



## **MODEL BODY-WORN CAMERA POLICY, ORDINANCE, OR BYLAW FOR MASSACHUSETTS POLICE DEPARTMENTS AND MUNICIPALITIES**

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*If Massachusetts police departments or municipalities decide to initiate body worn camera programs, they should do it right. The ACLU of Massachusetts therefore presents the following model provisions for use as part of a police policy or a municipal ordinance or bylaw. This model emphasizes four key goals: improving public safety, ensuring police accountability, enhancing community-police relations, and protecting privacy. Consistent with the ACLU's other advocacy concerning body cameras, this model also includes a "[No Tape, No Testimony](#)" proposal favoring evidentiary consequences for officers who are found to have unreasonably or in bad faith failed to record crucial incidents.*

### **Section 1: Purpose**

The {Name of City/Town} Police Department (hereinafter "the Department") is adopting the use of body cameras by police officers. The purpose of this body worn camera program is to improve community relations; foster better accountability for the actions of its personnel; deter or document inappropriate conduct by police officers and by members of the public; capture digital audio-video evidence for criminal, civil, and traffic-related court cases; assist with training officers; and improve the quality of interactions between officers and the members of the public

This {Policy/Ordinance/Bylaw} governs the use of body cameras; the management, retention, storage and retrieval of, and access to, recorded media captured by body cameras; the handling of evidence derived from body cameras; and sanctions for failing to abide by these provisions.

### **Section 2: Definitions**

(a) "Body worn camera" or "body camera" shall refer to a device worn by an officer that can record both audio and video of an interaction between an officer and a civilian.

(b) "Civilian" or "member of the public" shall refer to any person who is not an on-duty police officer.

(c) "Officer" shall refer to a sworn member of the Department.

(d) "Subject" shall refer to any individual who appears on video footage recorded by a body camera, except those who appear only incidentally.

### **Section 3: Use Protocols**

(a) Only officers with the authority to conduct searches and make arrests shall be permitted to wear a body camera.

(b) Before each shift, officers shall inspect and test their body cameras to verify that they are working properly and fully charged, and shall notify their supervisor of any problems.

(c) Body cameras shall be worn openly in a prominent location on the officer's body, uniform, or clothing, and in a manner that maximizes the camera's ability to capture video footage of the officer's activities.

(d) Body cameras shall not be used surreptitiously.

(e) Both the video and audio recording functions of the body camera shall be activated whenever an officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between an officer and a member of the public, except that when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous, the officer shall activate the camera at the first reasonable opportunity to do so. The body camera shall not be deactivated until the encounter has fully concluded and the officer leaves the scene. There is no exception to this rule for overtime shifts.

(f) As close to the start of the encounter as is reasonably possible, an officer who is wearing a body camera shall notify the subject(s) of the recording that they are being recorded by a body camera.

(g) Notwithstanding the requirements of subsection (e):

(1) Before entering a private residence or location with similar expectations of privacy without a warrant or in non-exigent circumstances, an officer shall ask the occupant if the occupant wants the officer to discontinue use of the officer's body camera. If the occupant responds affirmatively, the officer shall immediately discontinue use of the body camera; however, nothing in this provision prohibits use of body cameras when officers enter a private location pursuant to a search or arrest warrant or in exigent circumstances, so long as the officer promptly asks the occupant if the occupant wants the office to discontinue use;

(2) When interacting with an apparent crime victim (e.g., a victim of domestic violence or sexual assault), an officer shall, as soon as practicable, ask the apparent crime victim if he or she wants the officer to discontinue use of the body camera. If the apparent crime victim responds affirmatively, the officer shall immediately discontinue use of the body camera; and

(3) When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, an officer shall, as soon as practicable, ask the person seeking to remain anonymous if he or she wants the officer to discontinue use of the officer's body camera. If the person seeking to remain anonymous responds affirmatively, the officer shall immediately discontinue use of the body camera.

(h) All law enforcement offers to discontinue the use of a body camera made under subsection (g), and the responses thereto, shall be recorded by the body camera before discontinuing its use.

(i) Body cameras, as well as other devices that can record audio and video, shall not be used to gather intelligence information based in whole or in part on constitutionally protected speech, associations, or religion, or to record activity that does not involve a response to a call for service or a law enforcement or investigative encounter between an officer and a member of the public. For example, body cameras shall not be activated during protests or demonstrations unless and until an officer begins to engage with any individual participant or participants with regard to any alleged or suspected violation of law.

(j) Officers shall not activate a body camera while on the grounds of any public, private, charter, or parochial elementary or secondary school, except when responding to an imminent threat to life or health.

(k) Body camera recordings shall not be viewed by supervisors for the sole purpose of searching for violations of department policy not specifically related to a complaint or investigation.

#### **Section 4: Retention and Access**

(a) Body camera video footage shall be retained by the Department, or an authorized agent thereof, for six months from the date it was recorded; thereafter the footage shall be permanently deleted unless a longer retention period is required by law.

(b) Notwithstanding the retention and deletion requirements in subsection (a):

(1) Video footage shall be automatically retained for no less than three years if the video footage captures images involving:

(A) Any use of force;

(B) Events leading up to and including an arrest for a felony-level offense, or events that constitute a felony-level offense; or

(C) An encounter about which a complaint has been registered by a subject of the video footage.

(2) Body camera video footage shall also be retained for no less than three years if a longer retention period is requested by:

(A) The officer whose body camera recorded the video footage, if that officer reasonably asserts that the video footage has evidentiary or exculpatory value;

(B) Any officer who is a subject of the video footage, if that officer reasonably asserts that the video footage has evidentiary or exculpatory value;

(C) Any superior officer of an officer whose body camera recorded the video footage or who is a subject of the video footage, if that superior officer reasonably asserts that the video footage has evidentiary or exculpatory value;

(D) Any officer, if the video footage is being retained solely and exclusively for police training purposes, provided that such footage shall be redacted to obscure the identity of any civilian appearing therein;

(E) Any member of the public who is a subject of the video footage;

(F) Any parent or legal guardian of a minor who is a subject of the video footage; or

(G) A deceased subject's next of kin or legally authorized designee.

(c) To effectuate subsections (b)(2)(E), (b)(2)(F) and (b)(2)(G), any member of the public who is a subject of video footage, the parent or legal guardian of a minor who is a subject of the video footage, or a deceased subject's next of kin or legally authorized designee, shall be permitted to review the specific video footage in which the subject appears in order to make a determination as to whether they will voluntarily request it be subject to a three-year retention period, and shall be entitled to a copy of the video footage upon request.

(d) No officer shall review or receive an accounting of any body camera video footage before completing any required initial reports, statements, and interviews regarding the recorded event. After any required initial reports, statements, and interviews are completed, a supervisor may review footage when necessary to evaluate the merits of a complaint by a subject of the video footage or a specific allegation of misconduct.

(e) Officers are prohibited from accessing, copying, or releasing body camera video footage except for official law enforcement purposes. All accessing, copying, or releasing of body camera video footage that is undertaken for official law enforcement purposes must be logged. Officers shall never use a camera phone or other secondary recording device to make a copy of a body camera video for any purpose.

(f) Under no circumstance shall body camera video be subject to, either in real time or after the footage is captured, any technological enhancements, automated analysis, or analysis of biometric indicators, including but not limited to iris or retina patterns or facial characteristics.

(g) Video footage shall be subject to the public inspection requirements of the Massachusetts public records law (M.G.L. c.4 s. 7 cl. 26; M.G.L. c.66), but otherwise shall not be divulged or used by the Department for any commercial or other non-law enforcement purpose.

(h) Video footage made public pursuant to a public records request or for another legitimate law enforcement purpose shall be redacted to obscure the identities of minor children, and to obscure the identities of other individuals when the release of the video footage would unreasonably, substantially, or seriously interfere with the individual's privacy.

(i) Where the Department authorizes a third party to act as its agent in maintaining body camera footage, the agent shall not be permitted to independently access, view, or alter any video footage, except to delete videos as required by law or agency retention policies.

## **Section 5: Enforcement**

(a) If any Department officer, employee or agent fails to comply with the requirements of Sections 4 or 5, or interferes with a body camera's ability to accurately capture video footage, then the following enforcement mechanisms shall apply unless exigent circumstances made compliance impossible:

(1) Appropriate disciplinary action shall be taken against the officer, employee, or agent.

(2) The Department shall support a rebuttable evidentiary presumption in favor of any criminal defendant or civil plaintiff who reasonably asserts that, due to the noncompliance or interference described in this subsection, body-camera footage favorable to that defendant or plaintiff was destroyed or not captured.

(3) The Department shall also support a rule that, upon a finding by a jury or court that a failure to record or the destruction of a recording was done in bad faith, the relevant officer's testimony about the underlying encounter should be disregarded by the factfinder or not admitted into evidence.

(b) If a Department officer is found by a court, administrative body, fellow police officer, or other factfinder to have provided an account of an incident that is [materially?] contradicted by footage from a body camera or other recording, that contradiction shall be reported to the officer's supervisor and the District Attorney's Office, including if applicable the District Attorney's Conviction Integrity Unit.

(c) If a Department officer is found by a fellow police officer to have provided an account of an incident that is material contradicted by footage from a body camera or other recording, that contradiction shall be reported to the Department officer's supervisor and the District Attorney's Office, including if applicable the District Attorney's Conviction Integrity Unit.

(d) Body camera video footage recorded in contravention of this {Policy/Ordinance/Bylaw} or any other applicable law shall be immediately destroyed. The Department and its officers shall not seek to introduce improperly recorded video footage as evidence in any criminal or civil legal or administrative proceeding against a civilian.

(e) Nothing in this {Policy/Ordinance/Bylaw} shall be read to contravene any laws governing the maintenance and destruction of evidence in criminal investigations and prosecutions.

#### **Section 6: Effective Date**

This {Policy/Ordinance/Bylaw} shall take effect on {Date}.