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INTIMATE PARTNER VIOLENCE: BODY-WORN CAMERA PROGRAM CONSIDERATIONS

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Gathered from the IACP National Forum on Body-Worn Cameras and Violence Against Women

The IACP recognizes that the impact of body-worn cameras on victims of intimate partner violence (IPV)¹ may present a particularly unique set of policy and protocol challenges for law enforcement agencies. Unfortunately, there has been a lack of dialogue about the impact of cameras and recordings on victims of IPV. The unintended consequences of using cameras in these cases needs to be thoroughly examined and considered by law enforcement leaders when developing or updating policies and programs. The considerations presented here provide agencies with actions, and policy and leadership directives to assist in the creation, review, and implementation of effective, victim-focused body-worn camera programs.

¹The phrase “intimate partner violence” will be used herein as an umbrella term to refer to the wide variety of crimes that fall under the general categories of sexual assault, domestic violence, dating violence, and stalking. These crimes may include (but are not necessarily limited to) physical and psychological violence by a current or former partner, unwanted sexual experiences (whether physical contact was made or not), completed or attempted nonconsensual penetration, completed or attempted forced acts in which a victim is made to penetrate a perpetrator or someone else, acts of human trafficking, and stalking. An intimate partner can include, but is not limited to, current or former spouses, boyfriends or girlfriends, dating or domestic partners, or sexual partners—regardless of marriage, co-habitation, or dating status. Particularly in cases of stalking (though not exclusively), the offender in an intimate partner violence case may actually be unknown to the victim. Crimes of intimate partner violence can vary in frequency and severity, can happen to anyone regardless of race, age, sexual orientation, religion, or gender, and can impact people of all socioeconomic backgrounds and education levels. Intimate partner violence can occur within heterosexual or same-sex couples, but does not require sexual intimacy or the existence of a dating or romantic relationship. The term “intimate partner violence” or “IPV” is used for brevity; its use is not meant to diminish or minimize the complexities of these crimes or the experiences of survivors.

It is critical that agencies implement trauma-informed, victim-focused body-worn camera policies and programs. However, these priorities must be balanced with officer safety and agency accountability, which can present a quandary for law enforcement and other stakeholders. Current laws are not keeping up with the realities of the fast-paced evolution of recording technology; these statutes should include more protections for victim privacy. This, and other considerations, should be taken into account as police departments develop policies to ensure their body-worn camera programs are the most effective for all affected individuals.

With the support of the Department of Justice, Office on Violence Against Women (OVW), the IACP convened the **National Forum on Body-Worn Cameras and Violence Against Women**. Information about the event including additional policy and program considerations, overview and highlights from the forum discussions, participant details, event agenda, and resources can be found in the *Deliberations from the IACP National Forum on Body-Worn Cameras and Violence Against Women* document, which can be found at <http://www.theiacp.org/Police-Response-to-Violence-Against-Women>.



Law enforcement agencies considering the use of or currently using body-worn cameras should spend significant time contemplating the question: *When is the use of a body-worn camera appropriate?* When responding to cases of IPV, the decision to leave a body-worn camera turned on presents a dilemma for law enforcement; striking the right balance between the evidence potential of video footage with the safety and wishes of victims and witnesses is no easy task, and should be guided by clear policies. Multidisciplinary collaboration is necessary to create victim-focused body-worn camera policies and programs. There should be a clear expectation to discuss and understand the differing responsibilities of various systems and stakeholders. The following is a compilation of the considerations regarding program and policy development and implementation and policy content specifically focused on the safety and privacy of victims of IPV. These are not meant to be definitive in nature, they are instead offered as a starting point of guidance for agency and community leaders.

Agency leaders should:

- Review and understand all applicable Freedom of Information Act (FOIA) laws and statutes that may impact their department's use of body-worn cameras and train agency members to articulate this information to victims.
- Be aware that unless there are specific state statutes on body-worn cameras and IPV, recordings may fall under the requirements of FOIA.
- Collaborate with multidisciplinary stakeholders, including early collaboration with local prosecutors and law enforcement unions, to develop comprehensive, legally sound body-worn camera policies.
- Promote, internally and externally, transparency with victims and witnesses regarding details about recording practices and the use of body-worn cameras.
- Conduct focus groups, town hall meetings, or other sessions to hear from specific populations who may be impacted by use of body-worn cameras.
- Be aware of the diverse demographics in the jurisdiction and how these groups may interact with and respond to body-worn cameras.
- Acknowledge historical injustices or discrimination against specific groups that may be impacted by the addition of body-worn cameras.
- Post frequently asked questions regarding body-worn cameras on the agency website in various languages so it is accessible to many communities.
- Couple policy with comprehensive training for all agency members to provide direction and support.
- Include in training materials 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, consistent information to all community members.
- Continually assess the impact cameras have on specific communities and victims to ensure the goals of the program are being achieved.

CONSIDERATIONS FOR SUPERVISION, OVERSIGHT AND ACCOUNTABILITY

Policies should:

- Include supervisory oversight and accountability structures to hold responders accountable for actions, words, and responses to victims.
- Clearly define how recordings should be viewed internally by supervisors after the event to ensure appropriate officer response to victims.
- 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 recording use.

CONSIDERATIONS FOR RETENTION, RELEASE AND VIEWING

Policies should:

- Establish that recordings from body-worn cameras be treated as any other type of evidence: review is allowable when a legal, rational justification for viewing has been presented. However, policies should clearly state who within a law enforcement agency has access to videos, who makes decisions about the release or viewing, and how, where, and under what circumstances release or viewing will be allowed so that officers can fully inform victims and witnesses, and protect victim and witness privacy.
- Adhere to constitutional, statutory, and state-specific legal authority regarding retention and redaction as well as FOIA-related matters.
- Clearly define how recordings may be used internally under strict supervision for training efforts and mentoring.
- Clearly present information on the storage, retention, and redaction of videos so that officers can fully inform victims.
- Identify procedures to notify victims if a recording is to be presented in court or released.
- Allow victims' access to view recordings in which they appear.
- Include provisions to closely regulate and monitor offender access to recordings with extreme limitations on rerelease of the recording.
- Address whether investigators can view recordings from initial, on-scene interviews before conducting a more thorough follow-up interview with the victim.
- Restrict or prohibit public access to body-worn camera footage of survivors and witnesses of IPV.
- Prohibit officers from editing, altering, duplicating, copying, sharing, or otherwise distributing video recordings in any manner.
- Include directives for notifying victims when FOIA requests or other requests to view recordings are received.
- Include language regarding redaction of images for any digital images that need to be released due to a FOIA request or other legal reasons (e.g. presented in court).

CONSIDERATIONS FOR RECORDING IN AREAS AND SITUATIONS WITH HIGH EXPECTATIONS OF PRIVACY

Policies should provide direction to agency members regarding the use of cameras:

- In locations with a high expectation of privacy, including, but not limited to homes, hospitals or clinics, schools, bathrooms, and religious sites.
- In situations involving children, youth or minors, or vulnerable adults.
- In situations where there is nudity or other compromising circumstances.
- When responding to confidential locations such as safe shelters.
- When conducting conversations that may include confidential information, safety planning, and risk or lethality assessment.
- When victim advocates are on-scene or speaking with victims or witnesses.
- When working with legal counsel or when medical staff are speaking with victims or witnesses.

CONSIDERATIONS REGARDING FEDERAL AND STATE LAWS

Policies should:

- Reflect an understanding of applicable state and local laws regarding the following:
 - access to records and open access laws
 - confidentiality and privilege
 - release of records and general privacy rights
 - redaction practices
 - victims' rights laws and requirements
 - rape shield protocols
 - discovery
 - funding options for legal services
 - pseudonym laws
 - victim notice requirements
- Be reviewed for compliance with federal law to include Fourth and Fifth Amendment requirements.
- Be compatible with legal requirements such as the Health Insurance Portability and Accountability Act (HIPAA), the Family Educational Rights and Privacy Act (FERPA), and any other applicable state or federal privacy laws.
- Be compatible with other legal requirements, state or local laws, and school district policies regarding filming or photographing children with or without parental consent

CONSIDERATIONS FOR VICTIM SAFETY

Policies should:

- Address civil issues that body-worn camera recordings might impact (e.g. obtaining a protection order, custody cases, child welfare cases).
- Direct agency members to fully inform victims that a recorded interview could be used as evidence in court and can be shared with the defendant.
- Include guidance regarding recorded witness statements and potential consequences.
- Include a prohibition of posting recordings publicly; these types of recordings should be treated as evidence.

CONSIDERATIONS FOR POLICY DEVELOPMENT

Policies should:

- Be as specific as possible and avoid ambiguous terminology.
- Be reevaluated annually, at minimum, based on ongoing monitoring, evaluation, and community feedback from multiple stakeholders to determine impacts and to consider revisions, necessary corrections, and training needs.
- Make the best effort to strike a balance between gathering information, building trust, and promoting officer and victim safety.
- Define what “informed consent” entails and include examples of situations when victims may be unable to consent to being recorded (e.g., a victim or witness is intoxicated, under the influence of drugs, underage, or has limited English proficiencies, cognitive disabilities, or mental health issues).
- Include directives for officers when victims may have an adverse reaction to being recorded.
- Present a standardized procedure for when officers are allowed to turn on and off a body-worn camera and how to do so.
- Direct agency members to inform victims, as well as advocates and social service providers, about how the video is used, stored, shared, and destroyed, and if victims can request that video be preserved.
- Allow for recording audio or visual, or audio and visual.