn camera policies and programs. The forum created a dialogue between a multidisciplinary group of subject matter experts including law enforcement, prosecutors, victim advocates, medical personnel, and others. The forum had five over-arching goals:

1. To articulate the potential positive and negative impacts body-worn cameras may have on victims and witnesses of sexual assault, domestic violence, dating violence, and stalking
2. To highlight areas where victim safety and autonomy and officer safety and discretion may concur or deviate from one another
3. To recognize the unique needs of specific populations and identify methods of building trust and rapport with these communities regarding the use of body-worn cameras and sexual assault, domestic violence, dating violence, and stalking
4. To explore a multidisciplinary and victim-centered approach for the development of

policies and programs regarding body-worn cameras and the crimes of sexual assault, domestic violence, dating violence, and stalking

5. To identify components of strong agency policy and promising practices regarding body-worn camera use and the crimes of sexual assault, domestic violence, dating violence, and stalking

Forum participants met for a day and a half to discuss how to effectively and responsibly develop and implement body-worn cameras policies and programs while keeping the event goals in the foreground of all conversations. The forum participants identified numerous considerations, concerns, issues, and recommendations for the use of body-worn cameras. Discussions centered on leadership and accountability, research and training, privacy and autonomy, victim's rights, officer discretion, safety and privacy issues, vulnerable populations, and cultural considerations.

The IACP is confident that the considerations captured in this document (see "Considerations for Practice and Policy" section of this report), will provide law enforcement leaders with actions, practices, experiences, and observations that will assist in the creation of effective, victim-centered body-worn camera policies and programs and facilitate productive dialogue regarding the use of cameras in the response and investigation of crimes of sexual assault, domestic violence, dating violence, and stalking.

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FORUM OVERVIEW AND HIGHLIGHTS FROM THE DELIBERATIONS

STRUCTURE

On February 24 and 25, 2016, the IACP convened the ***National Forum on Body-Worn Cameras and Violence Against Women Victim Impact*** to gather considerations and develop policy and program recommendations that take into account the impact of body-worn cameras on victims of domestic violence, sexual assault, dating violence, and stalking. The IACP held this event in order to support law enforcement executives and other criminal justice and community leaders create, implement, and review body-worn camera programs, policies, and procedures. The objectives of the forum were to do the following:

1. Consider the complexities of law enforcement response to the crimes of domestic violence, sexual assault, dating violence, and stalking.
2. Identify challenges and solutions to developing and implementing body-worn camera programs when responding to domestic violence, sexual assault, dating violence, and/or stalking calls for service.
3. Examine how specific populations and communities may be uniquely impacted by law enforcement's use of body-worn cameras when responding to incidents of domestic violence, sexual assault, dating violence, and stalking.
4. Explore multidisciplinary collaborations and victim-centered approaches to creating and implementing body-worn camera programs.
5. Examine how law enforcement agencies can address victim autonomy regarding what is recorded as well as victim rights and privacy issues.
6. Emphasize the importance for proactive law enforcement leadership, as well as various other disciplines, to identify partnerships at local and state levels, as well as tribal, military, and federal levels in order to develop, review, and maintain victim-centered body-worn camera programs.

OPENING SESSION: THE PURPOSE OF THE FORUM

The forum participants possessed varied and extensive experiences working with victims of domestic violence, sexual assault, dating violence, and stalking. Participants represented an expansive level of expertise and knowledge of victim rights, pertinent laws and statutes, and the complexities and realities of violence against women crimes. Advocates, prosecutors, law enforcement, representatives from the medical community, and others who work with or within the criminal justice system were present (for a full list of forum participants, see Appendix II). Many law enforcement officials who were present at the forum had extensive experience with the use of body-worn cameras, whereas others had limited or no experience.

Geographic distribution was also taken into account: participants represented jurisdictions and communities throughout the United States, including large metropolitan areas, small and midsize jurisdictions, as well as rural communities. Special emphasis was placed on the inclusion at the forum of individuals from groups and organizations that represent or serve immigrant populations, individuals with disabilities, minors and juveniles, and the lesbian, gay, bisexual, transgender (LGBT), and gender nonconforming communities.

This forum afforded the opportunity to review the complexities and realities of crimes of violence against women and the use of body-worn cameras. The potential role and impact that body-worn cameras can have when police respond to victims of domestic violence, sexual assault, dating violence, and stalking are still unclear but experience has shown that both positive and negative outcomes can occur. There are significant potential benefits, to include the power of seeing and hearing a victim's words, physical response, or level of pain, which can be extremely impactful. However, some forum participants asserted that if a camera will in any way hinder the ability or willingness of a victim to access services as expeditiously as possible, re-traumatize a victim, or cause fear regarding future use or dissemination of the footage, then the use of the camera should be secondary to the concerns of the victim.

Forum participants articulated their concerns for victim privacy and confidentiality, as well as victim autonomy, in situations where interactions with law enforcement were likely to be recorded. Many participants stressed the importance of developing trauma-informed, victim-centered body-worn camera policies and programs. However, it was emphasized that any type of victim-centered practices must be balanced with officer safety and agency

accountability, which—it was acknowledged—can present a quandary for law enforcement leadership and other stakeholders. There was also a recognition of the need to discuss prosecutorial and judicial concerns as well as evidentiary matters. During the event, participants reiterated that through a multidisciplinary, coordinated community response that includes enhanced partnerships with victim advocacy organizations and criminal justice partners, law enforcement leadership can develop and advocate for thoughtful victim-centered body-worn camera policies that promote both officer safety and accountability.

A need for further research regarding the impact of body-worn cameras on victims of sexual assault, domestic violence, dating violence, and stalking was expressed by participants during the opening of the forum. Further research inquiries presented included the following:

- ▶ How does the use of body-worn cameras impact law enforcement–victim interactions? Victim safety? Officer safety?
- ▶ How will footage be used and will it help or hurt a prosecutor bring charges? Will it help or hurt conviction rates?
- ▶ Will footage be used in other situations such as family or civil court?
- ▶ How would policies that encourage informed consent by victims for the use of body-worn cameras impact the work of law enforcement?
- ▶ If a victim is asked to provide consent for the use of a body-worn camera during an interview or investigation, how common will it be for victims to ask for cameras to be turned off and what is the impact of this type of action?

- ▶ When body-worn camera policies are in place, what are the best educational programs that provide information and training for community members regarding victim consent (if required), proper use of digital images, and how agencies work to protect the rights of victims (as it relates to the use, distribution, and storage of video documentation)?
- ▶ What training content and programs need to be developed and/or implemented in departments so that officers better understand the complexities of the crimes of domestic violence, sexual assault, dating violence, and stalking and the potential impact a video recording may have on victims and witnesses?
- ▶ What training/policy needs to be developed to ensure that footage of victim interactions are not viewed or utilized at a later time to discredit victim statements?
- ▶ What training content and programs need to be developed and/or implemented in departments so that officers better understand the potential impact of cameras on specific populations such as, but not limited to, older adults; minors; immigrants; or individuals who identify as gay, lesbian, bisexual, transgender, or gender nonconforming?

Additional research on the impact of recordings, will help inform a better understanding of the role of body-worn cameras, assist with defining strengths and weakness of programs, and identify a more accurate picture of the needs of law enforcement agencies and communities throughout the United States.

THE REALITIES OF BODY-WORN CAMERAS AND VIOLENCE AGAINST WOMEN VICTIMS

The first break-out session of the event allowed participants to meet in small, multidisciplinary groups to review and critique the use of cameras and share their thoughts on the **potential role that body-worn cameras can play when police respond to victims of domestic violence, sexual assault, dating violence, and stalking.** This discussion established the foundation for the forum by immediately bringing to the surface both concerns about and support for using cameras, as well as highlighting areas where the potential impact of body-worn camera usage are unknown, both negative and positive.

The following overview was developed and formulated from the expansive amount of information participants presented when the question of the potential role of cameras on sexual assault, domestic violence, and stalking was posed. What follows is not meant to be a verbatim rendering of the breakout discussion, but rather a synthesis of the dialogue that transpired.

Overall Themes

During the discussions at each of the small, multidisciplinary group breakouts, a common area of concern was the issue of possible unintended negative consequences of body-worn camera use. These potential consequences of body-worn cameras, as highlighted by the participants, included:

- ▶ a lack of protection of the privacy, confidentially, and rights of the victim;
- ▶ curtailing of victims reporting crimes;
- ▶ a misunderstanding of the victim's experience of the violence due to a lack of understanding of how victims and perpetrators may present

to law enforcement and the limitations of what may be captured in the video;

- ▶ circumstances presented may be misinterpreted due to the lack of understanding of trauma;
- ▶ inadvertently capturing privileged or confidential information;
- ▶ tension between victim autonomy, offender accountability, and community safety;
- ▶ use of recordings from a crime scene for other purposes, including civil issues such as child welfare, custodial rights, and visitation that may negatively impact the victim;
- ▶ release of private data/information;
- ▶ hesitation within immigrant communities to report crimes or call the police due to fear of deportation, and;
- ▶ hesitation within the gay, lesbian, bisexual, transgender or gender nonconforming communities to report crimes or call the police due to fear of being “outed.”

Participants also voiced concern that the use of body-worn cameras might not directly benefit victims and could do more harm than good. Without proper understanding and context of the purposes and use of a recording, a victim could inadvertently document disclosure that, in the wrong hands, could compromise safety and create additional risk.

Matters of Evidence

Some forum participants viewed the use of body-worn cameras as an improvement for the effective collection of evidence, with the caution that it is still critical for officers to create comprehensive reports and not solely rely on the camera video for documentation and evidence gathering.

Video captures a unique visual image of the crime scene. This provides detectives, prosecutors, juries, and others involved in a case a snapshot of what the officers witnessed at the time of arrival and during initial interview. In contrast, a paper report is only as good as an officer’s ability to effectively describe in written detail his or her observations. Perishable physical evidence and visible injuries can be readily and quickly documented with cameras— all of which can assist in the successful prosecution of what can sometimes be difficult cases. Some participants agreed that it may be easier to secure pleas in a more timely fashion when video evidence substantiates a strong case against the offender.

In addition to documenting crime scene evidence, video can also provide a digital record of the victim’s state of mind and provide insight into their emotions and levels of fear and stress at the time of the call. The power of seeing and hearing the victim’s account may help eliminate, or minimize, victim blaming— However, if a victim presents in a way that seems counter to what a “real” victim is or how one “should” behave or introduces information that could diminish credibility, this could be damaging to the case and the victim.

Officers using these recorders have a clearly documented, firsthand, completely objective account of what was said during an incident in question. The utilization of body-worn camera video and audio recordings at trial can provide the court with the actual statements of officers, suspects, and others that might not otherwise be admissible in court based upon hearsay concerns, or might not get sufficient consideration if there are conflicting memories of the statements. In addition, recordings made at crime and incident scenes are a tangible benefit of BWCs and can provide investigators, prosecutors, and juries with far more detailed, accurate, and compelling evidence.^{xi}

Video can also capture key statements by victims and perpetrators that could otherwise be lost, overlooked, or missed during an investigation. In cases of domestic violence, sexual assault, dating violence, and stalking, it is common for victims to

later recant statements. That can be frustrating for law enforcement, prosecutors, victim advocates, and others involved with the victim's case. The raw emotions and additional information captured on video may make it easier to explain

TESTIMONIAL AND NONTESTIMONIAL STATEMENTS

Statements captured on body-worn cameras may be admissible in court, depending on the circumstances. Such statements can be useful to corroborate a 911 call or a witness's in-court testimony, to show the demeanor of the victim or the offender, to capture admissions by the offender, to provide a prior consistent statement if the witness is impeached, to provide substantive evidence (in at least some jurisdictions) of what occurred if the victim later recants or if there is a finding of forfeiture by wrongdoing, or as evidence of witness intimidation (e.g., the offender telling the victim or children to keep quiet).

As out-of-court statements, if they are offered for their truth, they would be considered hearsay. If the declarant is testifying in court, such statements would be admissible as long as they come within an exception to the hearsay rule (e.g., excited utterance, present sense impression, prior consistent—or inconsistent—statement). When the witness is not testifying, whether a hearsay statement will be admissible is governed by Confrontation Clause jurisprudence as set forth in *Crawford v. Washington*, 541 U.S. 36 (2004), and its progeny. The admissibility of the statement of a non-testifying witness will depend, in the first instance, on whether the statement is “testimonial” or “nontestimonial”—a nontestimonial statement will be admissible as long as it comes within some hearsay exception. Testimonial statements of a non-testifying witness, however, are inadmissible unless the victim is unavailable AND the defendant had a prior opportunity to cross-examine the witness.

A statement will generally be considered non-testimonial if it is informal and not made with the primary purpose of relating events for future prosecution. Many statements made to family, friends, medical professionals, or others would fall into this category, as would statements made to individuals connected with law enforcement for the purpose of allowing them to respond to an ongoing emergency (e.g., 911 calls, statements to officers at the scene before the emergency has abated). Most statements to law enforcement about “what happened” once the emergency no longer exists would be considered testimonial, and inadmissible unless the witness testifies.

Even testimonial statements, however, will be admissible under the doctrine of forfeiture by wrongdoing if the defendant engages in conduct that causes, and was intended to cause, the witness to be unavailable at trial (typically, by engaging in witness intimidation). Thus, a successful forfeiture motion may result in all of that witness's statements—including those captured by the BWC—to be admissible at trial.

For more information, see <https://supreme.justia.com/cases/federal/us/541/36>

why the victim recanted. Whereas video, as a record of evidence, can assist in the capturing of exact wording and the accurate recollection of events, such video could also put victims and witnesses at risk.

Trauma and Trauma-Informed Investigations

Sexual assault, domestic violence, dating violence, and stalking are all crimes which can inflict severe physical and psychological trauma on a victim. A victim's outward reaction to the abuse can vary greatly. The victim's vulnerable state can be captured on video which may be very compelling. However, at the same time, if the victim's demeanor does not match the public perception of how a victim "should" respond it could later be used against them. Often trial strategies are required that are designed to explain the intricacies of varied victim behavior and demeanor. Without the use of such strategies a victim's demeanor as displayed on video may in fact be detrimental to their case. It is also possible that the recording itself may be re-traumatizing to the victim.

Additionally, experiencing a traumatic event can impair a victim's ability to recall details. A victim's recollection of information during the initial interview may or may not be linear and may leave out important details of the incident. Because of this, victims are often disbelieved or suspected of lying. These disjointed statements, omission of facts, and poor recall will all be captured on video. Without the proper knowledge and training to better understand the impacts of traumatic events on victims, a jury, judge, prosecutor, defense attorney, and law enforcement officials may question why and how pieces of information that came to light later were initially left out of a videotaped interview at the scene of the crime.

Victim Privacy, Confidentiality, and Safety Concerns

An officer's contact with a victim of sexual assault, domestic violence, dating violence, and stalking often occurs in an environment where expectations of privacy are high: a home, a school, or a medical setting for example. The use of body-worn cameras in these situations can be unexpected by the victim and even detrimental to their safety and well-being. When used in a way that attends to victim privacy and safety, and in a trauma-informed context, recordings from body-worn cameras can provide valuable evidence to contribute to the prosecution of crimes of violence against women. However, caution must be taken to ensure that the victim and witness privacy and safety, as well as the safety planning process with victims, is not jeopardized.

Delicate conversations in these types of cases may be made even more difficult for the victim with the use of a body-worn camera. Victims have legitimate concerns for their safety and privacy that are amplified in situations where there is uncertainty regarding the public disclosure of footage. Even if disclosure is controlled, use of footage by law enforcement, prosecutors, and attorneys in civil cases may remove autonomy or result in negative collateral outcomes with regards to the involvement of child protective services, custody actions, immigration status, and more.

Officer Accountability and Training

Participants were asked to answer: What practices/strategies could be in place that would ***impede or support an officer's ability to decide if/when body-worn cameras will be used and how? What needs to be implemented to support these decisions?*** Below is a compilation of the thoughts from the subject matter experts who attended the forum.

IMPEDE

- ▶ Lack of effective officer training regarding domestic violence, sexual assault, and stalking
- ▶ Lack of strong partnerships and collaborations with community advocates and victim support organizations
- ▶ Lack of clear policies regarding the use of body-worn cameras
- ▶ Limited resources and/or support for the use of body-worn cameras (especially rural agencies and areas)
- ▶ Policies that do not allow for officer discretion
- ▶ Mandatory record policies
- ▶ Lack of proper training on cameras, the use of recordings, and the long term implications
- ▶ Camera use based on and policy developed solely by union/labor agreements
- ▶ Lack of effective training on the realities of violence against women crimes. For example, lack of training regarding:
 - Victim-centered response
 - Trauma Informed investigations
 - Predominant aggressor determination
 - Complexities of domestic violence
 - Realities of stalking
 - Identifying and investigation stalking
 - Self-defense
 - Non-visible injuries
 - Effective interviewing
 - Perpetrator manipulation

SUPPORT

- ▶ Adequate staff time and resources for storage, analysis, and redaction of video
- ▶ Training for law enforcement regarding victim privacy and potential impact of recording/footage
- ▶ Clear policies in place regarding activation
- ▶ Training for law enforcement regarding the purpose of filming and the potential impact on victims/witnesses
- ▶ Comprehensive training on domestic violence, sexual assault and stalking and the intersections of these crimes
- ▶ Guidance and training regarding cross-complainants and predominant aggressor determination
- ▶ Separate camera policies or policy sections for responding to domestic violence, sexual assault, and stalking
- ▶ Detailed, more nuanced policies that guide officers to make informed decisions regarding when and how they should utilize cameras
- ▶ Comprehensive training regarding department policies related to victim consent to recording and who can consent including information about individuals with cognitive disabilities, mental illness, intoxication, impaired thinking, and trauma
- ▶ Strong partnerships with local/community advocates and stakeholders
- ▶ Access to on-call prosecutor or technical assistance provider
- ▶ Policies that support the use of audio only when victim requests/consents
- ▶ Involvement of victim advocates and other stakeholders in program development
- ▶ Comprehensive understanding by the officer of the uses of the footage that will be captured
- ▶ Dedicated support from the domestic violence, sexual assault, and family crimes unit (if available)
- ▶ Effective leadership, supervision and accountability, as well as oversight
- ▶ Including officers and other agency members as part of the policy/program development to build buy-in, when appropriate

Offender Accountability

Body-worn cameras and video footage can strengthen offender accountability by providing clear evidence of both the suspect's attitude, actions, and statements as well as the impact the suspect's behavior has on the victim. Prosecutors in particular noted their appreciation for video in that these images can provide strong proof of culpability and thereby assist in the securing of a guilty plea without going to trial. This, in turn, can reduce additional trauma to victims who would otherwise have to testify at trial, appear and potentially be identified in public, and risk media exposure or increased media exposure.

BALANCING AGENCY ACCOUNTABILITY AND VICTIM AUTONOMY

Developing body-worn camera policies that specify when a camera can or should be turned off is difficult; trying to anticipate every situation where an officer may come into contact with a community member is nearly impossible. How does an officer handle a situation when a witness wants to remain anonymous? If a community member, for whatever reason, requests that a camera be turned off, would implementing a policy that requires that a supervisor make the decision to turn off the camera be realistic or feasible? There are simply too many variables at play in each and every call to develop blanket policies. Although, it may be difficult, department leadership in collaboration with partners, must develop body-worn camera guidelines and policies, coupled with appropriate comprehensive training, for their officers in order to provide direction and support.

In cases of domestic violence, sexual assault, dating violence, and stalking, the decision to leave a body-worn camera turned on or to deactivate presents a dilemma for law

enforcement. Department leadership should consider the differences between a crime in progress and an after-action statement/report when developing policy and guidance. If policy does not allow for officer discretion to turn off cameras, over time victims may under-report, which is already a reality with the reporting of domestic violence, sexual assault, dating violence, and stalking, if they believe that they will always, in all circumstances, be recorded. If an officer believes that the use of a camera will put the victim at greater risk, the officer should be allowed, at his or her discretion, to turn the camera off, documenting why this decision was made.

The development of policies regarding the use of body-worn cameras in private spaces should also include considerations of compatibility with other legal requirements such as the Health Insurance Portability and Accountability Act (HIPAA), other federal, state or local laws, and policies such as school district policies regarding the filming or photographing children with or without parental consent.

When developing body-worn camera policies, law enforcement leadership should be as specific as possible and avoid ambiguous terminology. Using language such as "sensitive" in policies can be somewhat vague, misinterpreted, or subjective. Participants also noted that policies would be stronger if language such as "informed consent must be obtained" is utilized rather than "consideration must be given to victims and victim safety". However, some forum participants discussed that obtaining mandatory informed consent could potentially put criminal investigations in jeopardy. Forum participants also discussed the complications of obtaining informed consent in situations when a victim or witness is intoxicated, under the influence of drugs, underage, and/or has limited English proficiencies, cognitive disabilities, or mental

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191 required Health and Human Services (HHS) to adopt national standards for electronic health care transactions and code sets, unique health identifiers, and security. It was also recognized that anticipated advances in technology could erode the privacy of health information. With this in mind, Congress incorporated into HIPAA provisions that mandated Federal privacy protections for individually identifiable health information. This sets up a federally mandated protection for private patient information for healthcare providers and facilities. These privacy protections are for all individuals. With this in mind, it is critical that healthcare facilities develop policies to address the use of body-worn recording devices in their facilities to ensure that these standards are not violated.^{xii}

Secretary, HHS Office for Civil Rights, “HIPAA for Professionals,” HHS.gov. August 31, 2015

health issues. Department leadership should also define, in as specific detail as possible, what “informed consent” entails.

Most forum participants agreed with department policies that prohibit officers from editing, altering, duplicating, copying, sharing, or otherwise distributing video recordings in any manner. Department policy should include language regarding redaction of images for any digital images that need to be released due to a FOIA request or other legal reasons. However, such redaction or altering of a video image or release of a video is viewed as an issue to be handled by supervisors, leadership, or designees within the department.

Forum participants considered policies that allow for the viewing of videos. Participants noted that videos from body-worn cameras should be treated as any other type of evidence: review is allowable when a legal, rational justification for viewing has been presented. However, policies should be clear regarding who within a law enforcement agency has access to videos that are held as evidence, who makes decisions about the release/viewing of video evidence and under what circumstances release/viewing will be allowable. Such policies should also take into account local and state laws including any

public record laws and sunshine laws as well as FOIA related matters.

Law enforcement accountability needs to be taken into consideration at both an agency/administrative level (including, but not limited to policies, procedures, and the provision of services) as well as at an individual level (including conduct of agency members/officers, equal treatment of citizens, responses to community members, among other things). Recordings from cameras can contribute to agency accountability by ensuring policies are being followed by department members. Recordings can also be used by supervisors for officer review, for evaluations, to assist in the identification of ineffective performance, and provide information for responding to allegations of officer misconduct.

Victim Autonomy

Victim autonomy is the individual’s ability to make informed, uncoerced choices about, or act for, herself or himself in order to reach a desired outcome. During the forum, much of the victim autonomy discussion focused on whether a victim had a voice in deciding when law enforcement officers record and when they do not. Because victims know more than anyone else about the offender, the history of the relationship, and the situation, many participants

Victims often feel embarrassed and ashamed when asked to reveal details of the physical, emotional, and sexual violence they have survived. These feelings, along with the confusion, frustration, and pain many victims have experienced, may cause them to be concerned about sharing and safeguarding their personal information. In addition to privacy concerns, victims may feel a very real and overwhelming fear for their safety.^{xiii}

AEquitas: The Prosecutors' Resource on Violence Against Women

believed they should be able to determine when the interaction is recorded. However, thought should be given as to what age provides for victim autonomy and choice.

Participants were asked to answer: ***what practices and strategies could be in place that would impede or support a victim's ability to decide if or when body-worn cameras will be used and how? What needs to be implemented to support these decisions?*** See pages 10 - 12 for the compiled input and insights from the forum attendees regarding victim-centered practices and strategies.

If and when a victim should be given a choice regarding the use of body-worn cameras in cases of domestic violence, sexual assault, dating violence, and stalking is an important matter to consider regarding policy and implementation. Dialogue should be centered on bringing to light the complex set of concerns that surface when body-worn cameras are utilized and how their use can impact a victim's autonomy and safety. The existence of video may present challenges and safety risks for the victim, including FOIA requests that can put video into the public realm, perpetrator or third-party access to video, the use of the video in court proceedings, and possible damage to credibility, among other complexities. It is also critical for law enforcement to have a full and complete understanding of issues related to victim autonomy. Officers must be able to field questions from victims regarding their concerns for what might happen to video footage. If

victims do not fully understand these possible ramifications when asked if a body-worn camera can be turned on or remain on during an investigation, they could be putting themselves in jeopardy without knowing the risks.

Victim-Centered Programs

Participants of the forum discussed what they believe is the framework for victim-centered body-worn camera programs. These identified features, which follow, could significantly impact body-worn camera policy and programs by incorporating victim-centered initiatives and information. The participants stated that **victim-centered programs** do the following:

- ▶ **Put the safety of the victim as the top priority in line with officer safety.** Prevention of any further harm to the victim must also be of highest importance. Programs should support the victim's choice to not move forward with the case if safety is compromised.
- ▶ **Are culturally competent** and take into account immigrant communities and communities of color, as well as the needs of individuals from underserved and vulnerable populations.
- ▶ **Support and encourage victim autonomy** by
 - giving victims a voice and role in decision-making;
 - focusing on victim needs, including privacy, rather than system needs;

IMPEDE

- ▶ Policies or practices that leave no room for officer discretion
- ▶ “Open” discovery
- ▶ Lack of consistent, coordinated local, regional, and state body-worn camera policies
- ▶ Turning footage over to federal agencies
- ▶ Mandatory policies that require all interactions be recorded from start to finish
- ▶ Poorly written policies with no clear guidance for officers to support victims
- ▶ When no options are presented to the victim
- ▶ Policies that focus on or are solely written for officer accountability reasons, and are not victim friendly
- ▶ If policies do not take into account possible incapacitation of victims and the inability to understand the ramifications of recording

SUPPORT

- ▶ Policies that require informed victim consent on the use of body-worn cameras/recordings
- ▶ Case law and/or statutes that support victim privacy
- ▶ Presenting information to victims about their rights regarding the use of cameras and recordings
- ▶ Connecting victims to advocates and support services immediately
- ▶ Policies and practices which require that protections be in place regarding the release of digital information
- ▶ Clear explanation to the victim of how the footage can be used and potential consequences, positive and negative
- ▶ Detailed policies regarding who can access the footage and disclosure of the purposes for which released video will be used
- ▶ Officer access to qualified language interpreters, when needed
- ▶ Collaboration with all stakeholders when developing body-worn camera policies, practices, and programs
- ▶ Policies that allow for the deactivation of a camera when discussing safety planning and confidential information
- ▶ Policies that require that when an officer turns off a camera they announce why (e.g., “the victim is now meeting with an advocate or discussions of safety planning are taking place”)
- ▶ Public education regarding the use of cameras and transparency of department policies
- ▶ Public service announcements used to inform and further engage the public
- ▶ Effective, comprehensive law enforcement training on predominant aggressor determination, especially in same-sex relationships
- ▶ Strong trauma-informed victim interview training for law enforcement
- ▶ A multidisciplinary, coordinated response (including victim advocates, prosecutors, medical personnel, and law enforcement) to support the victim throughout the criminal justice system process
- ▶ Onsite counseling and support for the victim by a trained professional and/or advocate

A **victim-centered approach** to policy and programs is defined as the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a nonjudgmental manner. A victim-centered approach seeks to minimize retraumatization associated with the criminal justice process by providing the support of victim advocates and service providers and empowering victims as engaged participants with choice in the process.

For more information, visit the [Office of Justice Programs, OVC-TTAC, Training and Technical Assistance Center](#) webpage.

- including an opt-in/opt-out option;
 - informing a victim of the level of confidentiality of the video footage that will be provided to him or her;
 - providing victims with information and options in order for them to make informed choices;
 - obtaining victim consent regarding subsequent access to digital media (beyond police involvement);
 - requiring victim notification of release of digital recordings to the media, if the victim requests to be notified; and
 - giving victims access to review recordings.
- ▶ **Include supervisory oversight and accountability structures** in order to hold responders accountable for actions, words, and response to victims. Incident reports and video recordings should be reviewed and evaluated to ensure proper officer response to victims and to identify any training or mentoring needs.

DISCUSSION BY DISCIPLINE

Forum participants were gathered in discipline-specific groups representing: law enforcement, prosecutors, and victim advocates. In these groups, individuals discussed potential law enforcement strategies to develop effective, interdisciplinary-interagency collaboration to proactively create and sustain victim-centered policies and programs. The groups also discussed solutions to possible challenges when developing victim-centered programs. What follows is the content gathered from the conversations that took place.

Law Enforcement

Law enforcement representatives noted that based on their experiences using body-worn cameras, several key issues and implications should be considered as policies and programs are developed. These include the following:

- ▶ Collaboration with legal counsel to ensure that all policies comport with local, state, and federal requirements.

- ▶ Awareness that the use of body-worn cameras can increase the time needed to process evidence.
- ▶ Supervision and accountability issues—such as how the use of body-worn cameras can demonstrate the shortcomings of poor investigations or an inadequate response—should be considered. A department needs to be prepared to require additional training for investigators and responders who demonstrate a lack of ability to work effectively on behalf of, and with, victims.
- ▶ Leveraging recordings to enhance an officer’s report writing and accuracy and documenting excited utterances.

Law enforcement representatives were also asked to identify any strategies to address challenges or pushback that one can encounter internally when implementing a victim-centered body-worn camera program within an agency. Most concurred that any internal pushback often manifests from a lack of agency member understanding of the critical needs of victims. Proactively including victim advocates in department policy development can help address and alleviate this lack of understanding. Working in collaboration with advocates can also help law enforcement agencies share new policy information with community members and victims and thus help to build support for victim-centered practices and approaches.

The creation of statewide model practices and victim-centered programs helps to deter pushback within a department. State legislation can also serve as a catalyst for the formation or support of victim-centered programs. However, participants in the law enforcement discussion group cautioned that a one-size-fits-all approach is not advisable. Law enforcement agencies, working in tandem with victim advocates and other stakeholders, should strive to develop victim-centered policies and practices that meet

the needs of the diverse communities which they serve.

Though the use of body-worn cameras by law enforcement is a relatively new development, there are perhaps some key lessons learned from those agencies that have participated in the first wave of moving forward with this technology. As part of the lessons learned approach, forum participants emphasized that policies should be reevaluated at least annually to determine their impacts and to consider revisions, necessary corrections, and training needs.

Finally, law enforcement representatives were asked to identify strategies for developing effective, interagency collaboration that informs the creation of body-worn camera programs, policies, and practices that are victim-centered. Interagency collaboration was viewed by many forum participants as a key element for policy development and implementation success. A forum participant noted that their jurisdiction worked diligently to adopt an electronic system to facilitate timely submission of digital media evidence collaborating across law enforcement and the court system. The implementation of research partnerships and collaborations were also noted as helpful ways by which to create the data infrastructure that will in turn help create and sustain support for these policies within a department or agency.

Prosecutors

When the forum participants in the prosecutors group were asked to describe their specific experiences working with victims and survivors who have encountered law enforcement officers utilizing body-worn cameras, some noted that many victims did not know they were being recorded at the time of their interview. Upon discovering that a recording had occurred, after the fact, victims wanted to obtain more information regarding their rights and many

requested to watch the videos. On the occasions when these requests by the victim to review the video were met with resistance, increased anxiety often resulted. One prosecutor also noted that victim attorneys who represent domestic violence and sexual assault victims have reported several instances where body-worn camera recordings were used by prosecutors to justify decisions to not file or to drop cases because of perceived credibility issues.

However, not all experiences were perceived as negative. A forum participant noted that some victims are glad they do not have to repeat everything. Additionally, the participant noted that recantations had decreased. Others noted that a body-worn camera is only a tool for law enforcement to utilize and that it is still important for them to undertake a comprehensive investigation. Also, participants in this group stressed that in any situation where a body-worn camera is used, victims need to understand how video recordings are used, stored, and destroyed and whether victims can request that video be preserved.

When the prosecutors group was asked to identify strategies to address challenges and pushback that may be encountered from local law enforcement or others when developing a victim-centered program, several discussion themes emerged. These themes included the following: supporting collaboration, protecting the rights of the victim, obtaining sufficient funding, complying with public records and disclosure requirements, and training for law enforcement personnel.

As was highlighted during the law enforcement discussion, the prosecutors group also stressed that interagency, multidisciplinary collaboration can help build support for victim-centered programs and help to alleviate challenges within an agency. Such collaboration needs to include

the involvement of victim legal representation, privacy experts, other government and law enforcement agencies, victims, victim advocates, victim service providers, medical personnel, and members of the defense bar in policy development and implementation. Engagement of HIPAA and the Family Educational Rights and Privacy Act (FERPA) experts was also recommended. Several forum participants recommended the creation of a task force or working group for these purposes. It was also noted that collaboration should include community member outreach in order to inform the public of agency policy and what video footage is collected by law enforcement officers when responding to domestic violence, sexual assault, dating violence, and stalking incidents.

The prosecutor group also discussed the need for law enforcement leadership to promote the protection of victim rights as a department-wide priority in order to develop victim-centered programs. One forum participant noted that a victim-centered approach must begin with an understanding of and respect for victim autonomy as well as an understanding of trauma and the offender's role in causation. Another participant in the prosecutor's discussion group noted that victims should be given more control over body-worn camera footage captured in their homes. This participant stressed that giving victims more power may create more comfort and willingness to report domestic violence, sexual assault, and/or stalking to law enforcement.

The lack of funding to support the development and sustaining of victim-centered programs and practices was also discussed. Federal, state, and/or local funding needs to go beyond the purchase of body-worn cameras and needs to support community outreach as well and research/evaluation regarding the impact of body-worn cameras on victims in a particular jurisdiction. Funds need to be secured to cover

the costs—both personnel and equipment—of collecting, maintaining, sharing, and redacting body-worn camera footage as well as training. Agencies may have difficulty fully implementing a victim-centered program if a sufficient budget is not provided.

The prosecutor group, like the law enforcement group, highlighted that the recording policies need to be developed and implemented in accordance with state and local laws. A forum participant noted that this understanding of the law must also include the identification of current laws that already protect certain victim information (such as addresses) and extrapolate what protections already apply to body-worn camera footage and would be best practices to apply to body-worn camera footage.

Forum participants noted that true buy-in within an agency to develop and support victim-centered programs would not be successful or ingrained in the department culture until all agency personnel receive consistent, reoccurring, and effective training. Such training should include trauma-informed interview techniques and the realities of domestic violence, sexual assault, dating violence, and stalking, as well as working with immigrant, marginalized, and vulnerable populations. One forum participant noted that it is particularly important for responding officers to receive comprehensive training on these crimes in order to understand what they are seeing when they arrive at the scene and to counter any bias that impacts their ability to respond appropriately. Equally important, prosecutors need access to training which centers upon the intricacies of domestic violence, sexual assault, dating violence, and stalking in order to work effectively with law enforcement.

Finally, the last discussion topic posed to the prosecutor group was a request for them to identify strategies for law enforcement to

develop effective, interdisciplinary-interagency collaboration in order to develop and implement comprehensive policies and practices to use body-worn cameras in a manner that is victim focused. These recommendations included the following:

- ▶ Provide ongoing training for supervisors, new recruits, and experienced officers
- ▶ Gain buy-in from department leadership to support victim-centered approaches
- ▶ Develop and sustain community support for victim-centered programs
- ▶ Create an overall recognition by department leadership of law enforcement's role and responsibilities to victims
- ▶ Instill leadership transparency and accountability

Advocates

Victim advocates described specific experiences they had working with victims and survivors who had encountered law enforcement who have implemented the usage of body-worn cameras. Advocates noted that in the jurisdictions they serve, law enforcement agency policy does not currently require informing or notifying victims when recordings are taking place during interviews. Some participants who are in jurisdictions where body-worn cameras have been implemented noted that victims were unaware of the fact that they had been recorded. Some participants stated that upon notification after the fact, some victims were surprised, offended, and even retraumatized when they found out.

A medical professional who took part in the victim advocate discussion group reported that there have been instances where officers' use body-worn cameras to interview victims prior to the medical forensic exam. Particular concern

was expressed about the responsibility of a nurse to inform the patient that they are being recorded by a law enforcement official, especially if the nurse is cognizant that a camera is in use but the victim is unaware. The forum participant noted that there are also reported instances when a victim, when asked by law enforcement if she or he consents to the use of body-worn camera recording, has asked the nurse for his or her guidance. Nurses struggle with what, if any, advice should be offered.

Advocates also noted that they are concerned by the potential privacy breaches that can occur when personal victim information is shared as a matter of public record. This could include filmed interviews published online. There was also concern about suspect access to videos as part of an open records request process and through the suspect's attorney. Many victims continue to reside/have contact with suspects during the investigative process; suspect access to footage may increase safety risks for victims.

Next, the advocates were asked to identify strategies to address challenges and pushback they may encounter with local law enforcement when developing a victim-centered program. Similar to both the law enforcement group and the prosecutor group, the victim advocate group noted that developing collaborations with stakeholders was an essential way to build support for victim-centered programs within an agency, as well as to provide assistance with implementation and ongoing review of programs. Such stakeholders should include all ranks of law enforcement including public information officers, community leaders and community organizations (advocates, schools, and victim service organizations), representatives from justice systems (prosecutors, child welfare, domestic relations, juvenile justice), medical personnel/health professionals, and victim representation. A goal of this collaboration would be to identify shared objectives for body-worn

camera policies and practices. There should also be a clear expectation to identify and understand the differing roles and responsibilities of systems and stakeholders.

As part of this support for a collaborative approach, one participant in the advocate group noted that many communities have Sexual Assault Response Teams (SARTs) and Domestic Violence Response Teams (DVRTs) that should be included as partners when developing body-worn camera programs. Additional ways to promote collaboration included the utilization of town hall meetings and forums to build understanding within the community and gain support.

One strategy that advocates recommended, in order to help create buy-in with department leadership, was to run mock on-scene incident interviews with an officer as a "victim" being filmed by an agency member with a body-worn camera. It was recommended to also use this type of training to discuss different scenarios to help guide the creation and implementation of body-worn camera policies and practices.

Another recommended strategy from the advocates was to ensure that victims have access to advocates who can have privileged communications with the victims after the recording, in case the recording triggers trauma or brings up new fears. In these types of situations, advocates could explain pertinent victim information such as what their rights are, their options, what will happen to the recording, and what rights they have to ask that the recording be sealed from public access. Several individuals in the victim advocate group noted that policies should include a prohibition of posting recordings publicly and these types of recordings should be treated as evidence. As part of the policy considerations and developments by any law enforcement agency leadership, the worst-case scenario should be considered:

what would happen if victim video was released on social media? What would be the impact and harm to the victim, the victim's family, or witnesses? A victim-centered approach should always take into account and be concerned with how to prevent or mitigate additional harm to a victim.

Advocates were also asked to explore and discuss strategies for developing effective, multidisciplinary-interagency collaboration on efforts to develop policies and practices and implement body-worn camera programs that are victim-centered. Many of the suggested strategies offered were similar to those also offered by the law enforcement and prosecution discussion groups, however the advocates stressed that demonstrating to agency members how implementing a victim-centered approach can serve the interests of both individuals and system components is critical to success. Law enforcement leadership should be committed to demonstrating efficiencies, both time and money, as well as enhancing safety and building community and victim trust.

BUILDING COMMUNITY AND INDIVIDUAL TRUST

Forum participants explored the impact of body-worn cameras on victims of domestic violence, sexual assault, dating violence, and stalking specifically regarding the building of individual and community trust. When distrust and discord are present in any community, use of body-worn

cameras will not magically provide a panacea for manifesting positive community-police relations. However, when utilized appropriately, in a climate of cooperation, body-worn cameras can become another tool for building and sustaining community trust.

Participants explored services that *currently offered* by agencies or other community organizations that are culturally specific and supportive of individuals from specific populations that could help strengthen the development and implementation of body-worn camera programs. Below are the highlights from these discussions.

► **Services that create and sustain partnerships with leaders from specific populations.**

Input and insight from advocacy groups that represent specific populations is needed to develop policies, procedures, and training content so that they effectively capture the realities and needs of these groups. Creating an open-dialogue with these groups will also help leaders identify specific populations in their communities that are not receiving proper or effective services, or any services at all. Law enforcement leaders should hold community forums, town-hall meetings, and open discussions in order to gather feedback from the community. Marching in gay pride parades, working with youth and religious groups, and being part of various community activities hosted by specific groups can all help build the trust needed to encourage

“Building trust and nurturing legitimacy on both sides of the police/citizen divide is the foundational principle underlying the nature of relations between law enforcement agencies and the communities they serve. Decades of research and practice support the premise that people are more likely to obey the law when they believe that those who are enforcing it have authority that is perceived as legitimate by those subject to the authority.... law enforcement cannot build community trust if it is seen as an occupying force coming in from outside to impose control on the community.”^{xiv}

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victims of domestic violence, sexual assault, dating violence, and stalking to reach out for support when needed and create a feeling of safety. Departments can also use social media platforms to put out messages that are more accessible and supportive of various groups.

- ▶ **Services offered include the creation and development of resources and tools for specific populations (brochures in different languages and specific to various cultures and communities).** Agencies should provide information to victims in their native language and have this available to all responding officers. Many departments are making strides in providing victims of domestic violence, sexual assault, and stalking with brochures and resources in their native language. Service brochures in various languages should be provided in a variety of community locations such as athletic fields and facilities; churches, mosques, synagogues, and other religious gathering areas; and community centers. Schools with access to school resource officers for support were noted as particularly effective places for distribution of resources, materials, and tools. It was emphasized that resources such as guides and quick reference materials for victim services should be readily available for law enforcement to provide to victims of domestic violence, sexual assault, dating violence, and stalking.
- ▶ **Services offered encourage citizen and officer interactions.** Successful programs including citizen police academies, the Volunteers in Police Service Program, and ride-along programs can help develop community trust and understanding between law enforcement and community members.
- ▶ **Services offered include meaningful language access.** In order to best serve victims of domestic violence, sexual assault, dating violence, and stalking who are not

English speakers, or who are limited English proficient (LEP), law enforcement should have access to interpreters or translation services. These resources should be available from the initial dispatch call-taking to the conclusion of the case, if needed. Departments should make these services known to communities so that victims are fully aware that they will receive the proper response if they contact the police.

- ▶ **Services offered include liaison units to collaborate, communicate, and build relationships with specific communities.** Departments can create specialized units or assign members as liaisons to work with specific communities such as the lesbian, gay, bisexual, transgender, and gender nonconforming population, racial and ethnic minority groups, individuals who are deaf or hard of hearing, various religious groups, and other specific groups that make up their communities. Individuals in these units and who act as liaisons should receive additional training and resources to ensure an adequate response to these individuals and proper handling of cases.
- ▶ **Services offered include the establishment of advocacy and support centers where community organizations and criminal justice system partners are near each other or co-located.** It is extremely important that the services provided are representative of the communities they serve and provide effective support tailored for each individual's experience. A good example of co-located services are Family Justice Centers. Provision of services in small or rural areas can be difficult due to cost, and specialized services often are available only in larger metropolitan areas. Colocation of services can assist medium and small jurisdictions and can help to mitigate commutes for services or long

waiting periods for regional or long-distance services.

- ▶ **Services offered are culturally competent when hiring, recruiting, and promoting to reflect the composition of the community.** It is extremely important for the members of the agency to reflect the makeup of the community. Individuals in the community may find familiarity and build trust and respect for officers who they believe may have a better understanding of their experiences. In order to support such diversity and cultural competency, law enforcement leadership must ensure diversity on hiring boards.
- ▶ **Services offered are supported through training and internal agency prioritization.** In order to create trust and build an agency that victims of domestic violence, sexual assault, and stalking believe will support their needs when they reach out for help, members of the department need ongoing and effective training regarding these crimes and the realities of victims and perpetrators. This training should also include specific information on the needs of the various populations whom they may be in contact with, especially those who are at greater risk of victimization and have

vulnerabilities that can be exploited. Such training should support a willingness to learn new techniques and policing methods as well as promote cultural change within an agency that emphasizes the need for officers to communicate with victims, not make decisions for them. One forum participant noted that their office had conducted inclusivity training regarding disability issues for all domestic violence agencies it funds statewide. The focus of this training was on responsibilities under the Americans with Disabilities Act and the Rehabilitation Act, but programs also shared work under way to serve individuals with disabilities that go beyond the requirements of these laws. This forum participant also noted that their office supports a “Women of Color Task Force” that offers an annual conference to support the work of advocates who are from diverse communities.

Forum participants provided thoughtful discussion on the ways body-worn cameras may improve or decrease trust with specific populations when responding to sex assault, domestic violence, dating violence, and stalking. Highlights from this conversation are presented in the tables that follow.

HOW MIGHT THE USE OF BODY-WORN CAMERAS POTENTIALLY IMPROVE TRUST?

- ▶ Accurately documenting law enforcement interactions with victims of domestic violence, sexual assault, and stalking
- ▶ Documenting professionalism of police
- ▶ Helping to hold officers accountable for inappropriate behavior
- ▶ Reinforcing consistent, effective department and officer behavior
- ▶ Building transparency
- ▶ Providing insight into the context of an officer's actions including her or his thinking as he or she approached the scene
- ▶ Promoting inclusion of community members in the development of programs and policies
- ▶ Recording the victims account in real time and in their native language
- ▶ Improving relations with local media and enhancing communication so media and law enforcement understand each other's roles and needs

HOW MIGHT THE USE OF BODY-WORN CAMERAS POTENTIALLY DECREASE TRUST?

- ▶ Discouraging victims from vulnerable populations from seeking help
- ▶ Promoting the fear of the unknown (fears about control over possession of recording, how footage is stored, who can view recordings, etc.)
- ▶ Discouraging immigrants from seeking help as they have resistance to officers with body-worn cameras based on their experiences in their home countries
- ▶ Escalating a fear that privacy is being invaded
- ▶ Creating nonconsensual recordings
- ▶ Recording individuals from religious or cultural groups that may view the process as offensive or inappropriate
- ▶ Documenting and highlighting inappropriate behavior or poor response by law enforcement
- ▶ Documenting use of force, fatal encounters, complaints, and civil unrest and sharing this video documentation with the public without providing context for what is captured on the video
- ▶ Using video captured by body-worn cameras to punish or pressure witnesses or victims or others
- ▶ Using body-worn cameras in a vacuum without meaningful reforms to practice, training, and agency policies
- ▶ Increasing the trauma experienced by or retraumatizing the victim
- ▶ Invading or compromising victim privacy or breaching confidentiality
- ▶ Compromising safety by releasing recordings to offenders or to third parties
- ▶ Compromising safety by releasing recordings which in turn can be used to locate victims and witnesses with technology and software programs, use of mapping websites, location and geography, crime mapping, police blotters, and other technologies

MITIGATING CIRCUMSTANCES THAT IMPACT DECISIONS TO USE CAMERAS

- ▶ **Physical location.** Particularly in cases of domestic violence, sexual assault, and stalking, the location of the crime scene is often in places that are considered by many as settings where a right to privacy is assumed. A victim's home and confidential shelters in particular are environments where there are high expectations of privacy, but defining "private space" is not a simple matter. There are additional settings where privacy expectations are not only high, but privacy rights might also be protected by law. For example, in health care settings and facilities, HIPAA requirements need to be taken into consideration. In school environments, state and federal laws and regulations regarding the filming on minors may be in effect.
- ▶ **Victim characteristics.** There are characteristics of a victim that can affect a decision to turn on or off a body worn camera. Participants noted the following: if the victim is a juvenile; the mental health state of the victim; victim competency, and; nudity and injuries.
- ▶ **Sensitive conversations.** There are conversations that can occur with victims of domestic violence, sexual assault, and stalking that should not be recorded in order to protect the victim's privacy rights and help ensure their safety. A victim's request to turn off a camera, or a department policy to turn off a camera, should be considered in situations such as during a danger/lethality/risk assessment, during discussions of shelter information, or during any conversations that would be considered client privilege, such as conversations with legal counsel or victim advocates.
- ▶ **Religious and cultural considerations.** Religious considerations and cultural preferences and customs may not be readily obvious to a law enforcement officer or crime scene investigator, therefore there may be circumstances whereby asking a victim if they have any reason to want or need to turn off a body worn camera will be the only way an officer will be made aware of these cultural or religious considerations.
- ▶ **State and local law and governance.** State and local laws, decrees, memorandums of understanding, and/or inter-agency agreements may specify what should occur if and when a victim requests that a body worn camera be turned off. Department leadership should be familiar with these kinds of laws and agreements, interpret them accurately, create policies that reflect these decrees, and ensure that department members are fully trained.
- ▶ **The "opt-in" dilemma.** If the department policy is to turn cameras off in cases of domestic violence, sexual assault, and stalking, can a victim ask that the camera be turned on? In this situation an officer would need to fully understand the department policy and procedures and may need to be prepared to advise the victim as to the ramifications of such a recording.
- ▶ **Undocumented victims.** Victims who are undocumented may fear deportation and this can influence their decision to report a crime as well as their willingness to be recorded. Officers need to fully understand department policy and procedures when these situations arise, and articulate this information to victims in a language they understand. Officers should clearly explain that they are there to respond to the crime that occurred.
- ▶ **Language barriers.** Language can most certainly present difficulties for law enforcement officers. There could be situations where a victim is requesting that a camera be turned off, but an officer is unable to understand the request due to the victim speaking a language that the officer does not understand. Officers should follow department procedures for securing an interpreter and ensuring meaningful language access. If the victim is recorded in these circumstances, it should be done in the native language of that individual.
- ▶ **Officer safety.** The circumstances within a physical space can change quickly on a call for service, moving from calm to dangerous suddenly, especially when responding to domestic violence. If cameras are turned off during what seems like a secure, nonurgent scenario and the situation escalates or turns volatile, the group suggested that critical information might be lost.

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CONSIDERATIONS FOR AGENCY PRACTICE AND POLICY

The following is a compilation of the considerations presented at the event for body-worn camera program and policy development and implementation, as well as policy content, specifically focused on the safety and privacy of victims of domestic violence, sexual assault, dating violence, and stalking. These are not meant to be definitive in nature. Instead, they are offered as insight and guidance for agency and community leaders.

Overall, it was determined that there is not a one-size-fits-all body-worn camera policy that exists or could be created to address and capture all of the complexities of responding to domestic violence, sexual assault, or stalking calls. Departments considering the implementation of body-worn cameras should spend significant time contemplating the question: *When is the use of a body-worn camera appropriate?* However, as a matter of good practice, agency body-worn camera policies should do the following:

1. Articulate the goals of the body-worn camera program
2. Convey the expectations of officers and other members of the department
3. Capture the contributions of internal and external partners
4. Highlight transparency, both internally and externally, yet be mindful of victim safety, privacy, and confidentiality

5. Guide officer decision-making and appropriate behavior
6. Provide a foundation for agency and officer accountability

POLICY AND PRACTICE CONSIDERATIONS

Considerations for Agency Policy and Program Development Process

- ▶ Department leadership should support the protection of victims' rights as a department-wide priority.
- ▶ Department leaders should introduce body-worn cameras as tools for law enforcement, not as a means to change the basic concepts of comprehensive investigations or appropriate responses to victims.
- ▶ Policies and programs should make the best effort to strike a balance among gathering information, building trust, and promoting officer and victim safety.
- ▶ Policies should be developed utilizing a multidisciplinary approach, with all relevant stakeholders, to ensure the guidance is comprehensive and legally sound.
- ▶ Department leadership should create a task force or working group to enhance community partnerships and input.

- ▶ Policy development should include early collaboration with local prosecutors as well as law enforcement unions, as applicable.
- ▶ Policies should be created with a focus on use and implementation of practices that will not compromise victim safety or confidentiality.
- ▶ Policies should be developed that are victim centered, promote victim autonomy, and are culturally competent.
- ▶ Policies should outline the purpose of the recording so this information can be fully communicated with the victim.
- ▶ Policies should allow the victim to be part of a decision to record; however, the needs of a professional law enforcement investigation must also be taken into account.
- ▶ Policies should include directives for officers when victims are unable to consent to being recorded or may have an adverse reaction to being recorded; training on these complexities should be part of the body-worn camera program.
- ▶ Policies should define, in as specific detail as possible, what “informed consent” entails and include situations when a victim or witness is intoxicated, under the influence of drugs, underage, and/or has limited English proficiencies, cognitive disabilities, or mental health issues.
- ▶ Policies should provide for specific details regarding when officers are allowed to turn off a body-worn camera.
- ▶ Policies should provide directives for when a witness or a victim does not consent to being recorded.
- ▶ Department leaders should promote that all agency members will be transparent and forthright with victims regarding details about recording practices and the use of body-worn cameras.
- ▶ Policies should include directives for notifying victims when Freedom of Information Act (FOIA) requests or other requests to view recordings are received.
- ▶ Policies should include guidance about capturing witness statements.
- ▶ Policies should allow for recording audio or visual, or audio and visual.
- ▶ Programs should include outreach, service announcements, and information to be disseminated to inform the public of the policies regarding the use of body-worn cameras and recordings.
- ▶ Policies should also consider civil issues that body-worn camera recordings might impact (obtaining a protection order, custody cases, child welfare cases, etc.).
- ▶ Policies should direct officers to fully inform victims that a recorded interview could be used as evidence in court.
- ▶ Policies should direct officers to fully inform victims, as well as advocates and social service providers, about how video is used, stored, and destroyed and if they as victims can request that video be preserved.
- ▶ Policies or protocols should include a sample “script” for officers to use to explain the choices available to the victim when recording is an option in order to present accurate information and provide consistency to all community members.
- ▶ Department members should offer preprinted literature that clearly advises victims of rights and options and require every officer to disseminate this information.
- ▶ Department members should review and understand all applicable FOIA laws and

statutes that may impact their department's use of body-worn cameras; officers should be able to articulate this information to victims.

- ▶ Policies regarding retention and redaction should be created with prosecutors' guidance of constitutional, statutory, and case law for the specific state.
- ▶ Policies should be living documents based on ongoing monitoring, evaluation, and community feedback from a variety of stakeholders and reviewed annually to ensure the most up-to-date information is captured and presented.

Considerations for Victim-Centered Training

- ▶ Training efforts should be presented by a multidisciplinary team including victim advocates, prosecutors, medical personnel, and other stakeholders.
- ▶ Training content should highlight the purpose of body-worn camera policies and program implementation.
- ▶ Officers should receive consistent and reoccurring training on trauma-informed interview and investigation techniques, including the neurobiology of trauma and the manifestation of trauma following a traumatic event.
- ▶ Use of cameras should be limited to only those officers who have received comprehensive trauma-informed interview and investigation training.
- ▶ All agency members should receive comprehensive and ongoing training related to crimes of domestic violence, sexual assault, dating violence and stalking.
- ▶ Officers should receive training on how to approach and work with victims who are unable to consent to being recorded or have an adverse reaction to being recorded.

- ▶ Officers should receive comprehensive training on the realities of domestic violence, sexual assault, and stalking in immigrant communities and specific populations that reside in their jurisdiction.
- ▶ Officers should receive comprehensive training on the realities of domestic violence, sexual assault, and stalking in underserved and marginalized communities.
- ▶ Training should be presented that identifies and addresses gender bias, prejudices, and stereotypes that might impact the response to and investigation of domestic violence, sexual assault, and stalking.
- ▶ Training should incorporate mock incidents with law enforcement acting as victims being filmed by a body-worn camera during an interview in order to present an understanding of the impact of the camera.
- ▶ Additional, in-depth training should be presented to agency members assigned to domestic violence, sexual assault, or specialized units, as well as those who do case follow-up.
- ▶ Training should be presented that highlights all applicable FOIA laws and statutes that might impact their department policy and use of body-worn cameras so that officers are able to articulate this information to victims.

Considerations for Supervision, Oversight, and Accountability

- ▶ Policies should have embedded supervisory oversight and accountability structures in order to hold responders accountable for actions, words, and responses to victims.
- ▶ Policies should clearly define how recordings can be used internally under strict supervision for training efforts and mentoring.

- ▶ Policies should clearly define how recordings can be viewed internally, by supervisors, after the event to ensure appropriate officer response to victims.
- ▶ Leadership should promote that all agency members will be transparent and forthright with victims regarding details about recording practices and the use of body-worn cameras.
- ▶ Policies should include a delineation of accountability and discipline measures that will be taken for any department member who illegally uses, edits, destroys, disseminates, or in any way violates department policy regarding video use

Considerations for Building Cultural and Community Awareness and Addressing Specific Populations

- ▶ Department leaders should conduct focus groups, town hall meetings, or other information gathering sessions to hear from specific populations who will be impacted by the implementation of cameras in order to minimize negative effects and gain support.
- ▶ Department leaders need to be aware of the various, diverse demographics in their jurisdictions and how these groups will interact with and respond to body-worn cameras.
- ▶ Department leaders should ensure diversity and representation of various communities on the multidisciplinary group to develop the body-worn camera policy and program.
- ▶ Department leaders should acknowledge historical injustices or discrimination against specific groups that may be impacted, positively or negatively, by the addition of body-worn cameras.
- ▶ Department leaders should work with victim service agencies to develop victim-centered

approaches specifically designed for the various populations in the community.

- ▶ Departments should post frequently asked questions (FAQs) regarding cameras on the agency website in various languages so it's accessible and relevant to different communities.
- ▶ Department leaders should identify and address barriers that prevent members of specific communities from coming forward to report crimes that occurred.
- ▶ Department leaders should continually assess the impact cameras have on specific communities, negative and positive, to ensure the goals of the program are being achieved.
- ▶ Department leaders should consider working with local stakeholders and community partners to identify the elements of "informed consent" for various populations within their jurisdiction (e.g. for those with cognitive disabilities, limited English proficiency, etc.).

Considerations for Retention, Release, and Viewing

- ▶ Policies regarding retention and redaction should be created with legal guidance regarding constitutional, statutory, and case law authority for the specific state.
- ▶ Policies should clearly present information on the storage, retention, and redaction of videos in order for officers to fully inform victims.
- ▶ Policies should clearly present who can access recordings, including how and where, in order for officers to fully inform victims.
- ▶ Policies should identify procedures to notify victims if a recording is to be presented in court.

- ▶ Policies should require that recordings presented in court be redacted from the public record.
- ▶ Policies should allow victims' access to viewing recordings in which they appear.
- ▶ Policies should include provisions to closely regulate and monitor offender access to recordings with extreme limitations on rerelease of the recording.
- ▶ Policies should address if investigators can view recordings from initial/on-scene before conducting a more thorough, follow-up interview with the victim.
- ▶ Policies should restrict or prohibit public access to body-worn camera footage of survivors and witnesses of domestic violence, sexual assault, or stalking.

Considerations for Recording in Areas and Situations with High Expectations of Privacy

- ▶ Policies should address the use of cameras in locations with a high expectation of privacy including but not limited to homes, hospitals and clinics, schools, bathrooms, and religious sites.
- ▶ Policies should clearly provide direction to officers regarding the use of cameras in situations involving children, youth or minors, or vulnerable adults.
- ▶ Policies should clearly provide direction to officers regarding the use of cameras when there is nudity or other compromised situations.
- ▶ Policies should clearly provide directives for use of cameras when responding to confidential locations such as safe shelters.
- ▶ Policies should include directives for use of cameras when conducting conversations that

may include confidential information, safety planning, and/or risk or lethality assessment.

- ▶ Policies should clearly provide guidance for camera use when victim advocates are on-scene or speaking with victims or witnesses.
- ▶ Policies should clearly provide guidance for camera use when working with legal counsel or when medical staff are speaking with victims or witnesses.
- ▶ Policy and the use of cameras should be assessed for compatibility with other legal requirements such as the Health Insurance Portability and Accountability Act (HIPAA), the Family Educational Rights and Privacy Act (FERPA), and school district policies regarding the filming or photographing children.

Considerations of Federal and State Laws Interaction with Body-Worn Camera Policy

- ▶ Policies should reflect an understanding of applicable state and local laws regarding
 - access to records and open access laws,
 - release of records,
 - redaction practices,
 - victims' rights laws and requirements,
 - general privacy rights,
 - rape shield protocols,
 - funding options for legal services,
 - pseudonym laws, and
 - victim notice requirements.
- ▶ Policies should take into account applicable state public disclosure statutes, FOIA and/or applicable privacy laws.
- ▶ Policies should be reviewed for compliance with federal law to include Fourth Amendment and Fifth Amendment requirements.

- ▶ Department leaders should be aware that unless there are specific state statutes on body-worn cameras and domestic violence, sexual assault, dating violence, and stalking, recordings will fall under the requirements of FOIA.
- ▶ Department leaders should review and understand all applicable state statutes, case law, and FOIA laws that might impact their department's policy and use of body-worn cameras.
- ▶ Department leaders need to consider discovery laws when developing policies and programs.

COMMUNITY PARTNERSHIPS FOR POLICY AND PROGRAM DEVELOPMENT

Multidisciplinary collaboration is necessary when creating victim-centered body-worn camera policies and programs. Partners are needed to identify shared goals and help alleviate challenges within an agency and criminal justice system; these are vital steps towards successful policies and programs. There should also be a clear expectation to discuss and understand the differing roles and responsibilities of various systems and stakeholders. **Law enforcement leaders should consider involving the following stakeholders in the development of body-worn camera policies:**

- ▶ Individuals who represent various ranks of law enforcement including patrol officers and first responders as well as representatives from outside agencies
- ▶ Individuals or specialized resources, if available, from national law enforcement organizations such as the International Association of Chiefs of Police (IACP), the Commission on Accreditation for Law Enforcement Agencies (CALEA), the Fraternal Order of Police (FOP), the National Sheriff's Association (NSA), the National Association of Women Law Enforcement Executives (NAWLEE), Hispanic American Police Command Officers Association (HAPCOA), and National Organization of Black Law Enforcement Executives (NOBLE)
- ▶ Individuals who represent law enforcement agency records section and/or those who handle public records requests
- ▶ Individuals who represent state and local government offices (e.g., governor's office, legislature, and mayor's office)
- ▶ Individuals who represent the criminal justice system (e.g., prosecutor's office, judicial officials, and public defender's office)
- ▶ Individuals who represent civil liberties groups, such as the ACLU
- ▶ Individuals who represent the media
- ▶ Individuals who are victims and survivors of domestic violence, sexual assault, dating violence, and/or stalking
- ▶ Individuals who are subject matter experts or researchers including college and university representatives
- ▶ Individuals who represent community-based advocacy organizations, sexual assault and domestic violence advocates, and service providers
- ▶ Individuals who represent court administrators
- ▶ Individuals who represent local school districts
- ▶ Individuals who represent the medical profession including Sexual Assault Nurse Examiners (SANEs)

- ▶ Individuals who represent the local NAACP chapter or other similar organizations representing minority communities
- ▶ Individuals who represent local faith groups and organizations
- ▶ Individuals with knowledge of HIPAA and FERPA laws

Effective collaboration among disciplines and various stakeholders will aid in the creation of victim-centered policies and programs. In order to create and implement trauma-informed response as well as to develop victim-centered body-worn camera programs, the following multidisciplinary models and resources should be considered:

- ▶ **Domestic Violence Response Teams (DVRTS) and Sexual Assault Response Teams (SARTs)**- Domestic violence response and/or sexual assault response teams could form the core of collaborations, leveraging their experience with other issues related to these crimes.
- ▶ **National Assistance**- Reaching out to national technical assistance programs funded by federal agencies such as the Office on Violence Against Women (OVW, <https://www.justice.gov/ovw>) or the Office for Victims of Crime (OVC, <https://www.ovc.gov/>) that

can help develop a plan and/or help provide referrals.

- ▶ **Coordinated Community Response Model**- Coordinated Community Response (CCR) includes working with community policing strategies, approaches and resources as well as available national technical assistance. The CCR model promotes all interested and affected stakeholders coming to the table for the purposes of creating and sustaining true partnerships. For additional information, visit www.bwjp.org
- ▶ **Family Justice Centers**- The Family Justice Center (FJC) could be utilized to provide the stakeholders an understanding of the objectives, individual roles, and collaborative methods for developing and implementing body-worn camera policies. For additional information, visit www.familyjusticecenter.org
- ▶ **Domestic Violence Fatality Review Teams**- Communities with these preexisting partnerships and protocols have already put in place a foundation to successfully develop policies and programs and the resiliency to get through conflict, political currents, and other potentially polarizing issues. (For additional information, see the National Domestic Violence Fatality Review Initiative, <http://ndvfri.org>.)

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CONCLUSION

As the ability to gather digital information from body-worn cameras increases, the responsibility to thoughtfully and respectfully address the privacy rights of individuals, safety of victims and officers, and autonomy of victims increases as well. The use of body-worn cameras presents benefits and opportunities as well as challenges that must be carefully measured and scrutinized. Consensus was not reached at the forum about policy directives or program structure; however, there was agreement that the use of body-worn cameras should be implemented with consideration to the complexities of responding to victims of domestic violence, sexual assault, dating violence, and stalking. There was also agreement that the development of policies and practices must be done in collaboration with many community and criminal justice partners.

The participants at the forum articulated the need for additional research on the use and impact of cameras and recordings. It is important to implement body-worn camera policies and programs as pilot tests; collect information and data on the effects on victims, officers, and community members; and reassess the program in light of the collected information. It was suggested that law enforcement agencies partner with academic institutions to capture information and evaluate experiences with body-worn cameras.

As departments develop and implement programs, it is critical for agency leaders to

be cognizant of possible negative unintended consequences that can include the following:

- ▶ A lack of protection of the privacy, confidentiality, and rights of the victim
- ▶ A decrease in victims reporting crimes
- ▶ A decrease in victim safety
- ▶ A misunderstanding of the victim's experience of the violence due to a lack of knowledge of how victims and perpetrators may present to law enforcement and are captured in the recording
- ▶ Capturing privileged or confidential information that may include conversations with medical personnel, victim advocates, or legal advisors
- ▶ The use of recordings from a call for service in other civil cases and processes such as child welfare or custodial rights and visitation
- ▶ Nonintentional release of private data information due to insecure data storage systems or department policy
- ▶ Hesitation within marginalized communities and vulnerable populations to report for fear of discriminatory repercussions
- ▶ An increase of the time needed to process and/or review evidence by both law enforcement and prosecutors

Department leadership should be aware of these potential unintended consequences as

body-worn camera policies and programs are developed and implemented. They should provide for regular and ongoing assessment and review of how and if these unintended consequences might be occurring, internally and externally, and work toward their prevention. Academic research partners can assist with the collection and evaluation of this information.

As more programs are implemented nationally, it is vital that agency leaders and community partners consider the pros and cons of the use

of body-worn cameras and recordings. Forum participants agreed that in many circumstances, state laws and statutes need to include more protections for victim privacy; current laws are not keeping up with the realities of the fast-paced technology of cameras and recordings. This, as well as the extensive list of considerations enumerated in this report, need to be taken into account as department policies are developed to ensure that programs are the most effective for all individuals who will be affected by the use of body-worn cameras.

APPENDIX I: FORUM ADVISORS

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APPENDIX IV: FORUM AGENDA

WEDNESDAY, FEBRUARY 24TH

8:00 – 8:30 AM **Check-In and Networking**

8:30 – 9:00 AM **Welcome, Introductions and Overview of Forum**

- Former Assistant Chief Paul Figueroa, Oakland Police Department (CA)
- Gretta Gardner, Policy Director, D.C. Coalition Against Domestic Violence
- Rosie Hidalgo, Deputy Director for Policy, Office on Violence Against Women (OVW)
- Denise O'Donnell, Director, Bureau of Justice Assistance (BJA)
- Vince Talucci, Executive Director, International Association of Chiefs of Police (IACP)

9:00 – 9:15 AM **Event Participant Introductions**

9:15 – 10:30 AM **Hear from the Experts: Emerging Challenges and Considerations**

- **Introduction**
Former Assistant Chief Paul Figueroa, Oakland Police Department (CA)
- **Complexities of Violence Against Women and Victim Safety**
Michelle Garcia, Director, D.C. Office of Victim Services and Justice Grants
- **Privacy Issues and Victim Rights**
Jessie Mindlin, National Director of Training and Technical Assistance, Victim Rights Law Center
- **Addressing the Realities of Vulnerable Populations**
Gretta Gardner, Policy Director, D.C. Coalition Against Domestic Violence
- **Building Community Trust**
Chief Dave Porter, Dewitt Police Department (IA), Chair of the IACP Victim Services Committee

10:30 – 10:45 AM **Visit the Policy Wall and Leave Your Feedback on Existing Policy Components**

10:45 – 12:00 PM **Table Discussion & Activity: Body Worn Cameras and Violence Against Women: Context**

1:15 – 1:45 PM	Table Discussion: Large Group Report-Out
1:45 – 2:15 PM	Body Worn Camera Programs: Balancing Agency Accountability and Victim Autonomy
2:15 – 2:30 PM	Visit the Policy Wall and Leave Your Feedback on Existing Policy Components
2:30 – 3:30 PM	Walk-Around Activity: Body Worn Cameras & Violence Against Women: Challenges
3:30 – 3:45 PM	Visit the Policy Wall and Leave Your Feedback on Existing Policy Components
3:45 – 4:45 PM	Discipline Specific Break-Out Discussions
4:45 – 5:00 PM	Day One Closing Remarks

THURSDAY, FEBRUARY 25TH

8:30 – 8:45 AM	Welcome & Day One Follow-Up
8:45 – 9:15 AM	Presentation: Leading the Way <ul style="list-style-type: none"> • Chief Mary Gavin, Falls Church Police Department (VA)
9:15-10:15 AM	Table Discussion & Activity: Body Worn Cameras & Violence Against Women: Building Trust
10:15 – 10:30 AM	Visit the Policy Wall and Leave Your Feedback on Existing Policy Components
10:30 – 11:00 AM	Table Discussion: Large Group Report-Out
11:00 – 12:00 PM	Table Discussion & Activity : Body Worn Cameras & Violence Against Women: Promising Practices
12:00 – 12:30 PM	Event Wrap-Up & Final Remarks <ul style="list-style-type: none"> • John Firman, Director of Strategic Partnerships, International Association of Chiefs of Police (IACP)

APPENDIX V: CITATIONS

- ⁱ U.S. Department of Justice, Office of Justice Programs, “Justice Department Awards over \$23 Million in Funding for Body-Worn Camera Pilot Program to Support Law Enforcement Agencies in 32 States,” press release, September 21, 2015, <https://www.justice.gov/opa/pr/justice-department-awards-over-23-million-funding-body-worn-camera-pilot-program-support-law> (accessed August 27, 2016).
- ⁱⁱ Robinson Meyer, “Seen It All Before: Predictions About Police Body Cameras,” *The Atlantic*, December 2014, <http://www.theatlantic.com/technology/archive/2014/12/seen-it-all-before-10-predictions-about-police-body-cameras/383456> (accessed April 12, 2016).
- ⁱⁱⁱ Ibid.
- ^{iv} The International Association of Chiefs of Police (IACP) National Law Enforcement Policy Center, “Body-Worn Cameras,” Concepts and Issues Paper, April 2014.
- ^v U.S. Department of Justice, Office of Justice Programs, “Justice Department Awards over \$23 Million in Funding for Body worn Camera Pilot Program to Support Law Enforcement Agencies in 32 States,” news release, September 21, 2015, <https://www.justice.gov/opa/pr/justice-department-awards-over-23-million-funding-body-worn-camera-pilot-program-support-law> (accessed April 12, 2016).
- ^{vi} Jay Stanley, *Police Body-Mounted Cameras: With Right Policies in Place, A Win for All*, American Civil Liberties Union, last updated March 2015, 2, <https://www.aclu.org/police-body-mounted-cameras-right-policies-place-win-all> (accessed September 25, 2016).
- ^{vii} The IACP, *Enhancing Law Enforcement Response to Victims: A 21st Century Strategy* (Alexandria, VA: 2008), http://www.iacp.org/Portals/0/pdfs/responsetovictims/pdf/pdf/IACP_Strategy_REV_09_Layout_1.pdf (accessed September 14, 2016).
- ^{viii} Katrina Baum, et al., “Stalking Victimization in the United States,” Bureau of Justice Statistics Special Report (January 2009), <http://victimsofcrime.org/docs/src/baum-k-catalano-s-rand-m-rose-k-2009.pdf?sfvrsn=0> (December 21, 2016).
- ^{ix} Jennifer L. Truman and Michael Planty, *Criminal Victimization 2011* (Office of Justice Programs, Bureau of Justice Statistics, October 2012), <http://www.bjs.gov/content/pub/pdf/cv11.pdf> (accessed May 2016).

^x TK Logan and Roberta Valente, *Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses* (Washington, D.C.: National Domestic Violence Hotline, 2015), <http://www.thehotline.org/wp-content/uploads/2015/09/NDVH-2015-Law-Enforcement-Survey-Report.pdf> (accessed December 7, 2016).

^{xi} The IACP National Law Enforcement Policy Center, “Body-Worn Cameras.”

^{xii} U.S. Department of Health & Human Services, Office for Civil Rights, “HIPAA for Professionals,” <https://www.hhs.gov/hipaa/for-professionals> (accessed December 7, 2016).

^{xiii} Viktoria Kristiansson, JD, “Walking a Tightrope: Balancing Victim Privacy and Offender Accountability in Domestic Violence and Sexual Assault Prosecutions” *Strategies: The Prosecutors’ Newsletter on Violence Against Women*. Issue #9. (May 2013). AEquitas. http://www.aequitasresource.org/Issue_9_Walking_A_Tightrope_Balancing_Victim_Privacy_and_Offender_Accountability_in_Domestic_Violence_and_Sexual_Assault_Prosecutions_Part_I_May_2013.pdf (accessed January 11, 2017)

^{xiv} President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing* (Washington, D.C.: Office of Community Oriented Policing Services, 2015), http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (accessed September 22, 2016).

APPENDIX VI: RESOURCES AND READING MATERIALS

Access to Police Body-Worn Camera Video

Reporters Committee for Freedom of the Press

<https://www.rcfp.org/bodycams>

Body-Worn Cameras Associated with Increased Assaults Against Police, and Increase in Use-of-Force If Officers Choose When to Turn on Body-Worn Cameras

Rand Corporation

May 2016

<http://www.rand.org/news/press/2016/05/17.html>

Body-Worn Cameras, Concepts and Issues Paper

International Association of Chiefs of Police (IACP)

April 2014

<http://www.theiacp.org/Portals/0/documents/pdfs/MembersOnly/BodyWornCamerasPaper.pdf>

Body-Worn Cameras: FAQs

Metropolitan Police Department, Washington D.C.

<http://mpdc.dc.gov/page/body-worn-cameras-faqs>

Body-Worn Cameras Interactive Graphic: State Body-Worn Camera Laws

National Conference of State Legislatures

<http://www.ncsl.org/research/civil-and-criminal-justice/body-worn-cameras-interactive-graphic.aspx>

Connecting the Dots: The Challenges of Identifying and Responding to Stalking

Paul Schnell, et al.

The Police Chief

December 2013

<http://www.policechiefmagazine.org/connecting-the-dots-the-challenges-of-identifying-and-responding-to-stalking>

Criminal Victimization 2011

Jennifer L. Truman and Michael Planty

U.S. Department of Justice, Bureau of Justice Statistics

October 2012

<http://www.bjs.gov/content/pub/pdf/cv11.pdf>

Deploying Officer Body-Worn Cameras in Phoenix

Charles Katz and Mike Kurtenbach, Office of Justice Programs Diagnostic Center

August 2014

<https://www.ojpdagnosticcenter.org/blog/deploying-officer-body-worn-cameras-phoenix>

Enhancing Law Enforcement Response to Victims: A 21st Century Strategy

International Association of Chiefs of Police http://www.iacp.org/Portals/0/pdfs/responsetovictims/pdf/pdf/IACP_Strategy_REV_09_Layout_1.pdf

Existing and Ongoing Body Worn Camera Research: Knowledge Gaps and Opportunities

Cynthia Lum et al., Center for Evidence-Based Crime Policy

George Mason University, Fairfax, VA

2015

<http://cebcp.org/wp-content/technology/BodyWornCameraResearch.pdf>

Final Report of the President's Task Force on 21st Century Policing

President's Task Force on 21st Century Policing

Office of Community Oriented Policing Services

2015

http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

Guidance on the Use of Body-Worn Cameras (BWC) During the Administration of the Lethality Assessment Program (LAP)

Maryland Network Against Domestic Violence

June 2016

http://mnadv.org/_mnadvWeb/wp-content/uploads/2012/11/Body-Worn-Camera-LAP-Guidance-Final.pdf

HIPAA for Professionals

U.S. Department of Health & Human Services, Office for Civil Rights

August 2015

<https://www.hhs.gov/hipaa/for-professionals>

Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence

U.S. Department of Justice Civil Rights Division, Office on Violence Against Women, and the Office of Community Oriented Policing Services (COPS Office)

December 2015

<https://www.justice.gov/opa/file/799366/download>

Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned

Lindsay Miller, Jessica Toliver, and Police Executive Research Forum

U.S. Department of Justice, Office of Community Oriented Policing Services

2014

<http://ric-zai-inc.com/Publications/cops-p296-pub.pdf>

National Body-Worn Camera Toolkit
U.S. Department of Justice, Bureau of Justice Assistance
<https://www.bja.gov/bwc/index.html>

National Policy Summit on Community-Police Relations: Advancing a Culture of Cohesion and Community Trust
International Association of Chiefs of Police
January 2015
http://www.iacp.org/Portals/0/documents/pdfs/CommunityPoliceRelationsSummitReport_web.pdf

Police Body-Mounted Cameras: With Right Policies in Place, A Win for All
Jay Stanley, American Civil Liberties Union
March 2015
<https://www.aclu.org/other/police-body-mounted-cameras-right-policies-place-win-all>

Police Body Cameras in Domestic and Sexual Assault Investigations: Considerations and Unanswered Questions
Sandra Tibbetts Murphy
Battered Women's Justice Project
<http://www.bwjp.org/assets/documents/pdfs/police-body-cams-in-domestic-and-sexual-assault-inve.pdf>

Police Body Camera Policies: Privacy and First Amendment Protections
Brennan Center for Justice
August 2016
<https://www.brennancenter.org/analysis/police-body-camera-policies-privacy-and-first-amendment-protections>

Police Body Worn Cameras: A Policy Scorecard
The Leadership Conference
Updated August 2016
<https://www.bwcscorecard.org/>

Police Officer Body-Worn Cameras: Assessing the Evidence
Michael C. White, PH.D.
Office of Justice Programs Diagnostic Center
2014
<https://www.ojpdagnosticcenter.org/sites/default/files/spotlight/download/Police%20Officer%20Body-Worn%20Cameras.pdf>

Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges
U.S. Department of Justice, National Institute of Justice
June 2009
<https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>

SART Toolkit: Resources for Sexual Assault Response Teams
U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime
<http://ovc.ncjrs.gov/sartkit>

Seen It All Before: 10 Predictions About Police Body Cameras

Robinson Meyer

December 2014

<http://www.theatlantic.com/technology/archive/2014/12/seen-it-all-before-10-predictions-about-police-body-cameras/383456>

The Family Justice Center Alliance

A program of Alliance for Hope International

<http://www.familyjusticecenter.org>

Who Will Help Me? Domestic Violence Survivors Speak Out About Law Enforcement Responses

National Domestic Violence Hotline

2015

<http://www.thehotline.org/wp-content/uploads/2015/09/NDVH-2015-Law-Enforcement-Survey-Report.pdf>