



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

June 23, 2016

In light of the increasingly widespread adoption of body-worn cameras in the United States, and in response to growing demand for model policies concerning body-worn cameras in Massachusetts, the ACLU of Massachusetts presents the following model for use as either a police policy or a municipal ordinance or bylaw. As this model demonstrates, and as the experience of cities and towns across America confirms, a good body-worn camera policy can improve public safety, enhance community-police relations, and protect privacy. The ACLU of Massachusetts is eager to work collaboratively on this issue with community members, police departments, public officials, and other stakeholders to meet local community needs and concerns.

Section 1: Findings

- (a) There is no objective record of most encounters between {Name of City/Town} Police Department officers and civilians, which can lead to divergent and subjective accounts of these encounters.
- (b) The tragic deaths of civilians in police encounters, including numerous people of color, have brought police practices and police-community relations to the forefront of national attention.
- (c) Equipping police officers with body cameras can, together with good policies, provide objective evidence of encounters between civilians and police officers without unduly infringing privacy.
- (d) Body camera programs reportedly have been piloted or implemented in major cities throughout the country, including [Atlanta](#) (GA), [Austin](#) (TX), [Baltimore](#) (MD), [Charlotte](#) (NC), [Chicago](#) (IL), [Dallas](#) (TX), [Denver](#) (CO), Detroit (MI), El Paso (TX), [Ferguson](#) (MI), Fort Worth (TX), [Houston](#) (TX), Indianapolis (IN), [Las Vegas](#) (NV), [New Orleans](#) (LA), [New York](#) (NY), [Los Angeles](#) (CA), [Oakland](#) (CA), [Orlando](#) (FL), [Philadelphia](#) (PA), [Phoenix](#) (AZ), San Antonio (TX), [San Diego](#) (CA), [San Francisco](#) (CA), [San Jose](#) (CA), [Seattle](#) (WA), and [Washington](#) (DC).
- (e) Localities that have kept data on their body camera programs, including Buncombe County (NC), Mesa (AZ), Oakland (CA), [Orlando](#) (FL), Paulsboro (NJ), [Phoenix](#) (AZ), [Rialto](#) (CA), and San Diego (CA) have reportedly experienced substantial declines in civilian complaints, use-of-force incidents, or both.
- (f) The experience of these cities indicates that, when done right, body camera programs can enhance police accountability, deter misconduct by officers and civilians alike, and support rather than undermine positive police-community relations.

Now, be it ordained that the {City/Town} of {Name of City/Town} Code be amended
by adding the following ordinance:

~OR~

Accordingly, the following Policy shall govern the use of body-worn cameras
by the {Name of City/Town} Police Department:

Section 2: Purpose

The {Name of City/Town} Police Department (hereinafter “the Department”) shall adopt the use of body cameras by police officers to: improve community relations; foster better accountability for the actions of its personnel; deter inappropriate conduct by police officers and by members of the public; capture digital audio-video evidence for criminal, civil, and traffic-related court cases; be used as a training tool for officer safety and best practices; and assist in the assessment of contacts between officers and the public by reviewing procedures and interpersonal actions. All provisions laid out in this rule shall be reflected in all related rules and procedures of the Department.

This {Policy/Ordinance/Bylaw} is issued to provide officers and supervisors with guidelines for 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; as well as sanctions for failing to abide by these provisions.

Section 3: Definitions

(a) “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 4: 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.

(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 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;

(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 First Amendment-protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between an officer and a member of the public.

(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 5: 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, either in real time or after the footage is captured, to any automated analysis, or analysis of biometric indicators of any kind, 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 6: 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.

(b) 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.

(c) 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 7: Effective Date

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